

LAW AND JURISPRUDENCE ON ALTERNATIVE DISPUTE RESOLUTION

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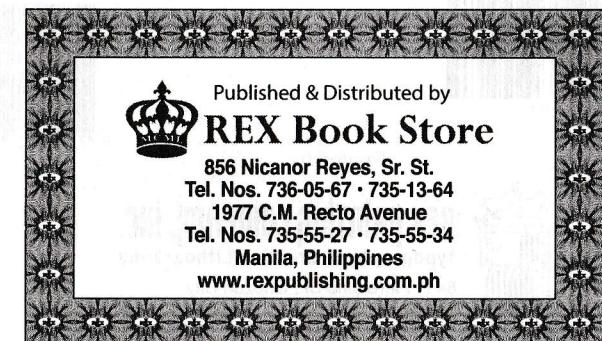
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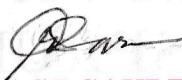
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ISBN 978-971-23-8268-0

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05-RL-00068-0



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Typography & Creative Lithography

84 P. Florentino St., Quezon City

Tel. No. 857-77-77

Dedicated

to the first arbitrators in our lives

our fathers

Luis R. Lara, Jr.

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PREFACE

The phrase “alternative dispute resolution” (ADR) system has been existing in our jurisdiction even before the Spanish, Americans and Japanese colonizers came into Philippine shores.

Our ancestors settled disputes in their communities or “balangays” (where the word “Barangay” came from) by referring them through their elders or community leaders. This mode of settling disputes is still practiced in our Sha’ria tradition or Muslim communities in the South, and among Igorots and Itnegs of the North, where our indigenous, rich and peculiar customs, culture, dialects and traditions abound.

Hence, the elders or leaders would gather the disputing parties before a mediator or conciliator, or a panel of mediators or conciliators, in order to avoid or settle conflicts already existing at the time. This averts conflicts ranging from personal, family, or dispute among clans, to tribal wars.

The traditional modes of settling disputes were removed when the Philippines was colonized successively such that the indigenous system of settling problems both in public and private relations, evolved – from the personal, simplified and traditional ways to the Western brand of complicated, tedious and due process-based system of justice.

It is time therefore that the simplified, inexpensive and short-term modes of settling disputes be re-ingrained in our legal system and in effect inculcated in our national consciousness, as a way of identifying with Filipino cultural identity and ASEAN community as well.

With globalization in the palm of our hands, or just a click in the computer, we foresee brisk commercial, trade and other economic transactions. The ADR indeed, as the Supreme Court puts it, is the “Wave of the Future” for Filipino students, ADR practitioners, lawyers, our people and our country.

Acknowledgment is made to those who in one way or another helped in the preparation of this book, particularly Lee Anne Babierra, Sedfrey del Rosario and Heinrick Rabara of Rex Printing Company, Timothy and Zachary Lara who helped us proofread and most specially to Dean Ferdinand Tan for his encouragement.

June 24, 2016

THE AUTHORS

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CHAPTER 1

GENERAL CONCEPTS

"The early judges called upon to solve private conflicts were primarily the arbiters, persons not specially trained but in whose morality, probity and good sense the parties in conflict reposed full trust. Thus, in Republican Rome, arbiter and judge (judex) were synonymous. The magistrate or praetor, after noting down the conflicting claims of litigants, and clarifying the issues, referred them for decision to a private person designated by the parties, by common agreement, or selected by them from an apposite listing (the album judicium) or else by having the arbiter chosen by lot. The judges proper, as specially trained state officials endowed with own power and jurisdiction, and taking cognizance of litigations from beginning to end, only appeared under the Empire, by the so-called cognitio extra ordinem."

[Chung Fu Industries (Philippines), Inc. v. Court of Appeals, G.R. No. 96283, February 25, 1992]

Introduction

The congestion of case dockets of Philippine courts, especially at the first and second level, has grave consequences for the average time for disposition of cases. In easing the burden of the courts with the accumulated cases, the judiciary needs solutions to drastically reduce the number of pending cases at any given time, and to improve court processes and expedite resolution of disputes.

To actively promote the freedom of parties to make own arrangements to resolve their disputes, the State encourages and actively promotes the use of alternative dispute resolution (ADR).¹

¹An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes [ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004], Republic Act No. 9285, Sec. 2.

The Philippines favors alternative methods of resolving disputes, particularly in civil and commercial disputes.² Alternative dispute resolution methods (i.e., arbitration, mediation, negotiation and conciliation) are encouraged because "they provide solutions that are less time-consuming, less tedious, less confrontational, and more productive of goodwill and lasting relationships."³

It has been said that the settlement of controversies by arbitration is an ancient practice at common law. In its broad sense it is a substitution, by consent of parties, of another tribunal for the tribunals provided by ordinary processes of law; a domestic tribunal, as contradistinguished from a regularly organized court proceeding according to the course of common law, depending on the voluntary act of parties disputant in the selection of judges of their own choice. 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.⁴

But historically, courts viewed arbitration with disfavour. Thus, "the possibly inevitable jealousy of the courts toward anything which deprives them of jurisdiction and the idea which was prevailed that since there are courts, therefore everybody must go to the courts is a *singular view of judicial sanctity*."⁵

The prevailing doctrine then was that "a clause in a contract providing that all matters in dispute shall be referred to arbitrators, *and to them alone*, is contrary to public policy and cannot oust the courts of jurisdiction."⁶

The rule now is that unless the agreement is such as absolutely to close the doors of the courts against the parties, which agreement would be void, the courts will look with favor upon such amicable arrangement and will only with great reluctance interfere to anticipate or nullify the action of the arbitrator.⁷

²Korea Technologies Co. v. Lerma, G.R. No. 143581, January 7, 2008.

³LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc., G.R. No. 141833. March 26, 2003.

⁴Chan Linte v. Law Union and Rock Ins., etc, 42 Phil. 548 citing Corpus Juris, vol. 5, p. 16.

⁵See the dissenting opinion of Justice Malcolm in Vega v. The San Carlos Milling Co., G.R. No. L-21549, October 22, 1924, citing United States Asphalt Refining Co. vs. Trinidad Lake Petroleum Co. ([1915], 222 Fed., 1006).

⁶Wahl, Jr. v. Donaldson, Sims & Co, G.R. No. 1085, May 16, 1903, 2 Phil. 445 (1903).

⁷Cited from the dissenting opinion of Justice Malcolm in Vega v. The San Car-

In practice nowadays, absent an agreement of the parties to resolve their disputes via a particular mode, it is the regular courts that remain the fora to resolve such matters. However, the parties may opt for recourse to third parties, exercising their basic freedom to "establish such stipulation, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy." In such a case, resort to the arbitration process may be spelled out by them in a contract in anticipation of disputes that may arise between them. Or this may be stipulated in a submission agreement when they are actually confronted by a dispute.⁸

It is emphasized that arbitration proceedings are designed to level the playing field among parties in pursuit of a mutually acceptable solution to their conflicting claims. Any arrangement or scheme that would give undue advantage to a party in the negotiating table is anathema to the very purpose of arbitration and should, therefore, be resisted.⁹

Purposes of Alternative Dispute Resolution System in the Philippines:

1. To achieve speedy and impartial justice
2. To declog court dockets
3. To prepare the Philippines for ASEAN integration and globalization

Sources of Alternative Dispute Resolution

The sources for alternative dispute resolution are as follows:

1. The 1987 Philippine Constitution, which provides that the Supreme Court shall have the power to promulgate rules "to provide a simplified and inexpensive procedure for the speedy disposition of cases." (Sec. 5, par. 5, Art. VIII, 1987 Constitution);
2. Philippine Laws, such as the Civil Code which contains provisions on compromises and arbitration (Arts. 2028-

los Milling Co., G.R. No. L-21549, October 22, 1924, 51 Phil. 908 (1924).

⁸Chung Fu Industries (Philippines), Inc. v. Court of Appeals, G.R. No. 96283, February 25, 1992.

⁹Magellan Capital Management v. Zosa, 355 SCRA 157.

- 2047), The Arbitration Law (Republic Act No. 876), and The Alternative Dispute Resolution Act of 2004 (Republic Act No. 9285). Special laws also govern alternative dispute resolution in specialized cases, i.e. disputes in the construction industry;
3. Decisions of the Supreme Court of the Philippines;
 4. Rules and Resolutions issued by the Philippine Supreme Court, such as the Rules on Civil Procedure, which considers the possibility of a submission to alternative modes of dispute resolution during pre-trial;
 5. Rules and Regulations issued by administrative agencies, such as DOJ Circular No. 98, which implements the Rules and Regulations (IRR) applicable to the ADR Act and regulates the OADR, an attached agency to the DOJ, which is tasked to promote, develop and expand the use of ADR in the private and public sectors;
 6. International Laws, Treaties or International Agreements such as the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985 and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards approved in 1958 and ratified by the Philippine Senate under Senate Resolution No. 71;
 7. Jurisprudence of Other Countries; and
 8. Equity.

Alternative Dispute Resolution, Defined

An alternative dispute resolution system is any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, in which a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.¹⁰

¹⁰An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes [ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004], Republic Act No. 9285, Sec. 3(a).

ADR Provider, Defined

ADR Provider means institutions or persons accredited as mediator, conciliator, arbitrator, neutral evaluator, or any person exercising similar functions in any Alternative Dispute Resolution system. This is without prejudice to the rights of the parties to choose non-accredited individuals to act as mediator, conciliator, arbitrator, neutral evaluator of their dispute.¹¹

Forms of Alternative Dispute Resolution

1. Conciliation
2. Mediation
3. Arbitration
4. Early neutral evaluation;
5. Mini-trial;
6. Mediation-arbitration;
7. A combination thereof; or
8. Any other ADR form.

Conciliation, Defined.

Conciliation is the adjustment and settlement of a dispute in a friendly, unantagonistic manner; used in courts before trial with a view towards avoiding trial and in labor disputes before arbitration.¹²

It is a process in which a neutral third party (conciliator) conveys information between parties and attempts to improve direct communication between them. The conciliator often prepares a report that describes the scope of agreement and disagreement. The role of a conciliator is more passive than a mediator.¹³

The Alternative Dispute Resolution Act does not define conciliation, but includes this form of ADR as part of mediation.¹⁴

¹¹Republic Act No. 9285, Sec. 3(b).

¹²Black's Law Dictionary, Fifth Edition, p. 262.

¹³The Philippine Mediation Center.

¹⁴R.A. No. 9285, Chapter 2, Section 7.

Mediation, Defined.

Mediation means a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a dispute.¹⁵

Arbitration, Defined.

Arbitration means a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties, or rules promulgated pursuant to this Act, resolve a dispute by rendering an award.¹⁶

Early Neutral Evaluation, Defined.

Early Neutral Evaluation means an ADR process wherein parties and their lawyers are brought together early in a pre-trial phase to present summaries of their cases and receive a nonbinding assessment by an experienced, neutral person, with expertise in the subject in the substance of the dispute.¹⁷

Mini-Trial, Defined.

Mini-Trial means a structured dispute resolution method in which the merits of a case are argued before a panel comprising senior decision makers with or without the presence of a neutral third person after which the parties seek a negotiated settlement.¹⁸

Mediation-Arbitration, Defined.

Mediation-Arbitration or Med-Arb is a step dispute resolution process involving both mediation and arbitration.¹⁹

Other ADR Forms

The parties may agree to refer one or more or all issues arising in a dispute or during its pendency to other forms of ADR such as

¹⁵R.A. No. 9285, Chapter 1, Section 3(q). This will be further discussed in Chapter 2 of this book.

¹⁶R.A. No. 9285, Chapter 1, Section 3(d). This will be further discussed in Chapter 3 of this book.

¹⁷R.A. No. 9285, Chapter 1, Section 3(n).

¹⁸R.A. No. 9285, Chapter 1, Section 3(u).

¹⁹R.A. No. 9285, Chapter 1, Section 3(t).

but not limited to (a) the evaluation of a third person or (b) a mini-trial, (c) mediation-arbitration, or a combination thereof. The use of other ADR forms shall be governed by the procedures on mediation except where it is combined with arbitration in which case it shall likewise be governed by the procedures on domestic arbitration.²⁰

What cannot be subject of ADR

The following disputes are exempt from the application of the Alternative Dispute Resolution Act:

1. Labor disputes covered by Presidential Decree No. 442, otherwise known as the "Labor Code of the Philippines, as amended", and its Implementing Rules and Regulations;
2. The civil status of persons;
3. The validity of marriage;
4. Any ground for legal separation;
5. The jurisdiction of courts;
6. Future *legitime*;
7. Criminal liability;
8. Those disputes which by law cannot be compromised; and
9. Disputes referred to court-annexed mediation.²¹

General Principles Governing ADR

1. Party autonomy
2. Liberal interpretation in favor of ADR
3. Competence-competence principle
4. Principle of separability
5. Confidential nature of ADR proceedings

Principle of Party Autonomy:

Parties are free to make their own arrangements to resolve their disputes.²²

²⁰R.A. No. 9285, Chapter 3, Section 18.

²¹DOJ Department Circular No. 98, s. 2009, Chapter 1, Rule 1, Article 1.3.

²²R.A. No. 9285, Chapter 1, Section 2.

They are even free to agree on the procedure to be followed in the conduct of the arbitral proceedings. Failing such agreement, the arbitral tribunal may conduct arbitration in the manner it considers appropriate.²³

Liberal Interpretation in Favor of ADR

In interpreting the ADR Act, the court shall have due regard to the policy of the law in favor of arbitration.²⁴

In situations where no specific rule is provided under the Special ADR Rules, the court shall resolve such matter summarily and be guided by the spirit and intent of the Special ADR Rules and the ADR Laws.²⁵

However, the Special ADR Rules do not apply to Court-Annexed Mediation, which shall be governed by issuances of the Supreme Court. Where the parties have agreed to submit their dispute to mediation, a court before which that dispute was brought shall suspend the proceedings and direct the parties to submit their dispute to private mediation. If the parties subsequently agree, however, they may opt to have their dispute settled through Court-Annexed Mediation.²⁶

Being an inexpensive, speedy and amicable method of settling disputes, arbitration – along with mediation, conciliation and negotiation – is encouraged by the Supreme Court. Aside from unclogging judicial dockets, arbitration also hastens the resolution of disputes, especially of the commercial kind. It is thus regarded as the “wave of the future” in international civil and commercial disputes.²⁷

Thus, the Supreme Court has held that brushing aside a contractual agreement calling for arbitration between the parties would be a step backward.²⁸ In another case, the Court held that if there is an interpretation that would render effective an arbitration clause for purposes of avoiding litigation and expediting resolution of the dispute, that interpretation shall be adopted.²⁹ Moreover, if the

²³A.M. No. 07-11-08-SC, Rule 2.3, Rules Governing Arbitral Proceedings.

²⁴R.A. No. 9285, Chapter 4, Section 25.

²⁵A.M. No. 07-11-08-SC, Rule 1.13, Spirit and Intent of Special ADR Rules.

²⁶A.M. No. 07-11-08-SC, Rule 2.5, Policy on Mediation.

²⁷LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc., G.R. No. 141833, March 26, 2003.

²⁸Ibid.

²⁹Lanuza v. BF Corporation, G.R. No. 174938, October 1, 2014.

arbitration clause is susceptible of an interpretation that covers the asserted dispute, an order to arbitrate should be granted, and any doubt should be resolved in favor of arbitration.³⁰

Policy on Arbitration

Where the parties have agreed to submit their dispute to arbitration, courts shall refer the parties to arbitration pursuant to Republic Act No. 9285 bearing in mind that such arbitration agreement is the law between the parties and that they are expected to abide by it in good faith. Further, the courts shall not refuse to refer parties to arbitration for reasons including, but not limited to, the following:

- a. The referral tends to oust a court of its jurisdiction;
- b. The court is in a better position to resolve the dispute subject of arbitration;
- c. The referral would result in multiplicity of suits;
- d. The arbitration proceeding has not commenced;
- e. The place of arbitration is in a foreign country;
- f. One or more of the issues are legal and one or more of the arbitrators are not lawyers;
- g. One or more of the arbitrators are not Philippine nationals; or
- h. One or more of the arbitrators are alleged not to possess the required qualification under the arbitration agreement or law.³¹

Where Court Intervention Allowed

Where court intervention is allowed under ADR Laws or the Special ADR Rules, courts shall not refuse to grant relief for any of the following reasons:

- a. Prior to the constitution of the arbitral tribunal, the court finds that the principal action is the subject of an arbitration agreement; or

³⁰LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc., G.R. No. 141833, March 26, 2003.

³¹A.M. No. 07-11-08-SC, Rule 2.2, Policy on Arbitration.

- b. The principal action is already pending before an arbitral tribunal.³²

Principle of Competence-Competence

The Special ADR Rules recognize the principle of competence-competence, which means that the arbitral tribunal may initially rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any condition precedent to the filing of a request for arbitration.³³

Principle of Separability

The Special ADR Rules recognize the principle of separability of the arbitration clause, which means that said clause shall be treated as an agreement independent of the other terms of the contract of which it forms part. A decision that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.³⁴

The doctrine of separability states that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate agreement and the arbitration agreement does not automatically terminate when the contract of which it is part comes to an end. The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of that contract and is itself a contract. The doctrine of separability denotes that the invalidity of the main contract, also referred to as the "container" contract, does not affect the validity of the arbitration agreement. Irrespective of the fact that the main contract is invalid, the arbitration clause/agreement still remains valid and enforceable. The validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself.³⁵

Confidential Nature of ADR

Information obtained through mediation is privileged and confidential.³⁶ Likewise, arbitration proceedings, including the

³²Ibid.

³³Ibid.

³⁴Ibid.

³⁵See Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc. G.R. No. 175404, January 31, 2011; See also Gonzalez v. Climax Mining, Ltd, G.R. Nos. 161957 & 167994, January 22, 1997.

³⁶R.A. No. 9285, Chapter 2, Section 9(a).

records, evidence and the arbitral award, are confidential and shall not be published.³⁷

The mantle of confidentiality extends to any information, related to the subject of the dispute, expressly intended by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed. It includes the following:

(1) communication, oral or written, made in a dispute resolution proceeding, including any memoranda, notes or work product of the neutral party or non-party participant;

(2) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing or reconvening mediation or retaining a mediator; and

(3) pleadings, motions manifestations, witness statements, reports filed or submitted in an arbitration or for expert evaluation.³⁸

A party, a mediator, or a nonparty participant may refuse to disclose and may prevent any other person from disclosing a mediation communication.³⁹ Confidential Information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, whether judicial or quasi-judicial.⁴⁰

The following persons involved or previously involved in a mediation may not be compelled to disclose confidential information obtained during mediation:

- (1) the parties to the dispute;
- (2) the mediator or mediators;
- (3) the counsel for the parties;
- (4) the nonparty participants;
- (5) any persons hired or engaged in connection with the mediation as secretary, stenographer, clerk or assistant; and

³⁷R.A. No. 9285, Chapter 4, Section 23.

³⁸R.A. No. 9285, Chapter 1, Section 3(h).

³⁹R.A. No. 9285, Chapter 2, Section 9(b).

⁴⁰R.A. No. 9285, Chapter 2, Section 9(c).

- (6) any other person who obtains or possesses confidential information by reason of his/her profession.⁴¹

Exceptions to Confidentiality

There is no privilege against disclosure if mediation communication is:

- (1) in an agreement evidenced by a record authenticated by all parties to the agreement;
- (2) available to the public or that is made during a session of a mediation which is open, or is required by law to be open, to the public;
- (3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- (4) internationally used to plan a crime, attempt to commit, or commit a crime, or conceal an ongoing crime or criminal activity;
- (5) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a public agency is protecting the interest of an individual protected by law; but this exception does not apply where a child protection matter is referred to mediation by a court or a public agency participates in the child protection mediation;
- (6) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against mediator in a proceeding; or
- (7) sought or offered to prove or disprove a claim of complaint of professional misconduct or malpractice filed against a party, nonparty participant, or representative of a party based on conduct occurring during a mediation.⁴²

After a hearing in camera, a court or administrative agency may find that confidentiality does not apply to information when the following requirements are met:

- (1) the party seeking discovery of the proponent of the evidence has shown that the evidence is not otherwise available;

⁴¹R.A. No. 9285, Chapter 2, Section 9(d).

⁴²R.A. No. 9285, Chapter 2, Section 11(a).

- (2) there is a need for the evidence that substantially outweighs the interest in protecting confidentiality; and
- (3) the mediation communication is sought or offered in:
 - a. a court proceeding involving a crime or felony; or
 - b. a proceeding to prove a claim or defense that under the law is sufficient to reform or avoid a liability on a contract arising out of the mediation.⁴³

Office for Alternative Dispute Resolution

The Office for Alternative Dispute Resolution is an attached agency to the Department of Justice, which aims to promote, develop and expand the use of ADR in the private and public sectors, to assist the government to monitor, study and evaluate the use by the public and the private sector of ADR, and recommend to Congress needful statutory changes to develop, and to strengthen and improve ADR practices in accordance with world standards.⁴⁴

Its powers and functions are as follows:

- (a) To formulate standards for the training of the ADR practitioners and service providers;
- (b) To certify that such ADR practitioners and ADR service providers have undergone the professional training provided by the office;
- (c) To coordinate the development, implementation, monitoring, and evaluation of government ADR programs;
- (d) To charge fees for their services; and
- (e) To perform such acts as may be necessary to carry into effect the provisions of this Act.⁴⁵

The Alternative Dispute Resolution Act of 2004

The Act is divided into eight chapters. Chapter 1 discusses the general provisions of the ADR Act. Chapter 2 discusses voluntary mediation other than court-annexed mediation. Chapter 3 discusses

⁴³R.A. No. 9285, Chapter 2, Section 11(b).

⁴⁴R.A. No. 9285, Chapter 8, Section 49.

⁴⁵R.A. No. 9285, Chapter 8, Section 50.

other ADR forms. Chapter 4 tackles international commercial arbitration. Chapter 5 discusses domestic arbitration, and states that Republic Act No. 876 or The Arbitration Law shall continue to govern the same. Chapter 6 covers arbitration of construction disputes, which is governed by Executive Order No. 1008, or the Constitution Industry Arbitration Law. Chapter 7 discusses the judicial review of arbitral awards, both domestic and foreign. Chapter 8 contains miscellaneous provisions, which include the establishment of the OADR, directing the promulgation of the implementing rules and regulations of the law, and the applicability of the *Katarungang Pambarangay* under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

The ADR Act also covers mediation, which is defined as a process whereby parties in dispute meet with a neutral third party who facilitates communication and negotiation between the parties to reach a voluntary agreement.¹ Mediation is a form of alternative dispute resolution that is often used in conjunction with other forms of ADR. It is a confidential process where the parties can express their views and concerns without fear of being held to them. The mediator's role is to facilitate communication and negotiation between the parties, but they do not make decisions on behalf of the parties. The ADR Act provides that mediation is a voluntary process, and that the parties must agree to refer their dispute to mediation before it can be conducted. The ADR Act also provides that mediation is confidential, and that the parties' communications during the process cannot be used against them in any legal proceeding.

The ADR Act also covers arbitration, which is defined as a process whereby parties in dispute submit their dispute to an impartial third party, known as an arbitrator, who makes a final and binding decision. The ADR Act provides that arbitration is a voluntary process, and that the parties must agree to refer their dispute to arbitration before it can be conducted. The ADR Act also provides that arbitration is confidential, and that the parties' communications during the process cannot be used against them in any legal proceeding.

CHAPTER 2

MEDIATION

I. Voluntary Mediation

Scope

Provisions of the Alternative Dispute Resolution (ADR) Act also covers voluntary mediation, whether *ad hoc* or institutional, other than court-annexed.¹ Voluntary mediation means a voluntary process in which disputing parties select a mediator who facilitates communication and negotiation, and assist the parties in reaching a voluntary agreement.² The voluntariness in mediation under the ADR Act must be possessed by both parties; one party cannot have a dispute referred to mediation without the agreement of the other party. The presence of a mediator does not detract from the fact that the primary responsibility of resolving a dispute and the shaping of a voluntary and un-coerced settlement rests with the parties.³ Parties can refer their dispute to voluntary mediation at any time, as long as both parties are mutually open to the mediation process.

The Implementing Rules and Regulations of the ADR Act also provides for its applicability to pending cases before an administrative or quasi-judicial agency which are referred to mediation upon agreement of the parties.⁴

Ad hoc and Institutional Mediation, Defined.

Voluntary mediation may be *ad hoc* or institutional. *Ad hoc* Mediation means any mediation other than institutional or court-

¹R.A. No. 9285, Chapter 2, Section 7.

²R.A. No. 9285, Chapter 1, Section 3(q).

³DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 3, Article 3.9(b).

⁴DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 1, Article 3.1, paragraph 2.

annexed.⁵ Parties voluntarily agree upon a form of mediation, without referring to any mediation institution. Institutional Mediation means any mediation process conducted under the rules of a mediation institution.⁶ Thus, parties are subject to the rules and procedures (including fee structures) of a mediation institution.

Court-Annexed and Court-Referred Mediation, Defined.

Court-Annexed Mediation means any mediation process conducted under the auspices of the court, after such court has acquired jurisdiction of the dispute.⁷ Court-Referred Mediation means mediation ordered by a court to be conducted in accordance with the Agreement of the Parties when a[n] action is prematurely commenced in violation of such agreement.⁸ Unlike voluntary mediation, parties do not have the freedom to select their mediator in court-annexed mediation. Court-Annexed Mediation shall be governed by issuances of the Supreme Court.⁹

Application and Interpretation

The rules on mediation are to be construed with the following considerations in mind:

1. The need to promote candor of parties and mediators through confidentiality of the mediation process;
2. The policy of fostering prompt, economical, and amicable resolution of disputes in accordance with the principles of integrity of determination by the parties, and
3. The policy that the decision-making authority in the mediation process rests with the parties.¹⁰

Place of Mediation

Parties are free to agree on the place of mediation. Failing such agreement, the place of mediation shall be any place convenient and appropriate to all parties.¹¹

⁵DOJ Department Circular No. 98, s. 2009, Chapter 1, Rule 2, Article 1.6(B)(1).

⁶DOJ Department Circular No. 98, s. 2009, Chapter 1, Rule 2, Article 1.6(B)(2).

⁷R.A. No. 9285, Chapter 1, Section 3(l).

⁸R.A. No. 9285, Chapter 1, Section 3(m).

⁹See A.M. 07-11-08-SC, Rule 2.5, Policy on Mediation.

¹⁰R.A. No. 9285, Chapter 2, Section 8.

¹¹R.A. No. 9285, Chapter 2, Section 15.

Role of Parties and their Counsels

Generally, the parties shall personally appear for mediation.¹² However, a party may designate, in writing, a lawyer or any other person to provide assistance in the mediation.¹³ A party's lawyer or agent must have full authority to negotiate and settle the dispute.¹⁴ A waiver of participation or legal representation may be rescinded at any time.¹⁵

The lawyer shall view his/her role in the mediation as a collaborator with the other lawyer in working together toward the common goal of helping their clients resolve their differences to their mutual advantage.¹⁶ The lawyer shall encourage and assist his/her client to actively participate in positive discussions and cooperate in crafting an agreement to resolve their dispute.¹⁷ The lawyer must assist his/her client to comprehend and appreciate the mediation process and its benefits, as well as the client's greater personal responsibility for the success of mediation in resolving the dispute.¹⁸ This is in contrast to the most publicly familiar role for lawyers as appearing in adversarial litigation on behalf of clients; however, in mediation, the lawyer is called to serve as the client's counselor during the process.¹⁹

In preparing for mediation, the lawyer shall confer and discuss with his/her client not only the substance of the mediation, but the mediation process in itself. The mediation process should be viewed as essentially a negotiation between the parties assisted by their respective lawyers, and facilitated by a mediator. The lawyer should stress its difference from litigation, its advantages and benefits, the clients heightened role in mediation and responsibility for its success and explain his or her role as lawyer in mediation proceedings.²⁰

In addition, the lawyer should discuss: (a) the substantive issues involved in the dispute and their prioritization in terms of

¹²DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 5, Article 3.17(c).

¹³R.A. No. 9285, Chapter 2, Section 14.

¹⁴DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 5, Article 3.17(c).

¹⁵R.A. No. 9285, Chapter 2, Section 14.

¹⁶DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 4, Article 3.15(a).

¹⁷DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 4, Article 3.15(b).

¹⁸DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 4, Article 3.15(c).

¹⁹See Cayetano v. Monsod, G.R. No. 100113, September 3, 1991, 201 SCRA

210.

²⁰DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 4, Article 3.15(d).

importance to his/her client's real interests and needs, (b) the study of other party's position in relation to the issues with a view to understanding the underlying interests, fears, concerns and needs, (c) the information or facts to be gathered or sought from the other side or to be exchanged that are necessary for informed decision-making, (d) the possible options for settlement but stressing the need to be open-minded about other possibilities, and (e) the best, worst and most likely alternative to a non-negotiated settlement.²¹

The lawyer shall give support to the mediator so that his/her client will fully understand the rules and processes of mediation.²² He or she shall impress upon his/her client the importance of speaking for himself/herself and taking responsibility for making decisions during the negotiations within the mediation process.²³ The lawyer may ask for a recess in order to give advice or suggestions to his/her client in private, if he/she perceives that his/her client is unable to bargain effectively.²⁴

Lastly, the lawyer shall assist his/her client and the mediator put in writing the terms of the settlement agreement that the parties have entered into. That lawyers shall see to it that the terms of the settlement agreement are not contrary to law, morals, good customs, public order or public policy.²⁵

Selection of a Mediator

The parties have the freedom to select a mediator, a list of which can be requested from the OADR. The OADR may be requested to inform the mediator of his/her selection.²⁶

A mediator may refuse, withdraw or may be compelled to withdraw under the following circumstances:

1. If any of the parties so requests the mediator to withdraw;
2. The mediator does not have the qualifications, training and experience to enable him/her to meet the reasonable expectations of the parties;

²¹DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 4, Article 3.15(d).

²²DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 4, Article 3.16(a).

²³DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 4, Article 3.16(b).

²⁴DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 4, Article 3.16(c).

²⁵DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 4, Article 3.16(d).

²⁶DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 2, Article 3.3.

3. Where the mediator's impartiality is in question;
4. If continuation of the process would violate any ethical standards;
5. If the safety of any of the parties would be jeopardized;
6. If the mediator is unable to provide effective services;
7. In case of conflict of interest; and
8. In any of the following instances, if the mediator is satisfied that:
 - a) One or more of the parties is/are not acting in good faith;
 - b) The parties' agreement would be illegal or involve the commission of a crime;
 - c) Continuing the dispute resolution would give rise to an appearance of impropriety;
 - d) Continuing with the process would cause significant harm to a non-participating person or to the public; or
 - e) Continuing discussion would not be in the best interest of the parties, their minor children or the dispute resolution process.²⁷

Ethical Conduct of a Mediator

Competence

It is not required that a mediator shall have special qualifications by background or profession unless the special qualifications of a mediator are required in the mediation agreement or by the mediation parties.²⁸ However, a certified mediator shall:

1. Maintain and continually upgrade his/her professional competence in mediation skills;
2. Ensure that his/her qualifications, training and experience are known to and accepted by the parties; and

²⁷DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 2, Article 3.5.

²⁸R.A. No. 9285, Chapter 2, Section 13, paragraph 3.

3. Serve only when his/her qualifications, training and experience enable him/her to meet the reasonable expectations of the parties and shall not hold himself/herself out or give the impression that he/she does not have.²⁹

Upon the request of a mediation party, an individual who is requested to serve as mediator shall disclose his/her qualifications to mediate a dispute.³⁰

Impartiality

A mediator should act with impartiality. Thus, before accepting a request to serve as a mediator, a person shall make a determination whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator. These factors can include a financial or personal interest in the outcome of the mediation and any existing or past relationship with a party or foreseeable participant in the mediation. The person requested to serve as a mediator should disclose to the parties any such fact as soon as is practical before accepting a mediation. If after accepting a mediation, a mediator learns any fact that would affect his or her impartiality, the mediator shall disclose it as soon as practicable.³¹

Confidentiality

A mediator shall keep in utmost confidence all confidential information obtained in the course of the mediation process. A mediator shall discuss issues of confidentiality and the extent of confidentiality provided in any private sessions or caucuses that the mediator holds with a party.³²

Consent and Self-Determination

A mediator shall make reasonable efforts to ensure that each party understands the nature and character of the mediation proceeding including private caucuses, the issues, the available options, the alternatives to non-settlement, and that each party is free and able to make whatever choices he/she desires regarding

²⁹DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 3, Article 3.6.

³⁰R.A. No. 9285, Chapter 2, Section 13, paragraph 2.

³¹R.A. No. 9285, Chapter 2, Section 13.

³²DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 3, Article 3.8.

participation in mediation generally and regarding specific settlement options. If a mediator believes that a party, who is not represented by counsel, is unable to understand, or fully participate, the mediation proceedings for any reason, a mediator may either: (a) limit the scope of the mediation proceedings in a manner consistent with the party's ability to participate, and/or recommend that the party obtain appropriate assistance in order to continue with the process; or (b) terminate the mediation proceedings.³³

A mediator shall recognize and put in mind that the primary responsibility of resolving a dispute and the shaping of a voluntary and un-coerced settlement rests with the parties.³⁴

Separation of Mediation from Counseling and Legal Advice

Except in evaluative mediation or when the parties so request, a mediator shall refrain from giving legal or technical advice and otherwise engaging in counseling or advocacy, and abstain from expressing his/her personal opinion on the rights and duties of the parties and the merits of any proposal made.

Where both parties are not represented by counsel, if a mediator deems it appropriate, he or she shall recommend that the parties seek outside professional advice to help them make informed decision and to understand the implication of any proposal, and suggest that the parties seek independent legal and/or technical advice before a settlement agreement is signed.

Without the consent of all parties, and for a reasonable time under the particular circumstance, a mediator who also practices another profession shall not establish a professional relationship in that other profession with one of the parties, or any person or entity, in a substantially and factually related matter.

Ethical Considerations in Fees and Gifts

A mediator shall fully disclose and explain to the parties the basis of cost, fees and charges.³⁵ The mediator who withdraws from the mediation shall return to the parties any unearned fee and unused deposit.³⁶ A mediator shall not enter into a fee agreement,

³³DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 3, Article 3.9(a).

³⁴DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 3, Article 3.9(b).

³⁵DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 3, Article 3.11(a).

³⁶DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 3, Article 3.11(b).

which is contingent upon the results of the mediation or the amount of the settlement.³⁷

No mediator or any member of a mediator's immediate family or his/her agent shall request, solicit, receive or accept any gift or any type of compensation other than the agreed fee and expenses in connection with any matter coming before the mediator.³⁸

Conduct of Mediation

The mediation process shall, in general, consists of the following stages:

1. Opening statement of the mediator
2. Individual narration by the parties;
3. Exchange by the parties;
4. Summary of issues;
5. Generation and evaluation of options; and
6. Closure.³⁹

The mediator shall help the parties reach a satisfactory resolution to their dispute but has no authority to impose a settlement on the parties.⁴⁰

The mediation proceeding shall be held in private. A person other than the parties, their representatives and mediator, may attend only with the consent of all the parties.⁴¹

The mediation shall be closed in the following ways:

1. The execution of a settlement agreement by the parties;
2. The withdrawal of any party from mediation; and
3. The written declaration of the mediator that any further effort at mediation would not be helpful.⁴²

³⁷DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 3, Article 3.11(c).

³⁸DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 3, Article 3.13.

³⁹DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 5, Article 3.17(d).

⁴⁰DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 5, Article 3.17(b).

⁴¹DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 5, Article 3.17(e).

⁴²DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 5, Article 3.17(f).

Effect of Agreement to Submit Dispute to Institutional Mediation

An agreement to submit a dispute to mediation by any institution shall include an agreement to be bound by the internal mediation and administrative policies of such institution. Further, an agreement to submit a dispute to mediation under international mediation rule shall be deemed to include an agreement to have such rules govern the mediation of the dispute and for the mediator, the parties, their respective counsel, and nonparty participants to abide by such rules. In case of conflict between the institutional mediation rules and the provisions of this Act, the latter shall prevail.⁴³

Enforcement of Mediated Settlement Agreement

A settlement agreement following successful mediation shall be prepared by the parties with the assistance of their respective counsel, if any, and by the mediator. The parties and their respective counsels shall endeavor to make the terms and condition thereof complete and make adequate provisions for the contingency of breach to avoid conflicting interpretations of the agreement.⁴⁴

The parties and their respective counsels, if any, shall sign the settlement agreement. The mediator shall certify that he/she explained the contents of the settlement agreement to the parties in a language known to them.⁴⁵

If the parties agree, the settlement agreement may be jointly deposited by the parties or deposited by one party with prior notice to the other party/ies with the Clerk of Court of the Regional Trial Court: (a) where the principal place of business in the Philippines of any of the parties is located; (b) if any of the parties is an individual, where any of those individuals resides; or (c) in the National Capital Judicial Region. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court in which case, the court shall proceed summarily to hear the petition, in accordance with the Special ADR Rules.⁴⁶

⁴³R.A. No. 9285, Chapter 2, Section 16.

⁴⁴R.A. No. 9285, Chapter 2, Section 17(a).

⁴⁵R.A. No. 9285, Chapter 2, Section 17(b).

⁴⁶DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 8, Article 3.20(c).

Deposit and Registry Book of Mediated Settlement Agreement

The Clerk of Court of each Regional Trial Court shall keep a Registry Book that shall chronologically list or enroll all the mediated settlement agreements/settlement awards that are deposited with the court as well as the names and address of the parties thereto and the date of enrollment and shall issue a Certificate of Deposit to the party that made the deposit.⁴⁷

Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court, in which case, the court shall proceed summarily to hear the petition.⁴⁸

After a summary hearing, if the court finds that the agreement is a valid mediated settlement agreement, that there is no merit in any of the affirmative or negative defenses raised, and the respondent has breached that agreement, in whole or in part, the court shall order the enforcement thereof; otherwise, it shall dismiss the petition.⁴⁹

Enforcement if Mediator is Sole Arbitrator

The parties may agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award which shall be subject to enforcement under Republic Act No. 876, otherwise known as the Arbitration Law, notwithstanding the provisions of Executive Order No. 1008 for mediated dispute outside of the CIAC.⁵⁰

A settlement agreement may attain the force of an arbitral award in the settlement agreement. Where the parties to mediation have agreed in the written settlement agreement that the mediator shall become the sole arbitrator for the dispute or that the settlement agreement shall become an arbitral award, the sole arbitrator shall issue the settlement agreement as an arbitral award, which shall be subject to enforcement under the law.⁵¹

⁴⁷A.M. No. 07-11-08-SC dated 1 September 2009, "Special Rules of Court on Alternative Dispute Resolution", Part 3, Rule 15, Rule 15.4.

⁴⁸R.A. No. 9285, Chapter 2, Section 17(c).

⁴⁹A.M. No. 07-11-08-SC, Part 3, Rule 15, Rule 15.8.

⁵⁰R.A. No. 9285, Chapter 2, Section 17(d).

⁵¹A.M. No. 07-11-08-SC, Part 1, Rule 2, Rule 2.7.

Fees and Cost of Mediation

In *ad hoc* mediation, the parties are free to make their own arrangement as to mediation cost and fees. In default thereof, the schedule of cost and fees to be approved by the OADR shall be followed.⁵²

In institutional mediation, mediation cost shall include the administrative charges of the mediation institution under which the parties have agreed to be bound, mediator's fees and associated expenses, if any. In default of agreement of the parties as to the amount and manner of payment of mediation's cost and fees, the same shall be determined in accordance with the applicable internal rules of the mediation service providers under whose rules the mediation is conducted.⁵³

A mediation service provider may determine such mediation fee as is reasonable taking into consideration the following factors, among others: the complexity of the case, the number of hours spent in mediation; and the training, experience and stature of mediators.⁵⁴

When Voluntary Mediation is Unsuccessful

If voluntary mediation proves to be unsuccessful, the parties may revert to other modes of alternative dispute resolution, such as Mediation-Arbitration, which is a two-step dispute resolution process involving mediation and then followed by arbitration. In the alternative, the parties may proceed with adversarial litigation.

II. Court-Diverted Mediation

Source of Governing Law

Courts are directed by the Supreme Court to refer cases to court-annexed mediation as part of pre-trial. The Rules of Court provide that pre-trial is mandatory, and courts shall consider, among others, the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution.⁵⁵

⁵²DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 10, Article 3.25.

⁵³DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 10, Article 3.26(a).

⁵⁴DOJ Department Circular No. 98, s. 2009, Chapter 3, Rule 10, Article 3.26(b).

⁵⁵1997 Rules of Civil Procedure, Rule 18, Section 2 (a).

Stages of Court Diversion

1. Court-Annexed Mediation (CAM). The judge refers mediatable cases to the Philippine Mediation Center (PMC) for amicable dispute settlement.
2. Judicial Dispute Resolution (JDR). If CAM fails, the case is referred to JDR where the judge becomes a mediator-conciliator-early neutral evaluator to facilitate amicable settlement. If JDR is unsuccessful, the case is raffled off to another judge or nearest/pair judge as the trial judge. The trial judge shall continue with the pre-trial proper and, thereafter, proceed to try and decide the case.
3. Appeals Court Mediation (ACM). During the appeal, mediatable cases are referred to the PMC-Appeals Court Mediation (ACM) unit.⁵⁶

Court-Annexed Mediation, When Ordered

Upon appearance of the parties during pre-trial in cases covered by mediation, the courts should immediately order the parties to appear before the Philippine Mediation Center unit located in the courthouse for initial mediation conference.⁵⁷

Mediatable Cases

The cases that may be referred to court-annexed mediation are as follows:

1. All civil cases and the civil liability of criminal cases covered by the Rule on Summary Procedure, including the civil liability for violation of B.P. 22, except those which by law may not be compromised;
2. Special proceedings for the settlement of estates;
3. All civil and criminal cases filed with a certificate to file action issued by the Punong Barangay or the Pangkat ng Tagapagkasundo under the Revised Katarungang Pambarangay Law;

⁵⁶Consolidated and Revised Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation (CAM) and Judicial Dispute Resolution (JDR), A.M. No. 11-1-6-SC-PHILJA dated January 11, 2011.

⁵⁷S.C. Administrative Circular No. 20-2002, Section 2.

4. The civil aspect of Quasi-Offenses under Title 14 of the Revised Penal Code;
5. The civil aspect of less grave felonies punishable by correctional penalties not exceeding 6 years imprisonment, where the offended party is a private person;
6. The civil aspect of estafa, theft and libel;
7. All civil cases and probate proceedings, testate and intestate, brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par. (1) of the Judiciary Reorganization Act of 1980;
8. All cases of forcible entry and unlawful detainer brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par. (2) of the Judiciary Reorganization Act of 1980;
9. All civil cases involving title to or possession of real property or an interest therein brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par.(3) of the Judiciary Reorganization Act of 1980; and
10. All *habeas corpus* cases decided by the first level courts in the absence of the Regional Trial Court judge, that are brought up on appeal from the special jurisdiction granted to the first level courts under Section 35 of the Judiciary Reorganization Act of 1980.⁵⁸

Cases Not Mediatable

The following cases shall not be referred to CAM and JDR:

1. Civil cases which by law cannot be compromised (Article 2035, New Civil Code);
2. Other criminal cases not covered under paragraphs 3 to 6 above;
3. *Habeas Corpus* petitions;
4. All cases under Republic Act No. 9262 (Violence against Women and Children); and

⁵⁸A.M. No. 11-1-6-SC-PHILJA dated January 11, 2011.

5. Cases with pending application for Restraining Orders/Preliminary Injunctions.

However, in cases covered under 1, 4 and 5 where the parties inform the court that they have agreed to undergo mediation on some aspects thereof, e.g., custody of minor children, separation of property, or support pendente lite, the court shall refer them to mediation.⁵⁹

Unwillingness to Pay Fees Equivalent to Refusal to Mediate

If parties are willing to undergo mediation, but are not willing to pay the mediation fees and they are not indigent litigants qualified for *pro bono* services, it should be construed as refusal to mediate.⁶⁰

Sanctions

Failure to appear before the PMC Unit as directed by the referring judge, or abusive conduct during mediation proceedings may be sanctioned by the court upon recommendation of the mediator, or by the referring judge upon his own initiative or upon motion of the interested party. Sanctions may include censure, reprimand, contempt, requiring the absent party to reimburse the appearing party his costs, including attorney's fees for that day up to treble such costs, payable on or before the date of the re-scheduled setting.⁶¹

Settlement

Parties may settle their dispute in full or in part. When there is full settlement of the dispute, a compromise agreement shall be submitted to the court for judgment upon compromise or other appropriate action. Where there is full compliance with the terms of the compromise, the parties, instead of submitting a compromise agreement, shall instead submit a satisfaction of claims or a mutual withdrawal of the case and, the court shall enter an order dismissing the case. When there is partial settlement, the parties shall submit the partial settlement for the appropriate action of the court, and the unsettled part of the dispute shall proceed to JDR.⁶²

⁵⁹A.M. No. 11-1-6-SC-PHILJA dated January 11, 2011.

⁶⁰Implementing Rules & Regulations on Mediation in the Trial Courts,A.M. No. 04-3-15-SC-PHILJA dated March 23, 2004.

⁶¹A.M. No. 11-1-6-SC-PHILJA dated January 11, 2011.

⁶²A.M. No. 11-1-6-SC-PHILJA dated January 11, 2011.

Role of the JDR Judge

When the case is referred to JDR, the judge is tasked to act as mediator, neutral evaluator and/or conciliator to continue to an amicable settlement to the dispute.

1. Role of mediator and conciliator: the judge facilitates the settlement discussions between the parties and tries to reconcile their differences.
2. Role of neutral evaluator: the judge assesses the relative strengths and weaknesses of each party's case and makes a non-binding and impartial evaluation of the chances of each party's success in the case. On the basis of such neutral evaluation, the judge persuades the parties to a fair and mutually acceptable settlement of their dispute.⁶³

Pre-Trial Proper

When the case is not settled at the JDR level, the JDR judge shall not preside over the trial of the case. The JDR judge shall turn over the case to the trial judge, who shall proceed to pre-trial and then trial proper on the merits of the case.⁶⁴

⁶³A.M. No. 11-1-6-SC-PHILJA dated January 11, 2011.

⁶⁴A.M. No. 11-1-6-SC-PHILJA dated January 11, 2011.

CHAPTER 3

DOMESTIC ARBITRATION

Source of Governing Law

Domestic arbitration is governed by Republic Act No. 876, otherwise known as “The Arbitration Law.¹ Domestic arbitration is also governed by certain provisions of the Model Law (Articles 8, 10, 11, 12, 13, 14, 18 and 19 and 29 to 32) and the Alternative Dispute Resolution Act (Section 22 to 31).² The provisions of Chapters One and Two (Compromises and Arbitrations), Title XIV, Book IV, of the Civil Code also remain in force.³

Domestic Arbitration, Defined.

The term “*domestic arbitration*” as used herein shall mean an arbitration that is not international as defined in Article 1(3) of the Model Law.⁴

Ad hoc Arbitration, Defined.

Ad hoc Arbitration means an arbitration administered by an arbitrator and/or the parties themselves. An institution may administer *ad hoc* arbitration if it is not a permanent or regular arbitration institution in the Philippines.⁵

Institutional Arbitration, Defined.

Institutional arbitration means arbitration administered by an entity, which is registered as a domestic corporation with the Securities

¹R.A. No. 9285, Chapter 5, Section 32.

²R.A. No. 9285, Chapter 5, Section 33.

³R.A. No. 9285, Chapter 5, Section 31.

⁴R.A. No. 9285, Chapter 5, Section 32.

⁵DOJ Department Circular No. 98, s. 2009, Chapter 1, Rule 2, Article 1.6(D)(1).

and Exchange Commission (SEC) and engaged in the arbitration of disputes in the Philippines on a regular and permanent basis.⁶

Appointing Authority, Defined.

Appointing Authority shall mean the person or institution named in the arbitration agreement as the appointing authority; or the regular arbitration institution under whose rules the arbitration is agreed to be conducted. When parties agree to submit their dispute to institutional arbitration rules, they are deemed to have agreed to procedure under such arbitration rules for the selection and appointment of arbitrators. In *ad hoc* arbitration, the default appointment of an arbitrator shall be made by the National President of the Integrated Bar of the Philippines (IBP) or his duly authorized representative.⁷

Arbitral Tribunal, Defined.

Arbitral Tribunal means a sole arbitrator or a panel, board or committee of arbitrators.⁸

Liberal Interpretation in favor of Arbitration

In interpreting the ADR Act, the court shall have due regard to the policy of the law in favor of arbitration.⁹

Confidential Nature of Arbitration

Information obtained in arbitration proceedings, including the records, evidence and the arbitral award, is confidential and shall not be published. Arbitration proceedings may be published only with the consent of the parties, or for the disclosing to the court of relevant documents in cases where resort to the court is allowed. The court may then issue a protective order to prevent or prohibit disclosure of documents or information containing secret processes, developments, research and other information where it is shown that the applicant shall be materially prejudiced by an authorized disclosure thereof.¹⁰

⁶DOJ Department Circular No. 98, s. 2009, Chapter 1, Rule 2, Article 1.6(D)(10).

⁷R.A. No. 9285, Chapter 4, Section 26.

⁸DOJ Department Circular No. 98, s. 2009, Chapter 1, Rule 2, Article 1.6(D)(5).

⁹R.A. No. 9285, Chapter 4, Section 25.

¹⁰R.A. No. 9285, Chapter 4, Section 23.

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.¹¹

Such submission or contract may include question arising out of valuations, appraisals or other controversies which may be collateral, incidental, precedent or subsequent to any issue between the parties.

Who Cannot Arbitrate

There can be no arbitration when one of the parties does not have legal capacity to do so (i.e. he or she is an infant, or a person judicially declared to be incompetent), unless the court approves a petition for permission to submit such controversy to arbitration made by the general guardian or guardian *ad litem* of the infant or of the incompetent.¹² Where a person has knowingly entered into an agreement with a person incapable of so doing, the objection on the ground of incapacity can be taken only in behalf of the person so incapacitated.¹³

Formal Requirements of Arbitration Agreement

A contract to arbitrate, as well as a submission to arbitrate an existing dispute shall be in writing and subscribed by the party sought to be charged, or by his lawful agent. The making of a contract or submission for arbitration, providing for arbitration of any controversy, shall be deemed a consent of the parties to the jurisdiction of the Regional Trial Court of the province or city where any of the parties resides, to enforce such contract or submission.¹⁴

¹¹R.A. No. 876, Section 2.

¹²R.A. No. 876, Section 2.

¹³R.A. No. 876, Section 2.

¹⁴R.A. No. 876, Section 4.

Right to Arbitrate for Parties to an Agreement, or their Assigns or Heirs

An agreement containing an arbitration clause, binds the parties thereto, as well as their assigns and heirs; but only they. Thus, the Supreme Court held that the right to arbitrate as provided in the Agreement was never vested in parties, who were neither parties to the Agreement nor the latter's assigns or heirs. (However, in the interest of justice, the trial court was ordered hear the complaint against all parties – both parties to the Agreement and non-parties thereto – so as not to split the proceedings, or to hold trial in abeyance pending arbitration, which would result in multiplicity of suits, duplicitous procedure and unnecessary delay.)¹⁵

Early on in a catena of cases inspired by Justice Malcolm's provocative dissent in *Vega v. San Carlos Milling Co.* [1924],¹⁶ the court has recognized arbitration agreements as valid, binding, enforceable and not contrary to public policy.¹⁷

The parties, in incorporating an arbitration clause in their contract [with regard to energy fees], expressly intended that the said matter in dispute must first be resolved by an arbitration panel before it reaches the courts.¹⁸

Applicability of Arbitration to Non-Parties

Corporate representatives may be compelled to submit to arbitration proceedings pursuant to a contract entered into by the corporation they represent if there are allegations of bad faith or malice in their acts representing the corporation. Thus, the members of a corporation's board of directors were made parties to the arbitration proceedings, pursuant to the arbitration clause provided in the contract entered into for and on behalf of the corporation, when there were allegations of malice or bad faith on their part in directing the affairs of the corporation.

As a general rule, a corporation's representative who did not personally bind himself or herself to an arbitration agreement

¹⁵Heirs of Augusto Salas, Jr. v. Laperal Realty Corporation, G.R. No. 135362, December 13, 1999, 378 Phil. 369; 320 SCRA 610.

¹⁶Supra.

¹⁷BF Corporation v. Court of Appeals, 288 SCRA 267.

¹⁸Fiesta World Mall Corporation v. Linberg Philippines, Inc. 499 SCRA 332 [2006].

cannot be forced to participate in arbitration proceedings made pursuant to an agreement entered into by the corporation. He or she is generally not considered a party to that agreement. However, in cases alleging solidary liability with the corporation or praying for the piercing of the corporate veil, parties who are normally treated as distinct individuals should be made to participate in the arbitration proceedings in order to determine if the corporation's distinct and separate personality from its directors or officers should indeed be disregarded and, if so, to determine the extent of their liabilities.¹⁹

Referral to Arbitration

A court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.²⁰

Place of Arbitration

The parties are free to agree on the place of arbitration. If the parties do not agree on a place, the place of arbitration shall be in Metro Manila, unless the arbitral tribunal decides on a different place of arbitration, considering the circumstances of the case and the convenience of the parties. The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of goods, other property or documents.²¹

Language of the Arbitration

Parties are free to agree on the language or languages to be used in the arbitral proceedings. If the parties do not agree on a language, the language to be used shall be English or Filipino, unless the arbitral tribunal shall determine differently. This agreement or determination shall apply to any written statement by a party, any hearing and any award, decision or other communication by

¹⁹Lanuza v. BF Corporation, G.R. No. 174938, October 1, 2014.

²⁰R.A. No. 9285, Chapter 4, Section 24.

²¹R.A. No. 9285, Chapter 4, Section 30.

the arbitral tribunal. The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages to be used in the arbitral proceedings.²²

Preliminary Procedure

In the case of a contract to arbitrate future controversies, arbitration shall be instituted by the service by either party upon the other of a demand for arbitration in accordance with the contract. Such demand shall be 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. The demand shall be served upon any party either in person or by registered mail. 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. 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.²³

In the event that one party defaults in answering the demand, the aggrieved party may file with the Clerk of the Court of First Instance having jurisdiction over the parties, a copy of the demand for arbitration under the contract to arbitrate, with a notice that the original demand was sent by registered mail or delivered in person to the party against whom the claim is asserted. Such demand shall set forth the nature of the controversy, the amount involved, if any, and the relief sought, and shall be accompanied by a true copy of the contract providing for arbitration.²⁴

In the case of the submission of an existing controversy by the filing with the Clerk of the Court of First Instance having jurisdiction, of the submission agreement, setting forth the nature

²²R.A. No. 9285, Chapter 4, Section 31.

²³R.A. No. 876, Section 5(a).

²⁴R.A. No. 876, Section 5(b). [Court of First Instance, now Regional Trial Court]

of the controversy, and the amount involved, if any. Such submission may be filed by any party and shall be duly executed by both parties.²⁵

In the event that one party neglects, fails or refuses to arbitrate under a submission agreement, the aggrieved party may request the court to refer the parties to arbitration.²⁶

Hearing by Court

A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. The court shall hear the parties, and upon being satisfied that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or default be in issue the court shall proceed to summarily hear such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. The court shall decide all motions, petitions or applications within ten days after such motions, petitions, or applications have been heard by it.²⁷

Doctrine of Separability of the Arbitration Agreement

The doctrine of separability states that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate agreement and the arbitration agreement does not automatically terminate when the contract of which it is part comes to an end. The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of that contract and is itself a contract. The doctrine of separability denotes that the invalidity of the main contract, also referred to as the "container"

²⁵R.A. No. 876, Section 5(c). [Court of First Instance, now Regional Trial Court]

²⁶R.A. No. 876, Section 5(d).

²⁷R.A. No. 876, Section 6.

contract, does not affect the validity of the arbitration agreement. Irrespective of the fact that the main contract is invalid, the arbitration clause/agreement still remains valid and enforceable. The validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself.²⁸

R.A. No. 876 explicitly confines the court's authority only to the determination of whether or not there is an agreement in writing providing for arbitration. In the affirmative, the statute ordains that the court shall issue an order "summarily directing the parties to proceed with the arbitration in accordance with the terms thereof." If the court, upon the other hand, finds that no such agreement exists, "the proceeding shall be dismissed." Since there obtains herein a written provision for arbitration as well as failure on respondent's part to comply therewith, the court a quo rightly ordered the parties to proceed to arbitration in accordance with the terms of their agreement. The duty of the court is not to resolve the merits of the parties' claims but only to determine if they should proceed to arbitration or not.²⁹

Implicit in the summary nature of the judicial proceedings is the separable or independent character of the arbitration clause.³⁰

Arbitration Improper on the Validity of a Contract

Arbitration is not proper when one of the parties repudiates the existence or validity of a contract or agreement on the ground of fraud or oppression. The validity of the contract cannot be subject of arbitration proceedings. Allegations of fraud and duress in the execution of a contract are matters within the jurisdiction of the ordinary courts of law. These questions are legal in nature and require the application and interpretation of laws and jurisprudence which is necessarily a judicial function. Thus, a Panel of Arbitrators does not have jurisdiction over a complaint for declaration of nullity and/or termination of the contract on the ground of fraud, oppression and violation of the Constitution.³¹

²⁸See Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc. G.R. No. 175404, January 31, 2011. *Supra*.

²⁹See Gonzales v. Climax Mining Ltd., G.R. Nos. 161957 & 167994, January 22, 2007, 512 SCRA 148.

³⁰See Manila Electric Co. v. Pasay Trans. Co 57 Phil 600 (1932) and Del Monte Corporation-USA v. Court of Appeals, 351 SCRA 371 (2001).

³¹Gonzales v. Climax Mining Ltd., G.R. No. 161957, February 28, 2005, 452 SCRA 607.

Stay of Civil Action

If any suit or proceeding be brought upon an issue arising out of an agreement providing for the arbitration thereof, the court in which such suit or proceeding is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration, shall stay the action or proceeding until an arbitration has been had in accordance with the terms of the agreement: Provided, That the applicant for the stay is not in default in proceeding with such arbitration.³²

Appointment of Arbitrators

If, in the contract for arbitration or in the submission, provision is made for a method of naming or appointing an arbitrator or arbitrators, such method shall be followed; but if no method be provided therein the court shall designate an arbitrator or arbitrators.³³

The court shall appoint an arbitrator or arbitrators, in the following instances:

1. If the parties to the contract or submission are unable to agree upon a single arbitrator; or
2. If an arbitrator appointed by the parties is unwilling or unable to serve, and his successor has not been appointed in the manner in which he was appointed; or
3. If either party to the contract fails or refuses to name his arbitrator within fifteen days after receipt of the demand for arbitration; or
4. If the arbitrators appointed by each party to the contract, or appointed by one party to the contract and by the proper Court, shall fail to agree upon or to select the third arbitrator; or
5. The court shall, in its discretion appoint one or three arbitrators, according to the importance of the controversy involved in any of the preceding cases in which the agreement is silent as to the number of arbitrators; or

³²R.A. No. 876, Section 7.

³³R.A. No. 876, Section 8.

6. Arbitrators appointed under this section shall either accept or decline their appointments within seven days of the receipt of their appointments. In case of declination or the failure of an arbitrator or arbitrators to duly accept their appointments the parties or the court, as the case may be, shall proceed to appoint a substitute or substitutes for the arbitrator or arbitrators who decline or failed to accept his or their appointments.³⁴

Additional Arbitrators

Where a submission or contract provides that two or more arbitrators therein designated or to be thereafter appointed by the parties, may select or appoint a person as an additional arbitrator, the selection or appointment must be in writing. Such additional arbitrator must sit with the original arbitrators upon the hearing.³⁵

Qualifications of Arbitrators

A person appointed as an arbitrator must meet the following qualifications:

1. Must be of legal age, in full enjoyment of his civil rights, knows how to read and write;
2. Must not be related by blood or marriage within the sixth degree to either party to the controversy;
3. Must not have or have had financial, fiduciary or other interest in the controversy or cause to be decided or in the result of the proceeding, or has any personal bias, which might prejudice the right of any party to a fair and impartial award.
4. Must not act or acted as a champion of one party to the arbitration or to advocate his cause.³⁶

Parties may specify in their arbitration agreement a nationality and/or professional qualification for appointment as arbitrator but the nationality or professional qualification of an arbitrator is not required.³⁷

³⁴R.A. No. 876, Section 8(f).

³⁵R.A. No. 876, Section 9.

³⁶R.A. No. 876, Section 10.

³⁷A.M. No. 07-11-08-SC, Part 2, Rule 7, Rule 7.4.

Challenge of Arbitrators

Grounds

The arbitrators may be challenged only for not being qualified to be appointed as an arbitrator, which may have arisen after the arbitration agreement or were unknown at the time of arbitration.³⁸

The nationality or professional qualification of an arbitrator is not a ground to challenge an arbitrator unless the parties have specified in their arbitration agreement a nationality and/or professional qualification for appointment as arbitrator.³⁹

Effects of Challenge

If, after appointment but before or during hearing, a person appointed to serve as an arbitrator shall discover any circumstances likely to create a presumption of bias, or which he believes might disqualify him as an impartial arbitrator, the arbitrator shall immediately disclose such information to the parties. Thereafter the parties may agree in writing: (a) to waive the presumptive disqualifying circumstances; or (b) to declare the office of such arbitrator vacant. Any such vacancy shall be filled in the same manner as the original appointment was made.⁴⁰

Procedure for Challenge

The challenge shall be made before the arbitrators.⁴¹ If the challenge is unsuccessful, the aggrieved party may request the Appointing Authority to rule on the challenge, and it is only when such Appointing Authority fails or refuses to act on the challenge within such period as may be allowed under the applicable rule or in the absence thereof, within thirty (30) days from receipt of the request, that the aggrieved party may renew the challenge in court.⁴² The challenge shall be filed with the Regional Trial Court (a) where the principal place of business of any of the parties is located, (b) if any of the parties are individuals, where those individuals reside, or (c) in the National Capital Region.⁴³

³⁸R.A. No. 876, Section 11.

³⁹A.M. No. 07-11-08-SC, Part 2, Rule 7, Rule 7.4.

⁴⁰R.A. No. 876, Section 10.

⁴¹A.M. No. 07-11-08-SC, Part 2, Rule 7, Rule 7.1.

⁴²A.M. No. 07-11-08-SC, Part 2, Rule 7, Rule 7.2.

⁴³A.M. No. 07-11-08-SC, Part 2, Rule 7, Rule 7.3.

While the challenging incident is discussed before the court, the hearing on arbitration shall be suspended, and it shall be continued immediately after the court has delivered an order on the challenging incident.⁴⁴

The petition shall state the following:

1. The name/s of the arbitrator/s challenged and his/their address;
2. The grounds for the challenge;
3. The facts showing that the ground for the challenge has been expressly or impliedly rejected by the challenged arbitrator/s; and
4. The facts showing that the Appointing Authority failed or refused to act on the challenge.

The court shall dismiss the petition *motu proprio* unless it is clearly alleged therein that the Appointing Authority charged with deciding the challenge, after the resolution of the arbitral tribunal rejecting the challenge is raised or contested before such Appointing Authority, failed or refused to act on the challenge within thirty (30) days from receipt of the request or within such longer period as may apply or as may have been agreed upon by the parties.⁴⁵

After hearing, the court shall remove the challenged arbitrator if it finds merit in the petition; otherwise, it shall dismiss the petition.⁴⁶

The court shall allow the challenged arbitrator who subsequently agrees to accept the challenge to withdraw as arbitrator. The court shall accept the challenge and remove the arbitrator in the following cases:

1. The party or parties who named and appointed the challenged arbitrator agree to the challenge and withdraw the appointment;
2. The other arbitrators in the arbitral tribunal agree to the removal of the challenged arbitrator; and
3. The challenged arbitrator fails or refuses to submit his comment on the petition or the brief of legal arguments as

⁴⁴R.A. No. 876, Section 11, paragraph 2.

⁴⁵A.M. No. 07-11-08-SC, Part 2, Rule 7, Rule 7.5.

⁴⁶A.M. No. 07-11-08-SC, Part 2, Rule 7, Rule 7.5.

directed by the court, or in such comment or legal brief, he fails to object to his removal following the challenge.

The court will decide the challenge on the basis of the evidence submitted by the parties in the following instances:

1. The other arbitrators in the arbitral tribunal agree to the removal of the challenged arbitrator; and
2. If the challenged arbitrator fails or refuses to submit his comment on the petition or the brief of legal arguments as directed by the court, or in such comment or brief of legal arguments, he fails to object to his removal following the challenge.⁴⁷

Any order of the court resolving the petition shall be immediately executory and shall not be the subject of a motion for reconsideration, appeal, or *certiorari*.⁴⁸

The challenged arbitrator is entitled to reimbursement of all reasonable expenses he may have incurred in attending to the arbitration and to a reasonable compensation for his work on the arbitration. The reasonable compensation to be paid shall consider the time spent on the arbitration and his stature and reputation as an arbitrator. The request for reimbursement and payment shall be filed in the same case and in the court where the petition to replace the challenged arbitrator was filed. The court shall direct the challenging party to pay the amount of the award to the court for the account of the challenged arbitrator, in default of which the court may issue a writ of execution to enforce the award. However, if bad faith is established with reasonable certainty by concealing or failing to disclose a ground for his disqualification, then the challenged arbitrator is not entitled to reimbursement.⁴⁹

Procedure by Arbitrators

Subject to the terms of the submission or contract, the arbitrators selected must set a time and place for the hearing of the matters submitted to them, and must cause notice thereof to be given to each of the parties. The arbitrators must make this setting within five days after appointment if the parties to the controversy

⁴⁷A.M. No. 07-11-08-SC, Part 2, Rule 7, Rule 7.7.

⁴⁸A.M. No. 07-11-08-SC, Part 2, Rule 7, Rule 7.8.

⁴⁹A.M. No. 07-11-08-SC, Part 2, Rule 7, Rule 7.9.

reside within the same city or province, or within fifteen days after appointment if the parties reside in different provinces.⁵⁰

The hearing can be postponed or adjourned by the arbitrators only by agreement of the parties; otherwise, adjournment may be ordered by the arbitrators upon their own motion only at the hearing and for good and sufficient cause. No adjournment shall extend the hearing beyond the day fixed in the submission or contract for rendering the award, unless the time so fixed is extended by written agreement, or unless the parties have continued with the arbitration without objection to such adjournment.⁵¹

The hearing may proceed in the absence of any party who, after due notice, fails to be present at such hearing or fails to obtain an adjournment thereof. An award shall not be made solely on the default of a party. The arbitrators shall require the other party to submit such evidence as they may require for making an award.⁵²

Those who may appear before the arbitration include only the following:

1. a party to said arbitration, or
2. a person in the regular employ of such party duly authorized in writing by said party, or
3. a practicing attorney-at-law

Any party desiring to be represented by counsel shall notify the other party or parties of such intention at least five days prior to the hearing.⁵³

Persons having a direct interest in the controversy which is the subject of arbitration shall have the right to attend any hearing; but the attendance of any other person shall be at the discretion of the arbitrators.⁵⁴

The arbitrators shall arrange for the taking of a stenographic record of the testimony when such a record is requested by one or more parties, and when payment of the cost thereof is assumed by such party or parties.⁵⁵

⁵⁰R.A. No. 876, Section 12, paragraph 1.

⁵¹R.A. No. 876, Section 12, paragraph 1.

⁵²R.A. No. 876, Section 12, paragraph 1.

⁵³R.A. No. 876, Section 12, paragraph 1.

⁵⁴R.A. No. 876, Section 12, paragraph 1.

⁵⁵R.A. No. 876, Section 12, paragraph 1.

Oath of Arbitrators

Before hearing any testimony, arbitrators must be sworn faithfully and fairly to hear and examine the matters in controversy and to make a just award according to the best of their ability and understanding. Arbitrators shall have the power to administer the oaths to all witnesses requiring them to tell the whole truth and nothing but the truth in any testimony which they may give in any arbitration hearing. This oath shall be required of every witness before any of his testimony is heard.⁵⁶

Subpoena and Subpoena Duces Tecum

Arbitrators shall have the power to require any person to attend a hearing as a witness. They shall have the power to subpoena witnesses and documents when the relevancy of the testimony and the materiality thereof has been demonstrated to the arbitrators. Arbitrators may also require the retirement of any witness during the testimony of any other witness.⁵⁷

Hearing by Arbitrators

Arbitrators may, at the commencement of the hearing, ask both parties for brief statements of the issues in controversy and/or an agreed statement of facts. Thereafter the parties may offer such evidence as they desire, and shall produce such additional evidence as the arbitrators shall require or deem necessary to an understanding and determination of the dispute. Arbitrators shall receive as exhibits in evidence any document which the parties may wish to submit, and the exhibits shall be properly identified at the time of submission. All exhibits shall remain in the custody of the Clerk of Court during the course of the arbitration and shall be returned to the parties at the time the award is made. The arbitrators shall be the sole judge of the relevancy and materiality of the evidence offered or produced, and shall not be bound to conform to the Rules of Court pertaining to evidence.

The arbitrators may make an ocular inspection of any matter or premises which are in dispute, but such inspection shall be made only in the presence of all parties to the arbitration, unless any party who shall have received notice thereof fails to appear, in which event such inspection shall be made in the absence of such party.⁵⁸

⁵⁶R.A. No. 876, Section 13.

⁵⁷R.A. No. 876, Section 14.

⁵⁸R.A. No. 876, Section 15.

Interim Measure of Protection

Provisional relief may be granted to prevent irreparable loss or injury, to provide security for the performance of any obligation, to produce or preserve any evidence or to compel any other appropriate act or omission.⁵⁹

A party may request, before constitution of the tribunal, from a Court an interim measure of protection and the Court may grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection or modification thereof, may be made with the arbitral tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.⁶⁰

The arbitrator or arbitrators shall have the power at any time, before rendering the award, without prejudice to the rights of any party to petition the court to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration.⁶¹

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary. Such interim measures may include but shall not be limited to preliminary injunction, appointment of receivers or detention, preservation, inspection of property that is the subject of the dispute in arbitration.⁶²

Briefs

At the close of the hearings, when all parties no longer have any further proof or witnesses to present, the arbitrators shall declare the hearing closed unless the parties have signified an intention to file briefs. Then the hearing shall be closed by the arbitrators after the receipt of briefs and/or reply briefs. Definite time limit for the filing of such briefs must be fixed by the arbitrators at the close of the hearing. Briefs may be filed by the parties within fifteen days

⁵⁹R.A. No. 9285, Chapter 4, Section 28.

⁶⁰R.A. No. 9285, Chapter 4, Section 28.

⁶¹R.A. No. 876, Section 14.

⁶²R.A. No. 9285, Chapter 4, Section 29.

after the close of the oral hearings; the reply briefs, if any, shall be filed within five days following such fifteen-day period.⁶³

Reopening of Hearing

The hearing may be reopened by the arbitrators on their own motion or upon the request of any party, upon good cause, shown at any time before the award is rendered. When hearings are thus reopened the effective date for the closing of the hearings shall be the date of the closing of the reopened hearing.⁶⁴

Proceeding in lieu of Hearing

The parties to a submission or contract to arbitrate may, by written agreement, submit their dispute to arbitration by other than oral hearing. The parties may submit an agreed statement of facts. They may also submit their respective contentions to the duly appointed arbitrators in writing; this shall include a statement of facts, together with all documentary proof. Parties may also submit a written argument. Each party shall provide all other parties to the dispute with a copy of all statements and documents submitted to the arbitrators. Each party shall have an opportunity to reply in writing to any other party's statements and proofs; but if such party fails to do so within seven days after receipt of such statements and proofs, he shall be deemed to have waived his right to reply. Upon the delivery to the arbitrators of all statements and documents, together with any reply statements, the arbitrators shall declare the proceedings in lieu of hearing closed.⁶⁵

Judicial Relief after Arbitration Commences

An aggrieved party may petition the appropriate court for judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction.⁶⁶

The petition may be granted when the court finds that the arbitration agreement is invalid, nonexistent or unenforceable as a result of which the arbitral tribunal has no jurisdiction to resolve the dispute.⁶⁷

⁶³R.A. No. 876, Section 16.

⁶⁴R.A. No. 876, Section 17.

⁶⁵R.A. No. 876, Section 18.

⁶⁶A.M. No. 07-11-08-SC, Part 2, Rule 3, Rule 3.12.

⁶⁷A.M. No. 07-11-08-SC, Part 2, Rule 3, Rule 3.15.

The court shall render judgment within thirty (30) days from the time the petition is submitted for resolution. The court shall not enjoin the arbitration proceedings during the pendency of the petition. Judicial recourse to the court shall not prevent the arbitral tribunal from continuing the proceedings and rendering its award. The court shall dismiss the petition for failure to comply with submission requirements, or if the petition does not appear to be *prima facie* meritorious.⁶⁸

If the arbitral tribunal renders a final arbitral award and the Court has not rendered a decision on the petition from the arbitral tribunal's preliminary ruling affirming its jurisdiction, that petition shall become *ipso facto* moot and academic and shall be dismissed by the Regional Trial Court. The dismissal shall be without prejudice to the right of the aggrieved party to raise the same issue in a timely petition to vacate or set aside the award.⁶⁹

The Arbitral Award

Time for Rendering Award

The written award of the arbitrators shall be rendered within thirty (30) days after the closing of the hearings or if the oral hearings shall have been waived, within thirty days after the arbitrators shall have declared such proceedings in lieu of hearing closed. The parties may also stipulate by written agreement the time within which the arbitrators must render their award, and the thirty-day period may also be extended by mutual consent of the parties.⁷⁰

Form and Contents of Award

The award must be made in writing and signed and acknowledged by a majority of the arbitrators, if more than one; and by the sole arbitrator, if there is only one. Each party shall be furnished with a copy of the award. The arbitrators in their award may grant any remedy or relief which they deem just and equitable and within the scope of the agreement of the parties, which shall include, but not be limited to, the specific performance of a contract.

⁶⁸A.M. No. 07-11-08-SC, Part 2, Rule 3, Rule 3.18.

⁶⁹A.M. No. 07-11-08-SC, Part 2, Rule 3, Rule 3.21.

⁷⁰R.A. No. 876, Section 19.

In the event that the parties to an arbitration have, during the course of such arbitration, settled their dispute, they may request of the arbitrators that such settlement be embodied in an award which shall be signed by the arbitrators. No arbitrator shall act as a mediator in any proceeding in which he is acting as arbitrator; and all negotiations towards settlement of the dispute must take place without the presence of the arbitrators.

The arbitrators shall have the power to decide only those matters which have been submitted to them. The terms of the award shall be confined to such disputes.

The arbitrators shall have the power to assess in their award the expenses of any party against another party, when such assessment shall be deemed necessary.⁷¹

Motion to Confirm Award

At any time within one month after the award is made, any party to the controversy which was arbitrated may apply to the court having jurisdiction for an order confirming the award; and thereupon the court must grant such order unless the award is vacated, modified or corrected, as prescribed herein. Notice of such motion must be served upon the adverse party or his attorney as prescribed by law for the service of such notice upon an attorney in action in the same court.⁷²

Execution of Confirmed Arbitral Award

The Special ADR Rules are silent on the procedure for the execution of a confirmed arbitral award; however, the Supreme Court has held that the Rules' procedural mechanisms cover not only aspects of confirmation but necessarily extend to a confirmed award's execution in light of the doctrine of necessary implication which states that every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege.

Execution is but a necessary incident to the Court's confirmation of an arbitral award. To construe it otherwise would result in an absurd situation whereby the confirming court previously applying the Special ADR Rules in its confirmation of the arbitral award would later shift to the regular Rules of Procedure come execution.

⁷¹R.A. No. 876, Section 20.

⁷²R.A. No. 876, Section 23.

Irrefragably, a court's power to confirm a judgment award under the Special ADR Rules should be deemed to include the power to order its execution for such is but a collateral and subsidiary consequence that may be fairly and logically inferred from the statutory grant to regional trial courts of the power to confirm domestic arbitral awards.⁷³

Motion to Vacate Award

The court shall vacate the arbitral award upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:

1. The award was procured by corruption, fraud, or other undue means; or
2. That there was evident partiality or corruption in the arbitrators or any of them; or
3. That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine of R.A. No. 876, and wilfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or
4. That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

Where an award is vacated, the court, in its discretion, may direct a new hearing either before the same arbitrators or before a new arbitrator or arbitrators to be chosen in the manner provided in the submission or contract for the selection of the original arbitrator or arbitrators, and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.⁷⁴

⁷³Department of Environment and Natural Resources v. United Planners Consultants, Inc., G.R. No. 212081, February 23, 2015.

⁷⁴R.A. No. 876, Section 24.

Motion to Modify or Correct Award

The court shall modify or correct the arbitral award so as to effect the intent thereof and promote justice between the parties, upon the application of any party to the controversy which was arbitrated:

1. Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the award; or
2. Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; or
3. Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the court.⁷⁵

Common Provisions for Vacating, Modifying or Correcting Award

Notice of a motion to vacate, modify or correct the award must be served upon the adverse party or his counsel within thirty days after the award is filed or delivered, as prescribed by law for the service upon an attorney in an action.⁷⁶

Upon the granting of an order confirming, modifying or correcting an award, judgment may be entered in conformity therewith in the court wherein said application was filed. Costs of the application and the proceedings subsequent thereto may be awarded by the court in its discretion. If awarded, the amount thereof must be included in the judgment.⁷⁷

The judgment entered shall have the same force and effect in all respects, as, and be subject to all the provisions relating to, a judgment in an action; and it may be enforced as if it had been rendered in the court in which it is entered.⁷⁸

Motion for Reconsideration

An aggrieved party may file a motion for reconsideration of the order of the court. The decision of the court shall, however, not be subject to appeal. The ruling of the court affirming the arbitral tribunal's jurisdiction shall not be subject to a petition for certiorari. The ruling of the court that the arbitral tribunal has no jurisdiction may be the subject of a petition for *certiorari*.⁷⁹

The following are proper grounds for a motion for reconsideration:

1. That the arbitration agreement is nonexistent, invalid or unenforceable;
2. Upholding or reversing the arbitral tribunal's jurisdiction;
3. Denying a request to refer the parties to arbitration;
4. Granting or denying a party an interim measure of protection;
5. Denying a petition for the appointment of an arbitrator;
6. Refusing to grant assistance in taking evidence;
7. Enjoining or refusing to enjoin a person from divulging confidential information;
8. Confirming, vacating or correcting a domestic arbitral award.⁸⁰

Appeals

An agreement to refer a dispute to arbitration shall mean that the arbitral award shall be final and binding. Consequently, a party to an arbitration is precluded from filing an appeal or a petition for *certiorari* questioning the merits of an arbitral award.⁸¹

As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award. The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal

⁷⁵R.A. No. 876, Section 25.

⁷⁶R.A. No. 876, Section 26.

⁷⁷R.A. No. 876, Section 27.

⁷⁸R.A. No. 876, Section 28.

⁷⁹A.M. No. 07-11-08-SC, Part 2, Rule 3, Rule 3.19.

⁸⁰A.M. No. 07-11-08-SC, Part 6, Rule 19, Rule 19.1.

⁸¹A.M. No. 07-11-08-SC, Part 6, Rule 19, Rule 19.7.

committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal.⁸²

Death of Party

Where a party dies after making a submission or a contract to arbitrate, the proceedings may be begun or continued upon the application of, or notice to, his executor or administrator, or temporary administrator of his estate. In any such case, the court may issue an order extending the time within which notice of a motion to confirm, vacate, modify or correct an award must be served. Upon confirming an award, where a party has died since it was filed or delivered, the court must enter judgment in the name of the original party; and the proceedings thereupon are the same as where a party dies after a verdict.⁸³

CHAPTER 4

INTERNATIONAL COMMERCIAL ARBITRATION

I. Introduction

Sources of Governing Law

Model Law, Defined and How to Interpret

International commercial arbitration is governed by the *Model Law on International Commercial Arbitration* (the “Model Law”) adopted by the United Nations Commission on International Trade Law on June 21, 1985 (United Nations Document A/40/17) and recommended approved on December 11, 1985.¹

In interpreting the Model Law, its international origin and the need for uniformity in its interpretation shall be considered. Parties may resort to the official records (the “*travaux préparatoires*”) and the report of the Secretary General of the United Nations Commission on International Trade Law dated March 25, 1985 entitled, “International Commercial Arbitration: Analytical Commentary on Draft Trade identified by reference number A/CN. 9/264.”²

The Implementing Rules and Regulations (IRR) of the ADR Act applies only if the place or seat of arbitration is the Philippines and in default of any agreement of the parties on the applicable rules.³ In matters governed by the IRR of the ADR Act, no court shall intervene except where so provided in the ADR Act. Resort to Philippine courts for matters within the scope of the ADR Act shall be governed by the Special ADR Rules.⁴

⁸²A.M. No. 07-11-08-SC, Part 6, Rule 19, Rule 19.10.

⁸³R.A. No. 876, Section 30.

¹DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 1, Article 4.1(b).

²DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 1, Article 4.5.

Model Act, Defined and Distinguished from Model Law

A *Model Act* is a statute drafted by the National Conference of Commissioners in Uniform State Laws for adoption by state legislatures, modifying it to some extent to meet its own needs.⁵ It is different from Model Law as defined in Republic Act No. 9285.

Commercial Arbitration, Defined.

Arbitration is “*commercial*” if it covers matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include: any trade transaction for the supply or exchange of goods or services; distribution agreements; construction of works; commercial representation or agency; factoring; leasing, consulting; engineering; licensing; investment; financing; banking; insurance; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.⁶

Appointing Authority, Defined.

Appointing Authority shall mean the person or institution named in the arbitration agreement as the appointing authority; or the regular arbitration institution under whose rules the arbitration is agreed to be conducted. When parties agree to submit their dispute to institutional arbitration rules, they are deemed to have agreed to procedure under such arbitration rules for the selection and appointment of arbitrators. In ad hoc arbitration, the default appointment of an arbitrator shall be made by the National President of the Integrated Bar of the Philippines (IBP) or his duly authorized representative.⁷

International Arbitration, Defined.

International Arbitration means arbitration where:

1. the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states; or
2. one of the following places is situated outside the Philippines in which the parties have their places of business:

⁵See Black's Law Dictionary, 5th Edition, p. 905.

⁶R.A. No. 9285, Chapter 4, Section 21.

⁷R.A. No. 9285, Chapter 4, Section 26.

- a. the place of arbitration if determined in, or pursuant to, the arbitration agreement;
- b. any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
3. the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.⁸

New York Convention, Defined.

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) was approved in 1958 and ratified by the Philippine Senate under Senate Resolution No. 71.⁹ It provides for the recognition and enforcement of foreign and non-domestic arbitral awards and obliges courts of Convention States to recognize arbitration agreements and arbitral awards as binding, under conditions no more onerous than those under domestic arbitration.

A “*Convention State*” means a state that is a member of the New York Convention, and a “*Convention Award*” means a foreign arbitral award made in a Convention State. A “*Non-Convention State*” means a state that is not a member of the New York Convention, and a “*Non-Convention Award*” means a foreign arbitral award made in a state, which is not a Convention State.

Confidential Nature of Arbitration

Information obtained in arbitration proceedings, including the records, evidence and the arbitral award, is confidential and shall not be published. Arbitration proceedings may be published only with the consent of the parties, or for the disclosing to the court of relevant documents in cases where resort to the court is allowed. The court may then issue a protective order to prevent or prohibit disclosure of documents or information containing secret processes, developments, research and other information where it is shown that the applicant shall be materially prejudiced by an authorized disclosure thereof.¹⁰

⁸DOJ Department Circular No. 98, s. 2009, Chapter 1, Rule 2, Article 1.6(C)(8).

⁹DOJ Department Circular No. 98, s. 2009, Chapter 1, Rule 2, Article 1.6(C)(9).

¹⁰R.A. No. 9285, Chapter 4, Section 23.

Interpretation of R.A. No. 9285

In interpreting the Act, the court shall have due regard to the policy of the law in favor of arbitration. Where action is commenced by or against multiple parties, one or more of whom are parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement.¹¹

The Court will not countenance the effort of any party to subvert or defeat the objective of voluntary arbitration for its own private motives. After submitting itself to arbitration proceedings and actively participate therein, the petitioner is stopped from assailing the jurisdiction of the CIAC [Construction Industry Arbitration Commission], merely because the latter rendered an adverse decision.¹²

R.A. No. 9285 is a procedural law which has a retroactive effect.¹³

II. The Arbitration Process

Referral to Arbitration

An arbitration proceeding is not mandatory because it is subject to the will of the parties to a controversy. It is strictly consensual.

But a court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.¹⁴

Interim Measure of Protection

Provisional relief may be granted to prevent irreparable loss or injury, to provide security for the performance of any obligation, to produce or preserve any evidence or to compel any other appropriate act or omission.¹⁵

¹¹R.A. No. 9285, Chapter 4, Section 25.

¹²See Spouses Benitez v. Court of Appeals, 266 SCRA 242 and Philrock, Inc. v. CIAC, 359 SCRA 633.

¹³Korea Technologies Co., Ltd. v. Lerma, 542 SCRA 1, *supra*.

¹⁴R.A. No. 9285, Chapter 4, Section 24.

¹⁵R.A. No. 9285, Chapter 4, Section 28.

A party may request, before constitution of the tribunal, from a Court an interim measure of protection and the Court may grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection or modification thereof, may be made with the arbitral tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.¹⁶

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary. Such interim measures may include but shall not be limited to preliminary injunction, appointment of receivers or detention, preservation, inspection of property that is the subject of the dispute in arbitration.¹⁷

R.A. No. 9285 allows the filing of provisional or interim measures with the regular courts whenever the arbitral tribunal has no power to act or to act effectively. It is thus beyond cavil that the RTC has authority and jurisdiction to grant interim measures of protection.¹⁸

The UNCITRAL Model Law on ICA also grants courts power and jurisdiction to issue interim measures, thus: A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in court. The court shall exercise power in accordance with its own procedure in consideration of the specific features of international arbitration.¹⁹

Place of Arbitration

The parties are free to agree on the place of arbitration. If the parties do not agree on a place, the place of arbitration shall be in Metro Manila, unless the arbitral tribunal decides on a different place of arbitration, considering the circumstances of the case and the convenience of the parties.²⁰

¹⁶R.A. No. 9285, Chapter 4, Section 28.

¹⁷R.A. No. 9285, Chapter 4, Section 29.

¹⁸Korea Technologies Co., Ltd. v. Lerma, *supra*. See also Transfield Philippines, Inc. v. Luzon Hydro Corporation, 490 SCRA 14.

¹⁹*Ibid.* See also Article 17 J of UNCITRAL Model Law on ICA.

²⁰R.A. No. 9285, Chapter 4, Section 30.

Language of the Arbitration

Parties are free to agree on the language or languages to be used in the arbitral proceedings. If the parties do not agree on a language, the language to be used shall be English, unless the arbitral tribunal shall determine differently. This agreement or determination shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal. The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages to be used in the arbitral proceedings.²¹

Judicial Review in Foreign Arbitral Awards

An arbitration clause stipulating that the arbitral award is final and binding does not oust our courts of jurisdiction as the international arbitral award, the award of which is not absolute and without exceptions, is still judicially reviewable under certain conditions provided for by the UNCITRAL Model Law on ICA as applied and incorporated in RA 9285.²²

Grounds for Judicial Review Different in Domestic and Foreign Arbitral Awards

The differences between a final arbitral award from an international or foreign arbitral tribunal and an award given by a local arbitral tribunal are the specific grounds or conditions that vest jurisdiction over our courts to review the awards. For foreign or international arbitral awards which must first be confirmed by the RTC, the grounds for setting aside, rejecting or vacating the award by the RTC are provided under Art. 34(2) of the UNCITRAL Model Law. For final domestic arbitral awards, which also need confirmation by the RTC pursuant to Sec. 23 of RA 876 and shall be recognized as final and executory decisions of the RTC, they may only be assailed before the RTC and vacated on the grounds provided under Sec. 25 of RA 876.²³

²¹R.A. No. 9285, Chapter 4, Section 31.

²²Korea Technologies Co., Ltd. v. Lerma, G.R. No. 143581, January 7, 2008, 542 SCRA 1.

²³*Ibid.*

Arbitral Tribunal

Parties are free to determine the number of arbitrators. Failing such determination, the number of arbitrators shall be three (3).²⁴

Appointment of Arbitrators

No person shall be precluded by reason of his/her nationality from acting as an arbitrator, unless otherwise agreed by the parties.

Parties are free to agree on a procedure of appointing the arbitrator or arbitrators. Failing such agreement in an arbitration with three (3) arbitrators, each party shall appoint one arbitrator, and the two (2) arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty (30) days of receipt of a request to do so from the other party, or if the two (2) arbitrators fail to agree on the third arbitrator within thirty (30) days of their appointment, the appointment shall be made, upon request of a party, by the appointing authority. In arbitration with a sole arbitrator, parties are free to agree on an arbitrator, otherwise he or she shall be appointed, upon request of a party, by the appointing authority.

Where, under an appointment procedure agreed upon by the parties, there is failure to act as required under such procedure, or inability to reach an agreement, or, failure to perform any function entrusted to it under such procedure, any party may request the appointing authority to appoint an arbitrator, unless otherwise provided.

Decisions on the appointment procedure entrusted to the appointing authority shall be immediately executory and not be subject to a motion for reconsideration or appeal. The appointing authority shall have in appointing an arbitrator, due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.²⁵

²⁴DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 3, Article 4.10.

²⁵DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 3, Article 4.11.

Grounds for Challenge

When a person is approached in connection with his/her possible appointment as an arbitrator, he/she shall disclose any circumstance likely to give rise to justifiable doubts as to his/her impartiality or independence. An arbitrator, from the time of his/her appointment and throughout the arbitral proceedings shall, without delay, disclose any such circumstance to the parties unless they have already been informed of them by him/her.

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence, or if he/she does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him/her, or in whose appointment he/she has participated, only for reasons of which he/she becomes aware after the appointment has been made.²⁶

Challenge Procedure

The parties are free to agree on a procedure for challenging an arbitrator. Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen (15) days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance that constitutes a ground for challenge, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his/her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

If a challenge is not successful, the challenging party may request the appointing authority, within thirty (30) days after having received notice of the decision rejecting the challenge, to decide on the challenge, which decision shall be immediately executory and not subject to motion for reconsideration or appeal. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.²⁷

Failure or Impossibility to Act

If an arbitrator becomes unable to perform his/her functions or for other reasons fails to act without undue delay, his/her

²⁶DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 3, Article 4.12.

²⁷DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 3, Article 4.13.

mandate terminates if he/she withdraws from his/her office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the appointing authority to decide on the termination of the mandate, which decision shall be immediately executory and not subject to motion for reconsideration or appeal.²⁸

Appointment of Substitute Arbitrator

Where the mandate of an arbitrator terminates under the challenge procedure or failure or impossibility to act or because of his/her withdrawal from office for any other reason or because of the revocation of his/her mandate by agreement of the parties or in any other case of termination of his/her mandate, a substitute arbitrator shall be appointed following the rules on appointment of the arbitrator being replaced.²⁹

Jurisdiction of Arbitral Tribunal

Competence of Arbitral Tribunal to Rule on its Jurisdiction

The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any condition precedent to the filing of a request for arbitration. For that purpose, an arbitration clause, which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense (i.e., in an Answer or Motion to Dismiss). A party is not precluded from raising such plea by the fact that he/she has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

²⁸DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 3, Article 4.14.

²⁹DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 3, Article 4.15.

The arbitral tribunal may rule on a plea either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty (30) days after having received notice of that ruling, the Regional Trial Court to decide the matter, which decision shall be immediately executory and not subject to motion for reconsideration or appeal. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.³⁰

Determination of Rules of Procedure

Parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Failing such agreement, the arbitral tribunal may, subject to this Chapter, conduct the arbitration in such manner as it considers appropriate. Unless the arbitral tribunal considers it inappropriate, the UNCITRAL Arbitration Rules adopted by the UNCITRAL on 28 April 1976 and the UN General Assembly on 15 December 1976 shall apply subject to the following clarification: All references to the "Secretary-General of the Permanent Court of Arbitration at the Hague" shall be deemed to refer to the appointing authority. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.³¹

Statements of Claim and Defense

Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his/her/its claim, the points at issue and the relief or remedy sought, and the respondent shall state his/her/its defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements, all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

Unless otherwise agreed by the parties, either party may amend or supplement his/her claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.³²

³⁰DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 4, Article 4.16.

³¹DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.19.

³²DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.23.

Hearing and Written Proceedings

Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents. All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also, an expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.³³

Default of a Party

The following rules apply in cases of default, unless otherwise agreed by the parties, if, without showing sufficient cause:

1. When the claimant fails to communicate his statement of claim, the arbitral tribunal shall terminate the proceedings.
2. When the respondent fails to communicate his/her/its statement of defense, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations.
3. When any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.³⁴

Expert Appointed by the Arbitral Tribunal

Unless otherwise agreed by the parties, the arbitral tribunal, (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; or (b) may require a party to give the expert any relevant information or to produce, or to

³³DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.24.

³⁴DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.25.

provide access to, any relevant documents, goods or other property for his/her inspection.

Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his/her written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.³⁵

Court Assistance in Taking Evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a court of the Philippines assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence. The arbitral tribunal shall have the power to require any person to attend a hearing as a witness. The arbitral tribunal shall have the power to subpoena witnesses and documents when the relevancy of the testimony and the materiality thereof has been demonstrated to it. The arbitral tribunal may also require the retirement of any witness during the testimony of any other witness.³⁶

Settlement

If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. If requested by the parties and not objected to by the arbitral tribunal, the settlement shall be recorded in the form of an arbitral award on agreed terms. Such an award has the same status and effect as an award on the merits of the case.³⁷

Form and Contents of Award

The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated. The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are

³⁵DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.26.

³⁶DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.27.

³⁷DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.30.

to be given or the award is an award on agreed terms. The award shall state its date and the place of arbitration, and the award shall be deemed to have been made at that place. After the award is made, a copy signed by the arbitrators shall be delivered to each party.³⁸

Termination of Proceedings

The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal. The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

- (i) The claimant withdraws his/her/its claim, unless the respondent objects thereto and the arbitral tribunal recognized a legitimate interest on his/her/its part in obtaining a final settlement of the dispute;
- (ii) The parties agree on the termination of the proceedings;
- (iii) The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

The mandate of the arbitral tribunal ends with the termination of the arbitral proceedings.

Notwithstanding the foregoing, the arbitral tribunal may reserve in the final award or order, a hearing to determine costs and responsibility therefore. Pending determination of this issue, the award shall not be deemed final for purposes of appeal, vacation, correction, or any post-award proceedings.³⁹

Correction and Interpretation of Award, Additional Award

Within thirty (30) days from receipt of the award, unless another period of time has been agreed upon by the parties, a party may, with notice to the other party, request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature. The arbitral tribunal may also correct any error of this type on its own initiative within thirty (30) days from the date of the award. If the arbitral tribunal considers the request for correction to be justified, it shall make the correction within thirty (30) days from receipt of the request.

³⁸DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.31.

³⁹DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.32.

Within thirty (30) days from receipt of the award, unless another period of time has been agreed upon by the parties, a party may, if so agreed by the parties and with notice to the other party, request the arbitral tribunal to give an interpretation of a specific point or part of the award. If the arbitral tribunal considers the request to be justified, it shall give the interpretation within thirty (30) days from receipt of the request. The interpretation shall form part of the award.

Unless otherwise agreed by the parties, a party may, with notice to the other party, request, within thirty (30) days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty (60) days. The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award.⁴⁰

III. Challenges, Enforcement and Recognition of Arbitral Awards

Application for Setting Aside an Exclusive Recourse against Arbitral Award

An arbitral award may be set aside by the Regional Trial Court only if there is proof that:

1. 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 under the law of the Philippines; or
2. 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
3. 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

⁴⁰DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.33.

which contains decisions on matters not submitted to arbitration may be set aside; or

4. 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 ADR Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with ADR Act.

The arbitral award may also be set aside by the Regional Trial Court only if the court finds that the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or the award is in conflict with the public policy of the Philippines.

The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.⁴¹

Recognition and Enforcement of Awards

A foreign arbitral award shall be recognized as binding and, upon petition in writing to the Regional Trial Court, shall be enforced subject to the provisions of the IRR of the ADR Act.

Convention Award

The New York Convention shall govern the recognition and enforcement of arbitral awards covered by said Convention. The petitioner shall establish that the country in which the foreign arbitration award was made is a party to the New York Convention.

Non-Convention Award

The recognition and enforcement of foreign arbitral awards not covered by the New York Convention shall be done in accordance with procedural rules to be promulgated by the Supreme Court. The court may, on grounds of comity and reciprocity, recognize and enforce a non-convention award as a convention award.

⁴¹DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 5, Article 4.34.

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.

A foreign arbitral award when confirmed by the Regional Trial Court, shall be enforced in the same manner as final and executory decisions of courts of law of the Philippines.⁴²

Grounds for Refusing Recognition or Enforcement of a Convention Award

Recognition or enforcement of a convention award, may be refused only if the party furnishes to the Regional Trial Court proof that:

1. The parties to the arbitration agreement were, under the law applicable to them, 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 country where the award was made; or
2. The party against whom the award is invoked 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
3. The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it 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, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
4. The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
5. The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

⁴²DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 6, Article 4.35.

Recognition and enforcement of an arbitral award may also be refused if the Regional Trial Court where recognition and enforcement is sought finds that:

1. The subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or
2. The recognition or enforcement of the award would be contrary to the public policy of the Philippines.

A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the Special ADR Rules only on the grounds enumerated. Any other ground raised shall be disregarded by the Regional Trial Court.⁴³

Grounds for Refusing Recognition or Enforcement of a Non-Convention Award

A non-convention foreign arbitral award will be recognized upon proof of the existence of comity and reciprocity and may be treated as a convention award. If not so treated and if no comity or reciprocity exists, the non-convention award cannot be recognized and/or enforced but may be deemed as presumptive evidence of a right as between the parties in accordance with Section 48 of Rule 39 of the Rules of Court.⁴⁴

Appeal from Court Decision on Arbitral Awards

A decision of the Regional Trial Court recognizing, enforcing, vacating or setting aside an 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 Court of Appeals to post a counter-bond executed in favor of the prevailing party equal to the amount of the award in accordance with the Special ADR Rules.

Any stipulation by the parties that the arbitral tribunal's award or decision shall be final, and therefore not appealable, is valid. Such stipulation carries with it a waiver of the right to appeal

⁴³DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 6, Article 4.36(A).

⁴⁴DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 6, Article 4.36(B).

from an arbitral award but without prejudice to judicial review by way of certiorari under Rule 65 of the Rules of Court.⁴⁵

Summary Nature of Proceedings before the Court

A petition for recognition and enforcement of awards brought before the court shall be heard and dealt with summarily in accordance with the Special ADR Rules.⁴⁶

Common Procedure for Recognition and Enforcement or Setting Aside of an International Commercial Arbitration Award or a Foreign Arbitral Award

When to file petition

Any party to an international commercial arbitration in the Philippines or foreign arbitration may petition the proper court to recognize and enforce or set aside an arbitral award anytime from receipt of the award.⁴⁷

Venue

The petitioner may choose to file a petition to recognize and enforce an international commercial arbitral award or a foreign arbitral award with the Regional Trial Court: (a) where arbitration proceedings were conducted; (b) where any of the assets to be attached or levied upon is located; (c) where the act to be enjoined will be or is being performed; (d) where any of the parties to arbitration resides or has its place of business; or (e) in the National Capital Judicial Region.⁴⁸

Exclusive recourse against arbitral award

Recourse to a court against an arbitral award shall be made only through a petition to set aside the arbitral award and on grounds prescribed by the law that governs international commercial arbitration. Any other recourse from the arbitral award, such as by appeal or petition for review or petition for certiorari or otherwise, shall be dismissed by the court.⁴⁹

⁴⁵DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 6, Article 4.37.

⁴⁶DOJ Department Circular No. 98, s. 2009, Chapter 4, Rule 6, Article 4.42.

⁴⁷A.M. No. 07-11-08-SC, Part 2, Rule 12, Rule 12.1, 12.2, 13.1, and 13.2.

⁴⁸A.M. No. 07-11-08-SC, Part 2, Rule 12, Rule 12.3 and 13.3.

⁴⁹A.M. No. 07-11-08-SC, Part 2, Rule 12, Rule 12.5.

Presumption in favor of confirmation

It is presumed that an arbitral award was made and released in due course and is subject to enforcement by the court, unless the adverse party is able to establish a ground for setting aside or not enforcing an arbitral award.⁵⁰ There is a presumption that a foreign arbitral award was made and released in due course of arbitration and is subject to enforcement by the court. The court shall recognize and enforce a foreign arbitral award unless a ground to refuse recognition or enforcement of the foreign arbitral award under this rule is fully established. The decision of the court recognizing and enforcing a foreign arbitral award is immediately executory. In resolving the petition for recognition and enforcement of a foreign arbitral award in accordance with these Special ADR Rules, the court shall either [a] recognize and/or enforce or [b] refuse to recognize and enforce the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.⁵¹

Grounds to set aside or resist enforcement

Unless a ground to set aside an arbitral award is fully established, the court shall dismiss the petition. If, in the same proceedings, there is a petition to recognize and enforce the arbitral award filed in opposition to the petition to set aside, the court shall recognize and enforce the award. In resolving the petition or petition in opposition thereto in accordance with the Special ADR Rules, the court shall either set aside or enforce the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.⁵²

Recognition and Enforcement of a Foreign Arbitral Award

Governing Law

The recognition and enforcement of a foreign arbitral award shall be governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the—New York Convention) and this Rule. The court may, upon grounds of comity and reciprocity, recognize and enforce a foreign arbitral

⁵⁰A.M. No. 07-11-08-SC, Part 2, Rule 12, Rule 12.12 and 13.11.

⁵¹A.M. No. 07-11-08-SC, Part 2, Rule 13, Rule 13.11.

⁵²A.M. No. 07-11-08-SC, Part 2, Rule 12, Rule 12.13.

award made in a country that is not a signatory to the New York Convention as if it were a Convention Award.

Recognition and enforcement of non-convention award

The court shall, only upon grounds provided by these Special ADR Rules, recognize and enforce a foreign arbitral award made in a country not a signatory to the New York Convention when such country extends comity and reciprocity to awards made in the Philippines. If that country does not extend comity and reciprocity to awards made in the Philippines, the court may nevertheless treat such award as a foreign judgment enforceable as such under Rule 39, Section 48, of the Rules of Court.⁵³

Absence of license to do business in the Philippines not a bar to enforcement of foreign arbitral award

A foreign corporation not licensed to do business in the Philippines, but which collects royalties from entities in the Philippines, can sue to enforce a foreign arbitral award. The Alternative Dispute Resolution Act of 2004 provides that the opposing party in an application for recognition and enforcement of the arbitral award may raise only those grounds that were enumerated under Article V of the New York Convention, and these exclusive grounds do not specify the capacity to sue of the party seeking the recognition and enforcement of the award. When a party enters into a contract containing a foreign arbitration clause and, as in this case, in fact submits itself to arbitration, it becomes bound by the contract, by the arbitration and by the result of arbitration, conceding thereby the capacity of the other party to enter into the contract, participate in the arbitration and cause the implementation of the result.⁵⁴

IV. Investor-State Dispute Settlement and the Philippines

The International Centre for Settlement of Investment Disputes of the World Bank (ICSID)

The ICSID, an institution to resolve international investment disputes, was established under the Convention on the Settlement

⁵³A.M. No. 07-11-08-SC, Part 2, Rule 13, Rule 13.12.

⁵⁴Tuna Processing, Inc. v. Philippine Kingford, Inc., G.R. No. 185582, February 29, 2012.

of Investment Disputes between States and Nationals of Other States (the ICSID Convention). The ICSID Convention is a treaty ratified by 150 Contracting States, which entered into force on October 14, 1966. The ICSID is a leading forum for investor-State dispute settlement in most international investment treaties and in numerous investment laws and contracts. The Philippines signed the ICSID convention on September 26, 1978, and attained the status of Contracting State by the entry into force of the Convention on December 17, 1978.

ICSID Jurisdiction

The jurisdiction of the ICSID extends to any legal dispute arising directly out of an investment, between a Contracting State and a national of another Contracting State. Parties consent to the jurisdiction of the ICSID in writing; thereafter, parties may not unilaterally withdraw its consent.

Fraport AG Frankfurt Services Worldwide v. Republic of the Philippines

A dispute on the invalidation of a concession to build and operate a new international terminal at Ninoy Aquino International Airport (NAIA Terminal 3) arose between the claimant Fraport AG Frankfurt Services Worldwide, a company incorporated in Germany, and the Republic of the Philippines. In July 1997, pursuant to a concession agreement, the Philippines International Air Terminals Co., Inc. (PIATCO) was awarded the NAIA Terminal 3 Concession. In 1999, Fraport, an experienced airport operator, became a direct and indirect investor in PIATCO. In November 2002, as construction of Terminal 3 neared completion, the Philippine President announced that the Philippine Government had determined that the concession contracts were legally invalid and would not be honored. On May 5, 2003, the Philippine Supreme Court declared that the award of the contract for the construction, operation and maintenance of the NAIA Terminal was null and void due to the absence of the requisite financial capacity of the predecessor consortium of PIATCO.⁵⁵ The Republic of the Philippines took possession of Terminal 3 in December 2004, instituted domestic court expropriation proceedings in December 2004, and began operating the Terminal in 2008.

⁵⁵See Agan v. Philippines International Air Terminals Co., Inc., G.R. No. 155001, May 5, 2003, 402 SCRA 612.

In September 2003, Fraport initiated arbitral proceedings against the Philippines by submitting its Request for Arbitration to ICSID (ICSID Case No.ARB/03/25). The Request for Arbitration was made pursuant to arbitration provisions contained in the Agreement between the Federal Republic of Germany and the Republic of the Philippines on the Promotion and Reciprocal Protection of Investments (BIT), dated April 18, 1997 and in force since February 2, 2000. The Republic of the Philippines challenged the Arbitral Tribunal's jurisdiction on the basis that the protections afforded by the BIT did not extend to investments made in violation of Philippine law - Fraport's investment in PIATCO sought to evade the nationality requirement governing the NAIA Terminal 3 concession, a public utility, through the device of "indirect" ownership coupled with the secret shareholder agreements to exert financial dominance and effective corporate control of PIATCO. In July 2007, the Tribunal agreed with the assertion of the Republic of the Philippines, declared that it did not have jurisdiction to hear the dispute, and dismissed the claim of Fraport.

Fraport filed for the annulment of the 2007 award with an ICSID ad hoc committee. The annulment of the award was based on three separate grounds provided for in Article 52 of the ICSID Convention: that the Tribunal manifestly exceeded its powers [Article 52(1)(b)], that there has been a serious departure from a fundamental rule of procedure [Article 52(1)(d)], and that the award has failed to state the reasons on which it is based [Article 51(1)(e)]. The committee rendered a decision annulling the 2007 Award on December 23, 2010.

On March 30, 2011, the ICSID received a new request for the institution of arbitration proceedings submitted by Fraport against the Republic of the Philippines (ICSID Case No. ARB/11/12). On December 10, 2014, the Tribunal rendered a decision finding that Fraport violated Philippine anti-dummy laws at the time of its initial investment, and that the illegality of the investment consequently excluded it as an investment protected by the BIT. The Tribunal thus dismissed Fraport's claims for lack of jurisdiction. The Tribunal also deviated from the principle that parties should bear their own legal costs and share equally the costs of the arbitration, and ordered Fraport to reimburse the Republic of the Philippines for part of the latter's fees and costs in the amount of US \$5 million.

Baggerwerken Decloedt En Zoon NV v. Republic of the Philippines

On October 11, 2011, the ICSID registered a request for the institution of arbitration proceedings from claimant Baggerwerken Decloedt En Zoon NV (BDC) against the Republic of the Philippines (ICSID Case No. ARB/11/27). The dispute concerned claims arising out of the Philippine government's unilateral termination of a contract entered into by the previous administration with the claimant for the rehabilitation of Laguna Lake. BDC invokes the BLEU (Belgium-Luxembourg Economic Union) - Philippines Bilateral Investment Treaty (1998) as the international investment agreement in filing its claims. To date, the arbitration proceedings still remain pending with the ICSID.

Framework for ASEAN Investor-State Dispute Resolution: the ASEAN Comprehensive Investment Agreement (ACIA)

The ASEAN Comprehensive Investment Agreement (ACIA) is ASEAN's main economic instrument to realize a free and open investment regime. The ACIA aims to create a free and open investment regime in the ASEAN in order to achieve the end goal of economic integration under the ASEAN Economic Community. Article 33 of the ACIA allows investors to submit claims not just to courts or administrative tribunals, but also the ICSID (under the ICSID Convention), the UNCITRAL (under UNCITRAL Arbitration Rules), regional centres for arbitration in ASEAN, or to any other arbitration institution upon agreement of the parties.⁵⁶

V. International Commercial Arbitration in Asia

List of International Arbitral Institutions

Leading international arbitral institutions include:

Asia

- Singapore International Arbitration Centre (SIAC)
- Hong Kong International Arbitration Centre (HKIAC)
- China International Economic and Trade Arbitration Commission (CIETAC)

⁵⁶ASEAN Comprehensive Investment Agreement, February 26, 2009.

- Japanese Commercial Arbitration Association (JCAA)
 - Korean Commercial Arbitration Board (KCAB)
- Europe
- The International Court of Arbitration of the International Chamber of Commerce (ICC)
 - The Arbitration Institute of the Stockholm Chamber of Commerce (SCC)
 - The London Court of International Arbitration (LCIA)
- USA
- American Arbitration Association (AAA)

Background on Arbitral Institutes

The two leading international commercial arbitration institutes in Asia are the Hong Kong International Arbitration Centre (HKIAC) and the Singapore International Arbitration Centre (SIAC). HKIAC was founded in 1985, while SIAC was founded in 1991. Both institutions are among the longest-standing arbitral institutions in the Asia-Pacific region and have more established rules and organizations.

Choice of Arbitration Institutes

Parties should consider their administrative and substantive requirements in the choice of arbitration institute, some of which include:

Reputation in the International Community

Both Hong Kong and Singapore are consistently ranked among the top nations with the least corrupt public sector in the world in the Corruption Perceptions Index (CPI). Singapore is also consistently ranked as the least corrupt public sector in Asia in the CPI, with Hong Kong not far behind in second place.⁵⁷

Support Services

The HKIAC Secretariat comprises multilingual individuals from diverse backgrounds from both civil and common law jurisdictions,

⁵⁷See Transparency International Corruption Perceptions Index.

any of whom may be appointed as a tribunal secretary to perform organizational and administrative tasks, including conducting legal research and preparing drafts of non-substantive documents.⁵⁸ SIAC provides for the appointment of administrative secretaries to assist the arbitral tribunal with administrative matters.⁵⁹

Choice of Arbitrators

HKIAC provides an online database of arbitrators included on its Panel and List of Arbitrators which allows parties to search for potential arbitrators according to qualifications such as nationality, practice location, jurisdiction of admission, arbitration expertise, other ADR skills and language. SIAC has an experienced international panel of over 400 expert arbitrators from 40 jurisdictions.

Enforceability of Awards

Both Hong Kong and Singapore are parties to the 1958 New York Convention on the enforcement of arbitration awards. Arbitral awards from both Hong Kong and Singapore are enforceable in over 150 countries worldwide.

Rules

Each arbitration institution is governed by its own rules: the HKIAC Administered Arbitration Rules, 2013 edition and the SIAC Arbitration Rules, 2013 edition. Differences in the HKIAC and SIAC Rules include, among others: provisions on the commencement of arbitration, reglementary periods on responding to the notice of arbitration, and reglementary periods on the issuance of awards. For example, the SIAC Rules provide that the arbitral tribunal shall submit the draft award within 45 days from the declaration of the proceedings as closed.⁶⁰ In contrast, the HKIAC Rules are silent on prescribing a time limit within which an arbitral award must be made.⁶¹

⁵⁸See HKIAC Guidelines on the Use of a Secretary to the Arbitral Tribunal dated June 1, 2014.

⁵⁹See SIAC Practice Note for Administered Cases on the Appointment of Administrative Secretaries dated February 2, 2015.

⁶⁰SIAC Arbitration Rules 2013, Rule 28.2.

⁶¹See HKIAC Arbitration Rules 2013, Article 34.

CHAPTER 5

SPECIALIZED ADR

I. Mediation and Conciliation of Agrarian Disputes

Sources of Governing Law

Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 mandates the mediation and conciliation between parties involved in an agrarian dispute.¹ In the implementation of this mandate, the Department of Agrarian Reform (DAR) issued Administrative Order No. 08, series of 1994 (Rules and Procedures Governing Mediation/Conciliation of Agrarian Disputes by the Barangay Agrarian Reform Committee) and the 2009 DAR Adjudication Board (DARAB) Rules of Procedure.

Agrarian Disputes, Defined

Agrarian disputes refer to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship, or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers, associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange the terms and conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.²

BARC Certification of Non-Settlement

The DARAB or its Adjudicators shall not take cognizance of any agrarian case, dispute, or controversy, unless a certification from

¹R.A. No. 6657, Chapter 11, Section 47(a).

²R.A. No. 6657, Chapter 1, Section 3(d).

the Barangay Agrarian Reform Committee (BARC) of the barangay where the land involved is located is presented, to the effect that the dispute has been submitted to it for mediation or conciliation without any success or settlement.

A certification from the BARC is not necessary:

1. Where the issue involves the valuation of land to determine just compensation for its acquisition;
2. Where one party in a public or private corporation, partnership, association or juridical person, or a public officer or employee and the dispute relates to the performance of his official functions;
3. Where the Secretary of the DAR directly refers the matter to the DARAB or Adjudicator; or
4. Upon certification of the Municipal Agrarian Reform Officer (MARO) or, in his absence, the Senior Agrarian Reform Program Technologist (SARPT) or Agrarian Reform Program Technologist (ARPT) of the non-existence of the BARC or the inability of the BARC to convene.³

If the filing of the complaint or petition before the DARAB is not accompanied by the required BARC Certification, the dispute shall be referred to the BARC or DAR Technologist of the barangay where the land is located, through the MARO of the area, directing either the conduct of mediation/conciliation proceedings or the issuance of a certification of non-existence of the BARC or inability of the BARC to convene.⁴

Absence of BARC Certification Not Fatal

The failure to raise any objection based on lack of certification by the BARC that the case had undergone the process of mediation and conciliation is deemed a waiver, when the party invoking it submitted himself to the jurisdiction of the court by participating in the trial of the case and presenting his own evidence and cross-examining the witness of the adverse party. Thus, the absence of the conciliation process at the barangay level is not a jurisdictional defect.⁵

³2009 DARAB Rules of Procedure, Rule 3, Section 1.

⁴2009 DARAB Rules of Procedure, Rule 3, Section 2.

⁵Siacor v. Gigantana, G.R. No. 147877, April 5, 2002, 380 SCRA 306. Note,

Land or Parties in Two (2) Barangays

Where the land in dispute straddles two or more barangays or the parties involved reside in different barangays, the BARC of the barangay where the larger portion of the property lies, shall have the authority to conduct mediation or conciliation proceedings, unless for convenience and accessibility and upon agreement of the parties such proceedings should be held in another barangay within the Municipality or adjacent Municipality where the land in dispute is located.⁶

Mediation in Other DAR Levels

The rules on mediation and conciliation at the level of the BARC does not limit the discretion of the Provincial Agrarian Reform Officers (PAROs), the Regional Directors (RDs), and other DAR officials to mediate agrarian disputes at their respective levels when, in their honest judgment, a principled settlement of the problem shall promote justice and equity, and countryside peace, for all concerned.⁷

II. Arbitration of Construction Disputes

Sources of Governing Law

The Alternative Dispute Resolution Act of 2004 provides that the arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.⁸

E.O. No. 1008 which vests jurisdiction to the Construction Industry Arbitration Commission (CIAC) over construction disputes is a special law – hence, it takes precedence over Batas Pambansa Blg. 129 or the Judiciary Reorganization Act of 1980, a general law which vests jurisdiction to the Regional Trial Courts over civil law actions in which the subject of litigation is incapable of pecuniary estimation.⁹

however, that the case cites Rule III, §1(c) of the DARAB Revised Rules of Procedure which expressly provides that “the lack of the required certification cannot be made a ground for the dismissal of the action.” This provision has been deleted in the 2009 DARAB Rules of Procedure.

⁶2009 DARAB Rules of Procedure, Rule 3, Section 4.

⁷DAR Administrative Order No. 08, series of 1994, Section 2(B).

⁸R.A. No. 9285, Chapter 6, Section 34.

⁹Reyes v. Balde II, 498 SCRA 186 [2006]

Jurisdiction

The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost. Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.¹⁰

Condition for Exercise of Jurisdiction

For the CIAC to acquire jurisdiction, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration.¹¹

Requirements for CIAC Jurisdiction

A dispute must meet two (2) requirements in order to fall under the jurisdiction of the CIAC: first, the dispute must be somehow connected to a construction contract; and second, the parties must have agreed to submit the dispute to arbitration proceedings.¹²

Arbitration clause referring dispute to another forum vests CIAC with jurisdiction

The bare fact that the parties herein incorporated an arbitration clause in the EPCC is sufficient to vest the CIAC with jurisdiction over any construction controversy or claim between the parties. The arbitration clause in the construction contract ipso facto vested the CIAC with jurisdiction. This rule applies, regardless of whether the parties specifically choose another forum or make reference to another arbitral body. Since the jurisdiction of CIAC is conferred by

¹⁰E.O. No. 1008, Section 4.

¹¹CIAC Revised Rules of Procedure, Rule 2, Section 2.3.

¹²Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc., G.R. No. 177240, September 8, 2010, 630 SCRA 368.

law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract. The parties will not be precluded from electing to submit their dispute to CIAC, because this right has been vested in each party by law. The mere existence of an arbitration clause in the construction contract is considered by law as an agreement by the parties to submit existing or future controversies between them to CIAC jurisdiction, without any qualification or condition precedent. To affirm a condition precedent in the construction contract, which would effectively suspend the jurisdiction of the CIAC until compliance therewith, would be in conflict with the recognized intention of the law and rules to automatically vest CIAC with jurisdiction over a dispute should the construction contract contain an arbitration clause.¹³

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 specially 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, i.e., E.O. No. 1008. Parties may continue to stipulate as regards their preferred forum in case of voluntary arbitration, but in so doing, they may not divest the CIAC of jurisdiction as provided by law.¹⁴

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, i.e., E.O. No. 1008.¹⁵

CIAC jurisdiction cannot be limited

CIAC's jurisdiction cannot be limited by the parties' stipulation that only disputes in connection with or arising out of the physical

¹³Hutama-RSEA Joint Operations, Inc. v. CITRA Metro Manila Tollways Corporation, G.R. No. 180640, April 24, 2009.

¹⁴China Chang Jiang Energy Corporation (Philippines) v. Rosal Infrastructure Builders, G.R. No. 125706, 30 September 1996.

¹⁵National Irrigation Administration v. Court of Appeals, 376 Phil. 362, 375 (1999).

construction activities (execution of the works) are arbitrable before it. All that is required for the CIAC to acquire jurisdiction is for the parties to a construction contract to agree to submit their dispute to arbitration.¹⁶

If the CIAC's jurisdiction can neither be enlarged nor diminished by the parties, it also cannot be subjected to a condition precedent. To reiterate, all that is required for the CIAC to acquire jurisdiction is for the parties to agree to submit their dispute to voluntary arbitration. This jurisdiction cannot be altered by stipulations restricting the nature of construction disputes, appointing another arbitral body, or making that body's decision final and binding.¹⁷

Jurisdiction of CIAC extends to surety contracts

The jurisdiction of CIAC is not limited to the construction industry, and can also extend to surety contracts. "Although not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal. The Performance Bond is significantly and substantially connected to the construction contract that there can be no doubt it is the CIAC, under Section 4 of EO No. 1008, which has jurisdiction over any dispute arising from or connected with it."¹⁸

Arbitrable Issues

Claims for unrealized expected profits (built-in in the contract price) and issues on rescission or termination of a contract, however, are arbitrable.¹⁹

The arbitration clause in the GCC submits to the jurisdiction of the CIAC all disputes, claims or questions subject to arbitration under the contract. The language employed in the arbitration clause is such as to indicate the intent to include all controversies that may arise from the agreement as determined by the CIAC Rules.

¹⁶Licomcn Incorporated v. Foundation Specialists, Inc., G.R. No. 167022, April 4, 2011, 647 SCRA 83.

¹⁷Licomcn Incorporated v. Foundation Specialists, Inc., G.R. No. 167022, April 4, 2011, 647 SCRA 83.

¹⁸Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc., G.R. No. 177240, September 8, 2010, 630 SCRA 368.

¹⁹Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation, G.R. No. 144792, January 31, 2006.

It is broad enough to encompass all issues save only those which EO 1008 itself excludes, i.e., employer-employee relationship issues. Under these Rules, the amount of damages and penalties is a general category of arbitrable issues under which Gammon's claims may fall.²⁰

The payments, demand and disputed issues in this case – namely, work billings, material costs, equipment and labor standby costs, unrealized profits – all arose because of the construction activities and/or are connected or related to these activities. In other words, they are there because of the construction activities. Attorney's fees and interests payment, on the other hand, are costs directly incidental to the dispute. Hence, the scope of the arbitration clause, as worded, covers all the disputed items.²¹

The Court finds that petitioner's claims that it is entitled to payment for several items under their contract, which claims are, in turn, refuted by respondent, involves a "dispute arising from differences in interpretation of the contract." Verily, the matter of ascertaining the duties and obligations of the parties under their contract all involve interpretation of the provisions of the contract. Therefore, if the parties cannot see eye to eye regarding each other's obligations, i.e., the extent of work to be expected from each of the parties and the valuation thereof, this is properly a dispute arising from differences in the interpretation of the contract.²²

Failure or Refusal to Arbitrate

The absence or lack of participation of the respondent shall not stay arbitration proceedings. CIAC shall continue to appoint the arbitrator/s and continue to receive the evidence of the Claimant, after which the award shall be made.²³

Before award, if the absentee respondent appears and offers to present their evidence, and if the absence is justified, the Arbitral Tribunal may reopen and allow the respondent's participation in the proceedings. The Tribunal may allow him to present his evidence,

²⁰Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation, G.R. No. 144792, January 31, 2006.

²¹Licomcen Incorporated v. Foundation Specialists, Inc., G.R. No. 167022, April 4, 2011, 647 SCRA 83.

²²William Golangco Construction Corporation v. Ray Burton Development Corporation, G.R. No. 163582, August 9, 2010, 627 SCRA 74.

²³CIAC Revised Rules of Procedure, Rule 4, Section 4.2.

with limited right to cross examine witnesses already presented in the discretion of the Tribunal. Evidence already admitted shall remain.²⁴

When Arbitration Cannot Proceed

If the contract between the parties does not provide for arbitration and the parties cannot agree to submit the dispute to arbitration, the arbitration cannot proceed.²⁵

Jurisdictional Challenge

A motion to dismiss based on lack of jurisdiction shall be resolved by the Arbitral Tribunal, which shall have full authority to resolve all issues raised in the Motion to Dismiss for lack of jurisdiction on the grounds that:

1. The dispute is not a construction dispute,
2. The Respondent was represented by one without capacity to enter into a binding arbitration agreement,
3. Said agreement or submission is not valid for some other reasons, or does not cover the particular dispute sought to be arbitrated, or
4. Other issues of interpretation or nonfulfillment-of pre-conditions to arbitration that are raised therein.²⁶

Any of the following acts by a party does not result in a waiver of its right to challenge the jurisdiction of CIAC:

1. Participating in the nomination process including challenging the qualifications of a nominee;
2. Praying for extension of time to file appropriate pleading/motion to dismiss;
3. Opposing an application for interim relief;
4. Filing of a motion to dismiss/suspend.²⁷

²⁴CIAC Revised Rules of Procedure, Rule 4, Section 4.2.1.

²⁵CIAC Revised Rules of Procedure, Rule 4, Section 4.3.

²⁶CIAC Revised Rules of Procedure, Rule 2, Section 2.4.1.

²⁷CIAC Revised Rules of Procedure, Rule 2, Section 2.4.2.

Adverse decision not a ground for assailing CIAC jurisdiction

After submitting itself to arbitration proceedings and actively participating therein, a petitioner is estopped from assailing the jurisdiction of the CIAC, merely because the latter rendered an adverse decision.²⁸

The Arbitration Award

The award shall be rendered by the Arbitral Tribunal within thirty (30) days from the time the case is submitted for resolution but not more than six (6) months from the date of signing of the Terms of Reference (TOR) by the parties, or not more than six (6) months from the date of the last preliminary conference called for the purpose of finalizing and/or signing of the TOR.²⁹

A party may appeal a CIAC arbitral awards through a petition for review in accordance with the provisions of Rule 43 of the Rules of Court.³⁰ The filing of a petition for review shall not stay execution unless the Court of Appeals issues a temporary restraining order or preliminary injunction.³¹ A final arbitral award shall become executory upon the lapse of fifteen (15) days from receipt thereof by the parties.³²

When findings are reviewable by the Supreme Court

Factual findings of construction arbitrators are final and conclusive and not reviewable by the Supreme Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by

²⁸Philrock, Inc. v. Construction Industry Arbitration Commission, G.R. Nos. 132848-49, June 26, 2001 citing Spouses Benitez v. Court of Appeals, 266 SCRA 242, January 16, 1997.

²⁹CIAC Revised Rules of Procedure, Rule 16, Section 16.1.

³⁰CIAC Revised Rules of Procedure, Rule 18, Section 18.2.

³¹CIAC Revised Rules of Procedure, Rule 18, Section 18.4.

³²CIAC Revised Rules of Procedure, Rule 18, Section 18.1.

which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.³³

Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process.³⁴

III. Labor Dispute Settlement

Sources of Governing Law

The alternative dispute resolution mechanisms of conciliation, mediation, and voluntary and compulsory arbitration are used in labor dispute resolution. The Labor Code mandates the use of mediation and conciliation to effect a voluntary settlement after the filing of a notice of strike or lockout.³⁵ In labor disputes causing or likely to cause a strike or lockout in an industry indispensable to the national interest, one of the recourses available to the Secretary of Labor and Employment is the certification of the dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration.³⁶ Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.³⁷

The National Conciliation and Mediation Board

The National Conciliation and Mediation Board (NCMB) was created pursuant to Executive Order No. 126 dated January 31, 1987. The NCMB is called upon to perform the following functions:

³³David v. Construction Industry and Arbitration Commission, G.R. No. 159795, July 30, 2004

³⁴IBEX International, Inc. v. Government Service Insurance System, G.R. No. 162095, October 12, 2009

³⁵Presidential Decree No. 442, Book 5, Title 8, Chapter 1, Article 263(5).

³⁶Presidential Decree No. 442, Book 5, Title 8, Chapter 1, Article 263(7).

³⁷Presidential Decree No. 442, Book 5, Title 8, Chapter 1, Article 263(8).

1. Formulate policies, programs, standards, procedures, manuals of operation and guidelines pertaining to effective mediation and conciliation of labor disputes;
2. Perform preventive mediation and conciliation functions;
3. Coordinate and maintain linkages with other sectors or institutions, and other government authorities concerned with matters relative to the prevention and settlement of labor disputes;
4. Formulate policies, plans, programs, standards, procedures, manuals of operation and guidelines pertaining to the promotion of cooperative and non-adversarial schemes, grievance handling, voluntary arbitration and other voluntary modes of dispute settlement; and
5. Administer the voluntary arbitration program; maintain/update a list of voluntary arbitrations; compile arbitration awards and decisions.³⁸

NCMB Conciliation

Upon receipt of the notice of strike or lockout, the regional branch of the NCMB shall exert all efforts at mediation and conciliation during the cooling-off period of fifteen days to encourage an amicable settlement. The regional branch of the Board shall also encourage the parties to submit the dispute to voluntary arbitration.³⁹

IV. Mandatory Inclusion of ADR Provisions in PPP, BOT and JVA

All contracts involving Public-Private Partnership (PPP) projects and/or those entered into under RA No. 6957 entitled, "The Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes," as amended by RA No. 7718, otherwise known as the "Build-Operate and Transfer (BOT) Law," as well as Joint Venture Agreements (JVAs) between government and private entities issued by the National Economic and Development Authority (NEDA) pursuant to Executive Order (EO) No. 423 (s.

³⁸Executive Order No. 126 (S. 1987), Section 22.

³⁹Rules to Implement the Labor Code, Book 5, Rule 13, Section 6.

2005), shall include provisions on the use of ADR mechanisms, at the option and upon agreement of the parties to said contracts.⁴⁰

All parties who enter into similar contracts with Local Government Units (LGUs) are encouraged to stipulate on the use of ADR mechanisms, in accordance with their own JV rules, guidelines or procedures.⁴¹

When parties to the abovementioned contracts agree to submit the case for ADR, the use of either domestic or international ADR mechanisms shall be highly encouraged, giving the parties complete freedom to choose which venue and forum shall govern their dispute, as well as the rules or procedures to be followed in resolving the same.⁴²

The implementing agency is the National Economic Development Authority (NEDA). It shall guide LGUs that enter into PPP or BOT contracts and JVAs.⁴³

⁴⁰Executive Order No. 78 (s. 2012), Section 1.

⁴¹*Ibid.*

⁴²*Ibid.*

⁴³Executive Order No. 78 (s. 2012), Section 2.

CHAPTER 6

SPECIAL RULES OF COURT ON ADR

I. A. Introduction

Governing Law

The Supreme Court in an En Banc resolution on September 1, 2009 approved the SPECIAL RULES OF COURT ON ALTERNATIVE DISPUTE RESOLUTION. The Rules took effect on October 30, 2009 following its publication in three (3) newspapers of general circulation.¹

Subject matter and governing rules

The Special Rules of Court on Alternative Dispute Resolution (the "Special ADR Rules") shall apply to and govern the following cases:

- a. Relief on the issue of Existence, Validity, or Enforceability of the Arbitration Agreement;
- b. Referral to Alternative Dispute Resolution ("ADR");
- c. Interim Measures of Protection;
- d. Appointment of Arbitrator;
- e. Challenge to Appointment of Arbitrator;
- f. Termination of Mandate of Arbitrator;
- g. Assistance in Taking Evidence;
- h. Confirmation, Correction or Vacation of Award in Domestic Arbitration;
- i. Recognition and Enforcement or Setting Aside of an Award in International Commercial Arbitration;

¹AM No. 07-11-08-SC, Introductory Part.

- j. Recognition and Enforcement of a Foreign Arbitral Award;
- k. Confidentiality/Protective Orders; and
- l. Deposit and Enforcement of Mediated Settlement Agreements.²

Nature of the proceedings

All proceedings under the Special ADR Rules are special proceedings.³

Summary proceedings in certain cases

The proceedings in subject matters of ADR are summary in nature.⁴

The petitioner shall serve, either by personal service or courier, a copy of the petition upon the respondent before the filing thereof. Proof of service shall be attached to the petition filed in court.

For personal service, proof of service of the petition consists of the affidavit of the person who effected service, stating the time, place and manner of the service on the respondent. For service by courier, proof of service consists of the signed courier proof of delivery. If service is refused or has failed, the affidavit or delivery receipt must state the circumstances of the attempted service and refusal or failure thereof.⁵

Except for cases involving Referral to ADR and Confidentiality/Protective Orders made through motions, the court shall, if it finds the petition sufficient in form and substance, send notice to the parties directing them to appear at a particular time and date for the hearing thereof which shall be set no later than five (5) days from the lapse of the period for filing the opposition or comment. The notice to the respondent shall contain a statement allowing him to file a comment or opposition to the petition within fifteen (15) days from receipt of the notice.

The motion filed pursuant to the rules on Referral to ADR or Confidentiality/Protective Orders shall be set for hearing by the movant and contain a notice of hearing that complies with the requirements under Rule 15 of the Rules of Court on motions.⁶

²AM No. 07-11-08-SC, Rule 1.1.

³AM No. 07-11-08-SC, Rule 1.2.

⁴AM No. 07-11-08-SC, Rule 1.3.

⁵AM No. 07-11-08-SC, Rule 1.3 (A).

⁶AM No. 07-11-08-SC, Rule 1.3 (B), Notice.

In all cases, as far as practicable, the summary hearing shall be conducted in one (1) day and only for purposes of clarifying facts. Except in cases involving Referral to ADR or Confidentiality/Protective Orders made through motions, it shall be the court that sets the petition for hearing within five (5) days from the lapse of the period for filing the opposition or comment.⁷

The court shall resolve the matter within a period of thirty (30) days from the day of the hearing.⁸

Verification and submissions

Any pleading, motion, opposition, comment, defense or claim filed under the Special ADR Rules by the proper party shall be supported by verified statements that the affiant has read the same and that the factual allegations therein are true and correct of his own personal knowledge or based on authentic records and shall contain as annexes the supporting documents.

The annexes to the pleading, motion, opposition, comment, defense or claim filed by the proper party may include a legal brief, duly verified by the lawyer submitting it, stating the pertinent facts, the applicable law and jurisprudence to justify the necessity for the court to rule upon the issue raised.⁹

Certification against Forum Shopping

A Certification Against Forum Shopping is one made under oath made by the petitioner or movant: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforementioned petition or motion has been filed.

A Certification against Forum Shopping shall be appended to all initiatory pleadings except a Motion to Refer the Dispute to Alternative Dispute Resolution.¹⁰

⁷AM No. 07-11-08-SC, Rule 1.3 (C), Summary Hearing.

⁸AM No. 07-11-08-SC, Rule 1.3 (D), Resolution.

⁹AM No. 07-11-08-SC, Rule 1.4.

¹⁰AM No. 07-11-08-SC, Rule 1.5.

Prohibited submissions

Take note of the following pleadings, motions, or petitions that are prohibited, not allowed in cases governed by the Special ADR Rules and not to be accepted for filing by the Clerk of Court:

- a. Motion to dismiss;
- b. Motion for bill of particulars;
- c. Motion for new trial or for reopening of trial;
- d. Petition for relief from judgment;
- e. Motion for extension, except in cases where an ex-parte temporary order of protection has been issued;
- f. Rejoinder to reply;
- g. Motion to declare a party in default; and
- h. Any other pleading specifically disallowed under any provision of the Special ADR Rules.

The court shall *motu proprio* order a pleading/motion determined to be dilatory in nature expunged from the records.¹¹

Computation of time

In computing any period of time prescribed or allowed by the Special ADR Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. Should an act be done which effectively interrupts the running of the period, the allowable period after such interruption shall start to run on the day after notice of the cessation of the cause thereof. The day of the act that caused the interruption shall be excluded from the computation of the period.¹²

¹¹AM No. 07-11-08-SC, Rule 1.6.

¹²AM No. 07-11-08-SC, Rule 1.7.

Service and filing of pleadings, motions and other papers in non-summary proceedings

The initiatory pleadings shall be filed directly with the court. The court will then cause the initiatory pleading to be served upon the respondent by personal service or courier. Where an action is already pending, pleadings, motions and other papers shall be filed and/or served by the concerned party by personal service or courier. Where courier services are not available, resort to registered mail is allowed.¹³

The filing of a pleading shall be proved by its existence in the record of the case. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgment of its filing by the clerk of court on a copy of the same; if filed by courier, by the proof of delivery from the courier company.¹⁴

Proof of personal service shall consist of a written admission by the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by courier, proof thereof shall consist of an affidavit of the proper person, stating facts showing that the document was deposited with the courier company in a sealed envelope, plainly addressed to the party at his office, if known, otherwise at his residence, with postage fully pre-paid, and with instructions to the courier to immediately provide proof of delivery.¹⁵

Filing and service of pleadings by electronic transmission may be allowed by agreement of the parties approved by the court. If the filing or service of a pleading or motion was done by electronic transmission, proof of filing and service shall be made in accordance with the Rules on Electronic Evidence.¹⁶

No summons required

In cases covered by the Special ADR Rules, a court acquires authority to act on the petition or motion upon proof of jurisdictional facts, i.e., that the respondent was furnished a copy of the petition and the notice of hearing.

¹³AM No. 07-11-08-SC, Rule 1.8.

¹⁴AM No. 07-11-08-SC, Rule 1.8 (A), Proof of filing.

¹⁵AM No. 07-11-08-SC, Rule 1.8 (B), Proof of service.

¹⁶AM No. 07-11-08-SC, Rule 1.8 (C), Filing and service by electronic means and proof thereof.

The technical rules on service of summons do not apply to the proceedings under the Special ADR Rules. In instances where the respondent, whether a natural or a juridical person, was not personally served with a copy of the petition and notice of hearing in the proceedings contemplated in the first paragraph of Rule 1.3 (B) [involving Referral to ADR and Confidentiality/Protective Orders], or the motion in proceedings contemplated in the second paragraph Rule 1.3 (B), the method of service resorted to must be such as to reasonably ensure receipt thereof by the respondent to satisfy the requirement of due process.¹⁷

A proof of service of the petition and notice of hearing upon respondent shall be made in writing by the server and shall set forth the manner, place and date of service.¹⁸

The burden of showing that a copy of the petition and the notice of hearing were served on the respondent rests on the petitioner.¹⁹

Contents of petition/motion

The initiatory pleading in the form of a verified petition or motion, in the appropriate case where court proceedings have already commenced, shall include the names of the parties, their addresses, the necessary allegations supporting the petition and the relief(s) sought.²⁰

Applicability of Part II on Specific Court Relief

Part II of the Special ADR Rules on Specific Court Relief, insofar as it refers to arbitration, shall also be applicable to other forms of ADR.²¹

Spirit and intent of the Special ADR Rules

In situations where no specific rule is provided under the Special ADR Rules, the court shall resolve such matter summarily and be guided by the spirit and intent of the Special ADR Rules and the ADR Laws.²²

¹⁷AM No. 07-11-08-SC, Rule 1.9.

¹⁸AM No. 07-11-08-SC, Rule 1.9 (A).

¹⁹AM No. 07-11-08-SC, Rule 1.9 (B), Burden of Proof.

²⁰AM No. 07-11-08-SC, Rule 1.10.

²¹AM No. 07-11-08-SC, Rule 1.12.

²²AM No. 07-11-08-SC, Rule 1.13.

II. Specific Court Relief

RULE 3: JUDICIAL RELIEF INVOLVING THE ISSUE OF EXISTENCE, VALIDITY AND ENFORCEABILITY OF THE ARBITRATION AGREEMENT

When judicial relief is available

The judicial relief provided in Rule 3, whether resorted to before or after commencement of arbitration, shall apply only when the place of arbitration is in the Philippines.²³

Note that judicial relief is available only when there is valid and serious question on arbitration agreement of the parties. The law is interpreted in favor of party autonomy where parties are free to make their own arrangement to settle their disputes.

A. Judicial Relief before Commencement of Arbitration

Who may file petition

Any party to an arbitration agreement may petition the appropriate court to determine any question concerning the existence, validity and enforceability of such arbitration agreement serving a copy thereof on the respondent in accordance with Rule 1.4 (A).²⁴

When the petition may be filed

The petition for judicial determination of the existence, validity and/or enforceability of an arbitration agreement may be filed at any time prior to the commencement of arbitration.

Despite the pendency of the petition provided herein, arbitral proceedings may nevertheless be commenced and continue to the rendition of an award, while the issue is pending before the court.²⁵

Venue

A petition questioning the existence, validity and enforceability of an arbitration agreement may be filed before the Regional Trial Court of the place where any of the petitioners or respondents has his principal place of business or residence.²⁶

²³AM No. 07-11-08-SC, Rule 3.1.

²⁴AM No. 07-11-08-SC, Rule 3.2.

²⁵AM No. 07-11-08-SC, Rule 3.3.

²⁶AM No. 07-11-08-SC, Rule 3.4.

Grounds

A petition may be granted only if it is shown that the arbitration agreement is, under the applicable law, invalid, void, unenforceable or nonexistent.²⁷

Contents of petition

The verified petition shall state the following:

- a. The facts showing that the persons named as petitioner or respondent have legal capacity to sue or be sued;
- b. The nature and substance of the dispute between the parties;
- c. The grounds and the circumstances relied upon by the petitioner to establish his position; and
- d. The relief/s sought.

Apart from other submissions, the petitioner must attach to the petition an authentic copy of the arbitration agreement.²⁸

Comment/Opposition

The comment/opposition of the respondent must be filed within fifteen (15) days from service of the petition.²⁹

Court action

In resolving the petition, the court must exercise judicial restraint in accordance with the policy set forth in Rule 2.4, deferring to the competence or jurisdiction of the arbitral tribunal to rule on its competence or jurisdiction.³⁰

No forum shopping

A petition for judicial relief under this Rule may not be commenced when the existence, validity or enforceability of an arbitration agreement has been raised as one of the issues in a prior action before the same or another court.³¹

²⁷AM No. 07-11-08-SC, Rule 3.5.

²⁸AM No. 07-11-08-SC, Rule 3.6.

²⁹AM No. 07-11-08-SC, Rule 3.7.

³⁰AM No. 07-11-08-SC, Rule 3.8.

³¹AM No. 07-11-08-SC, Rule 3.9.

Application for interim relief or measure of protection

If the petitioner also applies for an interim measure of protection, he must also comply with the requirements of the Special ADR Rules for the application for an interim measure of protection.³²

Relief against court action

Where there is a *prima facie* determination upholding the arbitration agreement. A *prima facie* determination by the court upholding the existence, validity or enforceability of an arbitration agreement shall not be subject to a motion for reconsideration, appeal or *certiorari*.

Such *prima facie* determination will not, however, prejudice the right of any party to raise the issue of the existence, validity and enforceability of the arbitration agreement before the arbitral tribunal or the court in an action to vacate or set aside the arbitral award. In the latter case, the court's review of the arbitral tribunal's ruling upholding the existence, validity or enforceability of the arbitration agreement shall no longer be limited to a mere *prima facie* determination of such issue or issues as prescribed in this Rule, but shall be a full review of such issue or issues with due regard, however, to the standard for review for arbitral awards prescribed in these Special ADR Rules.³³

B. Judicial Relief after Arbitration Commences

Who may file petition

Any party to arbitration may petition the appropriate court for judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction. Should the ruling of the arbitral tribunal declining its jurisdiction be reversed by the court, the parties shall be free to replace the arbitrators or any one of them in accordance with the rules that were applicable for the appointment of arbitrator sought to be replaced.³⁴

When petition may be filed

The petition may be filed within thirty (30) days after having received notice of that ruling by the arbitral tribunal.³⁵

³²AM No. 07-11-08-SC, Rule 3.10.

³³AM No. 07-11-08-SC, Rule 3.11.

³⁴AM No. 07-11-08-SC, Rule 3.12.

³⁵AM No. 07-11-08-SC, Rule 3.13.

Venue

The petition may be filed before the Regional Trial Court of the place where arbitration is taking place, or where any of the petitioners or respondents has his principal place of business or residence.³⁶

Grounds

The petition may be granted when the court finds that the arbitration agreement is invalid, nonexistent or unenforceable as a result of which the arbitral tribunal has no jurisdiction to resolve the dispute.³⁷

Contents of petition

The petition shall state the following:

- a. The facts showing that the person named as petitioner or respondent has legal capacity to sue or be sued;
- b. The nature and substance of the dispute between the parties;
- c. The grounds and the circumstances relied upon by the petitioner; and
- d. The relief/s sought.

In addition to the submissions, the petitioner shall attach to the petition a copy of the request for arbitration and the ruling of the arbitral tribunal.

The arbitrators shall be impleaded as nominal parties to the case and shall be notified of the progress of the case.³⁸

Comment/Opposition

The comment/opposition must be filed within fifteen (15) days from service of the petition.³⁹

³⁶AM No. 07-11-08-SC, Rule 3.14.

³⁷AM No. 07-11-08-SC, Rule 3.15.

³⁸AM No. 07-11-08-SC, Rule 3.16.

³⁹AM No. 07-11-08-SC, Rule 3.17.

Court action

(A) Period for resolving the petition. – The court shall render judgment on the basis of the pleadings filed and the evidence, if any, submitted by the parties, within thirty (30) days from the time the petition is submitted for resolution.

(B) No injunction of arbitration proceedings. – The court shall not enjoin the arbitration proceedings during the pendency of the petition.

Judicial recourse to the court shall not prevent the arbitral tribunal from continuing the proceedings and rendering its award.

(C) When dismissal of petition is appropriate. – The court shall dismiss the petition if it fails to comply with Rule 3.16 above; or if upon consideration of the grounds alleged and the legal briefs submitted by the parties, the petition does not appear to be *prima facie* meritorious.⁴⁰

Relief against court action

The aggrieved party may file a motion for reconsideration of the order of the court. The decision of the court shall, however, not be subject to appeal. The ruling of the court affirming the arbitral tribunal's jurisdiction shall not be subject to a petition for *certiorari*. The ruling of the court that the arbitral tribunal has no jurisdiction may be the subject of a petition for *certiorari*.⁴¹

Where no petition is allowed

Where the arbitral tribunal defers its ruling on preliminary question regarding its jurisdiction until its final award, the aggrieved party cannot seek judicial relief to question the deferral and must await the final arbitral award before seeking appropriate judicial recourse.

A ruling by the arbitral tribunal deferring resolution on the issue of its jurisdiction until final award, shall not be subject to a motion for reconsideration, appeal or a petition for *certiorari*.⁴²

⁴⁰AM No. 07-11-08-SC, Rule 3.18.

⁴¹AM No. 07-11-08-SC, Rule 3.19.

⁴²AM No. 07-11-08-SC, Rule 3.20.

Rendition of arbitral award before court decision on petition from arbitral tribunal's preliminary ruling on jurisdiction

If the arbitral tribunal renders a final arbitral award and the Court has not rendered a decision on the petition from the arbitral tribunal's preliminary ruling affirming its jurisdiction, that petition shall become *ipso facto* moot and academic and shall be dismissed by the Regional Trial Court. The dismissal shall be without prejudice to the right of the aggrieved party to raise the same issue in a timely petition to vacate or set aside the award.⁴³

Arbitral tribunal a nominal party

The arbitral tribunal is only a nominal party. The court shall not require the arbitral tribunal to submit any pleadings or written submissions but may consider the same should the latter participate in the proceedings, but only as nominal parties thereto.⁴⁴

RULE 4: REFERRAL TO ADR**Who makes the request**

A party to a pending action filed in violation of the arbitration agreement, whether contained in an arbitration clause or in a submission agreement, may request the court to refer the parties to arbitration in accordance with such agreement.⁴⁵

When to make request

Where an arbitration agreement (arbitration clause) exists before the action is filed, the request for referral shall be made not later than the pre-trial conference. After the pre-trial conference, the court will only act upon the request for referral if it is made with the agreement of all parties to the case.⁴⁶

If there is no existing arbitration agreement at the time the case is filed but the parties subsequently enter into an arbitration agreement, they may request the court to refer their dispute to arbitration at any time during the proceedings. In this case there is a submission agreement.⁴⁷

⁴³AM No. 07-11-08-SC, Rule 3.21.

⁴⁴AM No. 07-11-08-SC, Rule 3.22.

⁴⁵AM No. 07-11-08-SC, Rule 4.1.

⁴⁶AM No. 07-11-08-SC, Rule 4.2 (A). Emphasis supplied.

⁴⁷AM No. 07-11-08-SC, Rule 4.2 (B). Emphasis supplied.

Contents of request

The request for referral shall be in the form of a motion, which shall state that the dispute is covered by an arbitration agreement.

Apart from other submissions, the movant shall attach to his motion an authentic copy of the arbitration agreement.

The request shall contain a notice of hearing addressed to all parties specifying the date and time when it would be heard. The party making the request shall serve it upon the respondent to give him the opportunity to file a comment or opposition as provided in the immediately succeeding Rule before the hearing.⁴⁸

The request to refer the case to arbitration is not in the form of mere request or even petition, but through filing of motion, a litigated one, since this requires proper notices to all the parties setting the time and date of the hearing.

Note also that before pre-trial, any party may move for the referral of the case to arbitration. But after pre-trial both parties must agree and file a joint motion to submit the case to arbitration.

Comment/Opposition

The comment/opposition must be filed within fifteen (15) days from service of the petition. The comment/opposition should show that: (a) there is no agreement to refer the dispute to arbitration; and/or (b) the agreement is null and void; and/or (c) the subject-matter of the dispute is not capable of settlement or resolution by arbitration in accordance with Section 6 of the ADR Act.⁴⁹

Court action

After hearing, the court shall stay the action and, considering the statement of policy embodied in Rule 2.4, above, refer the parties to arbitration if it finds *prima facie*, based on the pleadings and supporting documents submitted by the parties, that there is an arbitration agreement and that the subject-matter of the dispute is capable of settlement or resolution by arbitration in accordance with Section 6 of the ADR Act. Otherwise, the court shall continue with the judicial proceedings.⁵⁰

⁴⁸AM No. 07-11-08-SC, Rule 4.3.

⁴⁹AM No. 07-11-08-SC, Rule 4.4.

⁵⁰AM No. 07-11-08-SC, Rule 4.5.

No reconsideration, appeal or certiorari

An order referring the dispute to arbitration shall be immediately executory and shall not be subject to a motion for reconsideration, appeal or petition for *certiorari*.

An order denying the request to refer the dispute to arbitration shall not be subject to an appeal, but may be the subject of a motion for reconsideration and/or a petition for *certiorari*.⁵¹

The court order denying the motion to refer case to arbitration is an interlocutory order. The order may thus be subject of motion for reconsideration and elevated to the Court of Appeals by petition for *certiorari* under Rule 65 of the Rules of Court.

Multiple actions and parties

The court shall not decline to refer some or all of the parties to arbitration for any of the following reasons:

- a. Not all of the disputes subject of the civil action may be referred to arbitration;
- b. Not all of the parties to the civil action are bound by the arbitration agreement and referral to arbitration would result in multiplicity of suits;
- c. The issues raised in the civil action could be speedily and efficiently resolved in its entirety by the court rather than in arbitration;
- d. Referral to arbitration does not appear to be the most prudent action; or
- e. The stay of the action would prejudice the rights of the parties to the civil action who are not bound by the arbitration agreement.

The court may, however, issue an order directing the inclusion in arbitration of those parties who are not bound by the arbitration agreement but who agree to such inclusion provided those originally bound by it do not object to their inclusion.⁵²

⁵¹AM No. 07-11-08-SC, Rule 4.6.

⁵²AM No. 07-11-08-SC, Rule 4.7.

Arbitration to proceed

Despite the pendency of the judicial action, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the action is pending before the court.⁵³

RULE 5: INTERIM MEASURES OF PROTECTION

Who may ask for interim measures of protection

A party to an arbitration agreement may petition the court for interim measures of protection.

These remedies are similar to provisional remedies under the Rules of Court, but endemic to arbitration and other forms of ADR.⁵⁴

When to petition

A petition for an interim measure of protection may be made (a) before arbitration is commenced, (b) after arbitration is commenced, but before the constitution of the arbitral tribunal, or (c) after the constitution of the arbitral tribunal and at any time during arbitral proceedings but, at this stage, only to the extent that the arbitral tribunal has no power to act or is unable to act effectively.⁵⁵

Venue

A petition for an interim measure of protection may be filed with the Regional Trial Court, which has jurisdiction over any of the following places:

- a. Where the principal place of business of any of the parties to arbitration is located;
- b. Where any of the parties who are individuals resides;
- c. Where any of the acts sought to be enjoined are being performed, threatened to be performed or not being performed; or
- d. Where the real property subject of arbitration, or a portion thereof is situated.⁵⁶

⁵³AM No. 07-11-08-SC, Rule 4.8.

⁵⁴AM No. 07-11-08-SC, Rule 5.1.

⁵⁵AM No. 07-11-08-SC, Rule 5.2.

⁵⁶AM No. 07-11-08-SC, Rule 5.3.

Grounds

The following grounds, while not limiting the reasons for the court to grant an interim measure of protection, indicate the nature of the reasons that the court shall consider in granting the relief:

- a. The need to prevent irreparable loss or injury;
- b. The need to provide security for the performance of any obligation;
- c. The need to produce or preserve evidence; or
- d. The need to compel any other appropriate act or omission.⁵⁷

Contents of the petition

The verified petition must state the following:

- a. The fact that there is an arbitration agreement;
- b. The fact that the arbitral tribunal has not been constituted, or if constituted, is unable to act or would be unable to act effectively;
- c. A detailed description of the appropriate relief sought;
- d. The grounds relied on for the allowance of the petition

Apart from other submissions, the petitioner must attach to his petition an authentic copy of the arbitration agreement.⁵⁸

Type of interim measure of protection that a court may grant

The following, among others, are the interim measures of protection that a court may grant:

- a. Preliminary injunction directed against a party to arbitration;
- b. Preliminary attachment against property or garnishment of funds in the custody of a bank or a third person;
- c. Appointment of a receiver;
- d. Detention, preservation, delivery or inspection of property; or,

⁵⁷AM No. 07-11-08-SC, Rule 5.4.

⁵⁸AM No. 07-11-08-SC, Rule 5.5.

- e. Assistance in the enforcement of an interim measure of protection granted by the arbitral tribunal, which the latter cannot enforce effectively.⁵⁹

Dispensing with prior notice in certain cases

Prior notice to the other party may be dispensed with when the petitioner alleges in the petition that there is an urgent need to either (a) preserve property, (b) prevent the respondent from disposing of, or concealing, the property, or (c) prevent the relief prayed for from becoming illusory because of prior notice, and the court finds that the reason/s given by the petitioner are meritorious.⁶⁰

Comment/Opposition

The comment/opposition must be filed within fifteen (15) days from service of the petition. The opposition or comment should state the reasons why the interim measure of protection should not be granted.⁶¹

Court action

After hearing the petition, the court shall balance the relative interests of the parties and inconveniences that may be caused, and on that basis resolve the matter within thirty (30) days from (a) submission of the opposition, or (b) upon lapse of the period to file the same, or (c) from termination of the hearing that the court may set only if there is a need for clarification or further argument.

If the other parties fail to file their opposition on or before the day of the hearing, the court shall motu proprio render judgment only on the basis of the allegations in the petition that are substantiated by supporting documents and limited to what is prayed for therein.

In cases where, based solely on the petition, the court finds that there is an urgent need to either (a) preserve property, (b) prevent the respondent from disposing of, or concealing, the property, or (c) prevent the relief prayed for from becoming illusory because of prior notice, it shall issue an immediately executory temporary order of protection and require the petitioner, within five (5) days from receipt of that order, to post a bond to answer for any damage

⁵⁹AM No. 07-11-08-SC, Rule 5.6.

⁶⁰AM No. 07-11-08-SC, Rule 5.7.

⁶¹AM No. 07-11-08-SC, Rule 5.8.

that respondent may suffer as a result of its order. The *ex parte* temporary order of protection shall be valid only for a period of twenty (20) days from the service on the party required to comply with the order. Within that period, the court shall:

- a. Furnish the respondent a copy of the petition and a notice requiring him to comment thereon on or before the day the petition will be heard; and
- b. Notify the parties that the petition shall be heard on a day specified in the notice, which must not be beyond the twenty (20) day period of the effectiveness of the *ex parte* order.

The respondent has the option of having the temporary order of protection lifted by posting an appropriate counter-bond as determined by the court.

If the respondent requests the court for an extension of the period to file his opposition or comment or to reset the hearing to a later date, and such request is granted, the court shall extend the period of validity of the *ex parte* temporary order of protection for no more than twenty days from expiration of the original period.

After notice and hearing, the court may either grant or deny the petition for an interim measure of protection. The order granting or denying any application for interim measure of protection in aid of arbitration must indicate that it is issued without prejudice to subsequent grant, modification, amendment, revision or revocation by an arbitral tribunal.⁶²

Relief against court action

If respondent was given an opportunity to be heard on a petition for an interim measure of protection, any order by the court shall be immediately executory, but may be the subject of a motion for reconsideration and/or appeal or, if warranted, a petition for *certiorari*.⁶³

Duty of the court to refer back

The court shall not deny an application for assistance in implementing or enforcing an interim measure of protection ordered by an arbitral tribunal on any or all of the following grounds:

⁶²AM No. 07-11-08-SC, Rule 5.9.

⁶³AM No. 07-11-08-SC, Rule 5.10.

- a. The arbitral tribunal granted the interim relief ex parte; or
- b. The party opposing the application found new material evidence, which the arbitral tribunal had not considered in granting in the application, and which, if considered, may produce a different result; or
- c. The measure of protection ordered by the arbitral tribunal amends, revokes, modifies or is inconsistent with an earlier measure of protection issued by the court.

If it finds that there is sufficient merit in the opposition to the application based on letter (b) above, the court shall refer the matter back to the arbitral tribunal for appropriate determination.⁶⁴

Security

The order granting an interim measure of protection may be conditioned upon the provision of security, performance of an act, or omission thereof, specified in the order. The Court may not change or increase or decrease the security ordered by the arbitral tribunal.⁶⁵

Modification, amendment, revision or revocation of court's previously issued interim measure of protection

Any court order granting or denying interim measure/s of protection is issued without prejudice to subsequent grant, modification, amendment, revision or revocation by the arbitral tribunal as may be warranted.

An interim measure of protection issued by the arbitral tribunal shall, upon its issuance be deemed to have *ipso jure* modified, amended, revised or revoked an interim measure of protection previously issued by the court to the extent that it is inconsistent with the subsequent interim measure of protection issued by the arbitral tribunal.⁶⁶

Conflict or inconsistency between interim measure of protection issued by the court and by the arbitral tribunal

Any question involving a conflict or inconsistency between an interim measure of protection issued by the court and by the arbitral

tribunal shall be immediately referred by the court to the arbitral tribunal which shall have the authority to decide such question.⁶⁷

Court to defer action on petition for an interim measure of protection when informed of constitution of the arbitral tribunal

The court shall defer action on any pending petition for an interim measure of protection filed by a party to an arbitration agreement arising from or in connection with a dispute thereunder upon being informed that an arbitral tribunal has been constituted pursuant to such agreement. The court may act upon such petition only if it is established by the petitioner that the arbitral tribunal has no power to act on any such interim measure of protection or is unable to act thereon effectively.⁶⁸

Court assistance should arbitral tribunal be unable to effectively enforce interim measure of protection

The court shall assist in the enforcement of an interim measure of protection issued by the arbitral tribunal which it is unable to effectively enforce.⁶⁹

RULE 6: APPOINTMENT OF ARBITRATORS

When the court may act as Appointing Authority

The court shall act as Appointing Authority only in the following instances:

- a.) Where any of the parties in an institutional arbitration failed or refused to appoint an arbitrator or when the parties have failed to reach an agreement on the sole arbitrator (in an arbitration before a sole arbitrator) or when the two designated arbitrators have failed to reach an agreement on the third or presiding arbitrator (in an arbitration before a panel of three arbitrators), and the institution under whose rules arbitration is to be conducted fails or is unable to perform its duty as appointing authority within a reasonable time from receipt of the request for appointment;

⁶⁴AM No. 07-11-08-SC, Rule 5.11.

⁶⁵AM No. 07-11-08-SC, Rule 5.12.

⁶⁶AM No. 07-11-08-SC, Rule 5.13.

⁶⁷AM No. 07-11-08-SC, Rule 5.14.

⁶⁸AM No. 07-11-08-SC, Rule 5.15.

⁶⁹AM No. 07-11-08-SC, Rule 5.16.

- b.) In all instances where arbitration is ad hoc and the parties failed to provide a method for appointing or replacing an arbitrator, or substitute arbitrator, or the method agreed upon is ineffective, and the National President of the Integrated Bar of the Philippines (IBP) or his duly authorized representative fails or refuses to act within such period as may be allowed under the pertinent rules of the IBP or within such period as may be agreed upon by the parties, or in the absence thereof, within thirty (30) days from receipt of such request for appointment;
- c.) Where the parties agreed that their dispute shall be resolved by three arbitrators but no method of appointing those arbitrators has been agreed upon, each party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint a third arbitrator. If a party fails to appoint his arbitrator within thirty (30) days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within a reasonable time from their appointment, the appointment shall be made by the Appointing Authority. If the latter fails or refuses to act or appoint an arbitrator within a reasonable time from receipt of the request to do so, any party or the appointed arbitrator/s may request the court to appoint an arbitrator or the third arbitrator as the case may be.⁷⁰

Who may request for appointment

Any party to arbitration may request the court to act as an Appointing Authority in the instances specified in Rule 6.1 above.⁷¹

Venue

The petition for appointment of arbitrator may be filed, at the option of the petitioner, in the Regional Trial Court (a) where the principal place of business of any of the parties is located, (b) if any of the parties are individuals, where those individuals reside, or (c) in the National Capital Region.⁷²

⁷⁰AM No. 07-11-08-SC, Rule 6.1.

⁷¹AM No. 07-11-08-SC, Rule 6.2.

⁷²AM No. 07-11-08-SC, Rule 6.3.

Contents of the petition

The petition shall state the following:

- a. The general nature of the dispute;
- b. If the parties agreed on an appointment procedure, a description of that procedure with reference to the agreement where such may be found;
- c. The number of arbitrators agreed upon or the absence of any agreement as to the number of arbitrators;
- d. The special qualifications that the arbitrator/s must possess, if any, that were agreed upon by the parties;
- e. The fact that the Appointing Authority, without justifiable cause, has failed or refused to act as such within the time prescribed or in the absence thereof, within a reasonable time, from the date a request is made; and
- f. The petitioner is not the cause of the delay in, or failure of, the appointment of the arbitrator.

Apart from other submissions, the petitioner must attach to the petition (a) an authentic copy of the arbitration agreement, and (b) proof that the Appointing Authority has been notified of the filing of the petition for appointment with the court.⁷³

Comment/Opposition

The comment/opposition must be filed within fifteen (15) days from service of the petition.⁷⁴

Submission of list of arbitrators

The court may, at its option, also require each party to submit a list of not less than three (3) proposed arbitrators together with their curriculum vitae.⁷⁵

Court action

After hearing, if the court finds merit in the petition, it shall appoint an arbitrator; otherwise, it shall dismiss the petition.

⁷³AM No. 07-11-08-SC, Rule 6.4.

⁷⁴AM No. 07-11-08-SC, Rule 6.5.

⁷⁵AM No. 07-11-08-SC, Rule 6.6.

In making the appointment, the court shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

At any time after the petition is filed and before the court makes an appointment, it shall also dismiss the petition upon being informed that the Appointing Authority has already made the appointment.⁷⁶

Forum shopping prohibited

When there is a pending petition in another court to declare the arbitration agreement nonexistent, invalid, unenforceable, on account of which the respondent failed or refused to participate in the selection and appointment of a sole arbitrator or to appoint a party-nominated arbitrator, the petition filed under this rule shall be dismissed.⁷⁷

Relief against court action

If the court appoints an arbitrator, the order appointing an arbitrator shall be immediately executory and shall not be the subject of a motion for reconsideration, appeal or *certiorari*. An order of the court denying the petition for appointment of an arbitrator may, however, be the subject of a motion for reconsideration, appeal or *certiorari*.⁷⁸

RULE 7: CHALLENGE TO APPOINTMENT OF ARBITRATOR

Who may challenge

Any of the parties to an arbitration may challenge an arbitrator.⁷⁹

When challenge may be raised in court

When an arbitrator is challenged before the arbitral tribunal under the procedure agreed upon by the parties or under the

⁷⁶AM No. 07-11-08-SC, Rule 6.7.

⁷⁷AM No. 07-11-08-SC, Rule 6.8.

⁷⁸AM No. 07-11-08-SC, Rule 6.9.

⁷⁹AM No. 07-11-08-SC, Rule 7.1.

procedure provided for in Article 13 (2) of the Model Law and the challenge is not successful, the aggrieved party may request the Appointing Authority to rule on the challenge, and it is only when such Appointing Authority fails or refuses to act on the challenge within such period as may be allowed under the applicable rule or in the absence thereof, within thirty (30) days from receipt of the request, that the aggrieved party may renew the challenge in court.⁸⁰

Venue

The challenge shall be filed with the Regional Trial Court (a) where the principal place of business of any of the parties is located, (b) if any of the parties are individuals, where those individuals reside, or (c) in the National Capital Region.⁸¹

Grounds

An arbitrator may be challenged on any of the grounds for challenge provided for in Republic Act No. 9285 and its implementing rules, Republic Act No. 876 or the Model Law. The nationality or professional qualification of an arbitrator is not a ground to challenge an arbitrator unless the parties have specified in their arbitration agreement a nationality and/or professional qualification for appointment as arbitrator.⁸²

Contents of the petition

The petition shall state the following:

- a. The name/s of the arbitrator/s challenged and his/their address;
- b. The grounds for the challenge;
- c. The facts showing that the ground for the challenge has been expressly or impliedly rejected by the challenged arbitrator/s; and
- d. The facts showing that the Appointing Authority failed or refused to act on the challenge.

⁸⁰AM No. 07-11-08-SC, Rule 7.2.

⁸¹AM No. 07-11-08-SC, Rule 7.3.

⁸²AM No. 07-11-08-SC, Rule 7.4.

The court shall dismiss the petition *motu proprio* unless it is clearly alleged therein that the Appointing Authority charged with deciding the challenge, after the resolution of the arbitral tribunal rejecting the challenge is raised or contested before such Appointing Authority, failed or refused to act on the challenge within thirty (30) days from receipt of the request or within such longer period as may apply or as may have been agreed upon by the parties.⁸³

Comment/Opposition

The challenged arbitrator or other parties may file a comment or opposition within fifteen (15) days from service of the petition.⁸⁴

Court action

After hearing, the court shall remove the challenged arbitrator if it finds merit in the petition; otherwise, it shall dismiss the petition.

The court shall allow the challenged arbitrator who subsequently agrees to accept the challenge to withdraw as arbitrator.

The court shall accept the challenge and remove the arbitrator in the following cases:

- a. The party or parties who named and appointed the challenged arbitrator agree to the challenge and withdraw the appointment.
- b. The other arbitrators in the arbitral tribunal agree to the removal of the challenged arbitrator; and
- c. The challenged arbitrator fails or refuses to submit his comment on the petition or the brief of legal arguments as directed by the court, or in such comment or legal brief, he fails to object to his removal following the challenge.

The court shall decide the challenge on the basis of evidence submitted by the parties.

The court will decide the challenge on the basis of the evidence submitted by the parties in the following instances:

⁸³AM No. 07-11-08-SC, Rule 7.5.

⁸⁴AM No. 07-11-08-SC, Rule 7.6.

- a. The other arbitrators in the arbitral tribunal agree to the removal of the challenged arbitrator; and
- b. If the challenged arbitrator fails or refuses to submit his comment on the petition or the brief of legal arguments as directed by the court, or in such comment or brief of legal arguments, he fails to object to his removal following the challenge.⁸⁵

No motion for reconsideration, appeal or certiorari

Any order of the court resolving the petition shall be immediately executory and shall not be the subject of a motion for reconsideration, appeal, or *certiorari*.⁸⁶

Reimbursement of expenses and reasonable compensation to challenged arbitrator.

Unless the bad faith of the challenged arbitrator is established with reasonable certainty by concealing or failing to disclose a ground for his disqualification, the challenged arbitrator shall be entitled to reimbursement of all reasonable expenses he may have incurred in attending to the arbitration and to a reasonable compensation for his work on the arbitration. Such expenses include, but shall not be limited to, transportation and hotel expenses, if any. A reasonable compensation shall be paid to the challenged arbitrator on the basis of the length of time he has devoted to the arbitration and taking into consideration his stature and reputation as an arbitrator. The request for reimbursement of expenses and for payment of a reasonable compensation shall be filed in the same case and in the court where the petition to replace the challenged arbitrator was filed. The court, in determining the amount of the award to the challenged arbitrator, shall receive evidence of expenses to be reimbursed, which may consist of air tickets, hotel bills and expenses, and inland transportation. The court shall direct the challenging party to pay the amount of the award to the court for the account of the challenged arbitrator, in default of which the court may issue a writ of execution to enforce the award.⁸⁷

⁸⁵AM No. 07-11-08-SC, Rule 7.7.

⁸⁶AM No. 07-11-08-SC, Rule 7.8.

⁸⁷AM No. 07-11-08-SC, Rule 7.9.

RULE 8: TERMINATION OF THE MANDATE OF ARBITRATOR***Who may request termination and on what grounds***

Any of the parties to an arbitration may request for the termination of the mandate of an arbitrator where an arbitrator becomes de jure or de facto unable to perform his function or for other reasons fails to act without undue delay and that arbitrator, upon request of any party, fails or refuses to withdraw from his office.⁸⁸

When to request

If an arbitrator refuses to withdraw from his office, and subsequently, the Appointing Authority fails or refuses to decide on the termination of the mandate of that arbitrator within such period as may be allowed under the applicable rule or, in the absence thereof, within thirty (30) days from the time the request is brought before him, any party may file with the court a petition to terminate the mandate of that arbitrator.⁸⁹

Venue

A petition to terminate the mandate of an arbitrator may, at that petitioner's option, be filed with the Regional Trial Court (a) where the principal place of business of any of the parties is located, (b) where any of the parties who are individuals resides, or (c) in the National Capital Region.⁹⁰

Contents of the petition

The petition shall state the following:

- a. The name of the arbitrator whose mandate is sought to be terminated;
- b. The ground/s for termination;
- c. The fact that one or all of the parties had requested the arbitrator to withdraw but he failed or refused to do so;

⁸⁸AM No. 07-11-08-SC, Rule 8.1.

⁸⁹AM No. 07-11-08-SC, Rule 8.2.

⁹⁰AM No. 07-11-08-SC, Rule 8.3.

- d. The fact that one or all of the parties requested the Appointing Authority to act on the request for the termination of the mandate of the arbitrator and failure or inability of the Appointing Authority to act within thirty (30) days from the request of a party or parties or within such period as may have been agreed upon by the parties or allowed under the applicable rule.

The petitioner shall further allege that one or all of the parties had requested the arbitrator to withdraw but he failed or refused to do so.⁹¹

Comment/Opposition

The comment/opposition must be filed within fifteen (15) days from service of the petition.⁹²

Court action

After hearing, if the court finds merit in the petition, it shall terminate the mandate of the arbitrator who refuses to withdraw from his office; otherwise, it shall dismiss the petition.⁹³

No motion for reconsideration or appeal

Any order of the court resolving the petition shall be immediately executory and shall not be subject of a motion for reconsideration, appeal or petition for *certiorari*.⁹⁴

Appointment of substitute arbitrator

Where the mandate of an arbitrator is terminated, or he withdraws from office for any other reason, or because of his mandate is revoked by agreement of the parties or is terminated for any other reason, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.⁹⁵

⁹¹AM No. 07-11-08-SC, Rule 8.4.

⁹²AM No. 07-11-08-SC, Rule 8.5.

⁹³AM No. 07-11-08-SC, Rule 8.6.

⁹⁴AM No. 07-11-08-SC, Rule 8.7.

⁹⁵AM No. 07-11-08-SC, Rule 8.8.

RULE 9: ASSISTANCE IN TAKING EVIDENCE

Who may request assistance

Any party to arbitration, whether domestic or foreign, may request the court to provide assistance in taking evidence.⁹⁶

When assistance may be sought

Assistance may be sought at any time during the course of the arbitral proceedings when the need arises.⁹⁷

Venue

A petition for assistance in taking evidence may, at the option of the petitioner, be filed with Regional Trial Court where (a) arbitration proceedings are taking place, (b) the witnesses reside or may be found, or (c) where the evidence may be found.⁹⁸

Ground

The court may grant or execute the request for assistance in taking evidence within its competence and according to the rules of evidence.⁹⁹

Type of assistance

A party requiring assistance in the taking of evidence may petition the court to direct any person, including a representative of a corporation, association, partnership or other entity (other than a party to the ADR proceedings or its officers) found in the Philippines, for any of the following:

- To comply with a subpoena *ad testificandum* and/or subpoena *duces tecum*;
- To appear as a witness before an officer for the taking of his deposition upon oral examination or by written interrogatories;

⁹⁶AM No. 07-11-08-SC, Rule 9.1.

⁹⁷AM No. 07-11-08-SC, Rule 9.2.

⁹⁸AM No. 07-11-08-SC, Rule 9.3.

⁹⁹AM No. 07-11-08-SC, Rule 9.4.

- To allow the physical examination of the condition of persons, or the inspection of things or premises and, when appropriate, to allow the recording and/or documentation of condition of persons, things or premises (i.e., photographs, video and other means of recording/documentation);
- To allow the examination and copying of documents; and
- To perform any similar acts.¹⁰⁰

Contents of the petition

The petition must state the following:

- The fact that there is an ongoing arbitration proceeding even if such proceeding could not continue due to some legal impediments;
- The arbitral tribunal ordered the taking of evidence or the party desires to present evidence to the arbitral tribunal;
- Materiality or relevance of the evidence to be taken; and
- The names and addresses of the intended witness/es, place where the evidence may be found, the place where the premises to be inspected are located or the place where the acts required are to be done.¹⁰¹

Comment/Opposition

The comment/opposition must be filed within fifteen (15) days from service of the petition.¹⁰²

Court action

If the evidence sought is not privileged, and is material and relevant, the court shall grant the assistance in taking evidence requested and shall order petitioner to pay costs attendant to such assistance.¹⁰³

¹⁰⁰AM No. 07-11-08-SC, Rule 9.5.

¹⁰¹AM No. 07-11-08-SC, Rule 9.6.

¹⁰²AM No. 07-11-08-SC, Rule 9.7.

¹⁰³AM No. 07-11-08-SC, Rule 9.8.

Relief against court action

The order granting assistance in taking evidence shall be immediately executory and not subject to reconsideration or appeal. If the court declines to grant assistance in taking evidence, the petitioner may file a motion for reconsideration or appeal.¹⁰⁴

Perpetuation of testimony before the arbitral tribunal is constituted

At anytime before arbitration is commenced or before the arbitral tribunal is constituted, any person who desires to perpetuate his testimony or that of another person may do so in accordance with Rule 24 of the Rules of Court.¹⁰⁵

Consequence of disobedience

The court may impose the appropriate sanction on any person who disobeys its order to testify when required or perform any act required of him.¹⁰⁶

RULE 10: CONFIDENTIALITY/PROTECTIVE ORDERS*Who may request confidentiality*

A party, counsel or witness who disclosed or who was compelled to disclose information relative to the subject of ADR under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential has the right to prevent such information from being further disclosed without the express written consent of the source or the party who made the disclosure.¹⁰⁷

When request made

A party may request a protective order at anytime there is a need to enforce the confidentiality of the information obtained, or to be obtained, in ADR proceedings.¹⁰⁸

¹⁰⁴AM No. 07-11-08-SC, Rule 9.9.

¹⁰⁵AM No. 07-11-08-SC, Rule 9.10.

¹⁰⁶AM No. 07-11-08-SC, Rule 9.11.

¹⁰⁷AM No. 07-11-08-SC, Rule 10.1.

¹⁰⁸AM No. 07-11-08-SC, Rule 10.2.

Venue

A petition for a protective order may be filed with the Regional Trial Court where that order would be implemented.

If there is a pending court proceeding in which the information obtained in an ADR proceeding is required to be divulged or is being divulged, the party seeking to enforce the confidentiality of the information may file a motion with the court where the proceedings are pending to enjoin the confidential information from being divulged or to suppress confidential information.¹⁰⁹

Grounds

A protective order may be granted only if it is shown that the applicant would be materially prejudiced by an unauthorized disclosure of the information obtained, or to be obtained, during an ADR proceeding.¹¹⁰

Contents of the motion or petition

The petition or motion must state the following:

- a. That the information sought to be protected was obtained, or would be obtained, during an ADR proceeding;
- b. The applicant would be materially prejudiced by the disclosure of that information;
- c. The person or persons who are being asked to divulge the confidential information participated in an ADR proceedings; and
- d. The time, date and place when the ADR proceedings took place.

Apart from the other submissions, the movant must set the motion for hearing and contain a notice of hearing in accordance with Rule 15 of the Rules of Court.¹¹¹

¹⁰⁹AM No. 07-11-08-SC, Rule 10.3.

¹¹⁰AM No. 07-11-08-SC, Rule 10.4.

¹¹¹AM No. 07-11-08-SC, Rule 10.5.

Notice

Notice of a request for a protective order made through a motion shall be made to the opposing parties in accordance with Rule 15 of the Rules of Court.¹¹²

Comment/Opposition

The comment/opposition must be filed within fifteen (15) days from service of the petition. The opposition or comment may be accompanied by written proof that (a) the information is not confidential, (b) the information was not obtained during an ADR proceeding, (c) there was a waiver of confidentiality, or (d) the petitioner/movant is precluded from asserting confidentiality.¹¹³

Court action

If the court finds the petition or motion meritorious, it shall issue an order enjoining a person or persons from divulging confidential information.

In resolving the petition or motion, the courts shall be guided by the following principles applicable to all ADR proceedings. Confidential information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, whether judicial or quasi judicial. However, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use therein.

For mediation proceedings, the court shall be further guided by the following principles:

- a. Information obtained through mediation shall be privileged and confidential.
- b. A party, a mediator, or a nonparty participant may refuse to disclose and may prevent any other person from disclosing a mediation communication.
- c. In such an adversarial proceeding, the following persons involved or previously involved in a mediation may not be compelled to disclose confidential information obtained during the mediation: (1) the parties to the dispute; (2) the mediator or mediators; (3) the counsel for the parties;

¹¹²AM No. 07-11-08-SC, Rule 10.6.

¹¹³AM No. 07-11-08-SC, Rule 10.7.

(4) the nonparty participants; (5) any persons hired or engaged in connection with the mediation as secretary, stenographer; clerk or assistant; and (6) any other person who obtains or possesses confidential information by reason of his/ her profession.

- d. The protection of the ADR Laws shall continue to apply even if a mediator is found to have failed to act impartially.
- e. A mediator may not be called to testify to provide information gathered in mediation. A mediator who is wrongfully subpoenaed shall be reimbursed the full cost of his attorney fees and related expenses.¹¹⁴

Relief against court action

The order enjoining a person or persons from divulging confidential information shall be immediately executory and may not be enjoined while the order is being questioned with the appellate courts.

If the court declines to enjoin a person or persons from divulging confidential information, the petitioner may file a motion for reconsideration or appeal.¹¹⁵

Consequence of disobedience

Any person who disobeys the order of the court to cease from divulging confidential information shall be imposed the proper sanction by the court.¹¹⁶

RULE 11: CONFIRMATION, CORRECTION OR VACATION OF AWARD IN DOMESTIC ARBITRATION**Who may request confirmation, correction or vacation**

Any party to a domestic arbitration may petition the court to confirm, correct or vacate a domestic arbitral award.¹¹⁷

When to request confirmation, correction/modification or vacation

¹¹⁴AM No. 07-11-08-SC, Rule 10.8.

¹¹⁵AM No. 07-11-08-SC, Rule 10.9.

¹¹⁶AM No. 07-11-08-SC, Rule 10.10.

¹¹⁷AM No. 07-11-08-SC, Rule 11.1.

- (A) Confirmation. — At any time after the lapse of thirty (30) days from receipt by the petitioner of the arbitral award, he may petition the court to confirm that award.
- (B) Correction/Modification. — Not later than thirty (30) days from receipt of the arbitral award, a party may petition the court to correct/modify that award.
- (C) Vacatin. — Not later than thirty (30) days from receipt of the arbitral award, a party may petition the court to vacate that award.
- (D) A petition to vacate the arbitral award may be filed, in opposition to a petition to confirm the arbitral award, not later than thirty (30) days from receipt of the award by the petitioner. A petition to vacate the arbitral award filed beyond the reglementary period shall be dismissed.
- (E) A petition to confirm the arbitral award may be filed, in opposition to a petition to vacate the arbitral award, at any time after the petition to vacate such arbitral award is filed. The dismissal of the petition to vacate the arbitral award for having been filed beyond the reglementary period shall not result in the dismissal of the petition for the confirmation of such arbitral award.
- (F) The filing of a petition to confirm an arbitral award shall not authorize the filing of a belated petition to vacate or set aside such award in opposition thereto.
- (G) A petition to correct an arbitral award may be included as part of a petition to confirm the arbitral award or as a petition to confirm that award.¹¹⁸

Venue

The petition for confirmation, correction/modification or vacation of a domestic arbitral award may be filed with Regional Trial Court having jurisdiction over the place in which one of the parties is doing business, where any of the parties reside or where arbitration proceedings were conducted.¹¹⁹

¹¹⁸AM No. 07-11-08-SC, Rule 11.2.

¹¹⁹AM No. 07-11-08-SC, Rule 11.3.

Grounds

- (A) To vacate an arbitral award. — The arbitral award may be vacated on the following grounds:
 - a. The arbitral award was procured through corruption, fraud or other undue means;
 - b. There was evident partiality or corruption in the arbitral tribunal or any of its members;
 - c. The arbitral tribunal was guilty of misconduct or any form of misbehavior that has materially prejudiced the rights of any party such as refusing to postpone a hearing upon sufficient cause shown or to hear evidence pertinent and material to the controversy;
 - d. One or more of the arbitrators was disqualified to act as such under the law and willfully refrained from disclosing such disqualification; or
 - e. The arbitral tribunal exceeded its powers, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter submitted to them was not made.

The award may also be vacated on any or all of the following grounds:

- a. The arbitration agreement did not exist, or is invalid for any ground for the revocation of a contract or is otherwise unenforceable; or
- b. A party to arbitration is a minor or a person judicially declared to be incompetent.

The petition to vacate an arbitral award on the ground that the party to arbitration is a minor or a person judicially declared to be incompetent shall be filed only on behalf of the minor or incompetent and shall allege that (a) the other party to arbitration had knowingly entered into a submission or agreement with such minor or incompetent, or (b) the submission to arbitration was made by a guardian or guardian ad litem who was not authorized to do so by a competent court.

In deciding the petition to vacate the arbitral award, the court shall disregard any other ground than those enumerated above.

- (B) To correct/modify an arbitral award. — The Court may correct/modify or order the arbitral tribunal to correct/modify the arbitral award in the following cases:
 - a. Where there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
 - b. Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted;
 - c. Where the arbitrators have omitted to resolve an issue submitted to them for resolution; or
 - d. Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the Court.¹²⁰

Form of petition

An application to vacate an arbitral award shall be in the form of a petition to vacate or as a petition to vacate in opposition to a petition to confirm the same award.

An application to correct/modify an arbitral award may be included in a petition to confirm an arbitral award or in a petition to vacate in opposition to confirm the same award.

When a petition to confirm an arbitral award is pending before a court, the party seeking to vacate or correct/modify said award may only apply for those reliefs through a petition to vacate or correct/modify the award in opposition to the petition to confirm the award provided that such petition to vacate or correct/modify is filed within thirty (30) days from his receipt of the award. A petition to vacate or correct/modify an arbitral award filed in another court or in a separate case before the same court shall be dismissed, upon appropriate motion, as a violation of the rule against forum-shopping.

When a petition to vacate or correct/modify an arbitral award is pending before a court, the party seeking to confirm said award may only apply for that relief through a petition to confirm the same

¹²⁰AM No. 07-11-08-SC, Rule 11.4.

award in opposition to the petition to vacate or correct/modify the award. A petition to confirm or correct/modify an arbitral award filed as separate proceeding in another court or in a different case before the same court shall be dismissed, upon appropriate motion, as a violation of the rule against forum shopping.

As an alternative to the dismissal of a second petition for confirmation, vacation or correction/modification of an arbitral award filed in violation of the non-forum shopping rule, the court or courts concerned may allow the consolidation of the two proceedings in one court and in one case.

Where the petition to confirm the award and petition to vacate or correct/modify were simultaneously filed by the parties in the same court or in different courts in the Philippines, upon motion of either party, the court may order the consolidation of the two cases before either court.

In all instances, the petition must be verified by a person who has knowledge of the jurisdictional facts.¹²¹

Contents of petition

The petition must state the following:

- a. The addresses of the parties and any change thereof;
- b. The jurisdictional issues raised by a party during arbitration proceedings;
- c. The grounds relied upon by the parties in seeking the vacation of the arbitral award whether the petition is a petition for the vacation or setting aside of the arbitral award or a petition in opposition to a petition to confirm the award; and
- d. A statement of the date of receipt of the arbitral award and the circumstances under which it was received by the petitioner.

Apart from other submissions, the petitioner must attach to the petition the following:

- a. An authentic copy of the arbitration agreement;
- b. An authentic copy of the arbitral award;

¹²¹AM No. 07-11-08-SC, Rule 11.5.

- c. A certification against forum shopping executed by the applicant in accordance with Section 5 of Rule 7 of the Rules of Court; and
- d. An authentic copy or authentic copies of the appointment of an arbitral tribunal.¹²²

Notice

Upon finding that the petition filed under this Rule is sufficient both in form and in substance, the Court shall cause notice and a copy of the petition to be delivered to the respondent allowing him to file a comment or opposition thereto within fifteen (15) days from receipt of the petition. In lieu of an opposition, the respondent may file a petition in opposition to the petition.

The petitioner may within fifteen (15) days from receipt of the petition in opposition thereto file a reply.¹²³

Hearing

If the Court finds from the petition or petition in opposition thereto that there are issues of fact, it shall require the parties, within a period of not more than fifteen (15) days from receipt of the order, to simultaneously submit the affidavits of all of their witnesses and reply affidavits within ten (10) days from receipt of the affidavits to be replied to. There shall be attached to the affidavits or reply affidavits documents relied upon in support of the statements of fact in such affidavits or reply affidavits.

If the petition or the petition in opposition thereto is one for vacation of an arbitral award, the interested party in arbitration may oppose the petition or the petition in opposition thereto for the reason that the grounds cited in the petition or the petition in opposition thereto, assuming them to be true, do not affect the merits of the case and may be cured or remedied. Moreover, the interested party may request the court to suspend the proceedings for vacation for a period of time and to direct the arbitral tribunal to reopen and conduct a new hearing and take such other action as will eliminate the grounds for vacation of the award. The opposition shall be supported by a brief of legal arguments to show the existence of a sufficient legal basis for the opposition.

¹²²AM No. 07-11-08-SC, Rule 11.6.

¹²³AM No. 07-11-08-SC, Rule 11.7.

If the ground of the petition to vacate an arbitral award is that the arbitration agreement did not exist, is invalid or otherwise unenforceable, and an earlier petition for judicial relief under Rule 3 had been filed, a copy of such petition and of the decision or final order of the court shall be attached thereto. But if the ground was raised before the arbitral tribunal in a motion to dismiss filed not later than the submission of its answer, and the arbitral tribunal ruled in favor of its own jurisdiction as a preliminary question which was appealed by a party to the Regional Trial Court, a copy of the order, ruling or preliminary award or decision of the arbitral tribunal, the appeal therefrom to the Court and the order or decision of the Court shall all be attached to the petition.

If the ground of the petition is that the petitioner is an infant or a person judicially declared to be incompetent, there shall be attached to the petition certified copies of documents showing such fact. In addition, the petitioner shall show that even if the submission or arbitration agreement was entered into by a guardian or guardian ad litem, the latter was not authorized by a competent court to sign such the submission or arbitration agreement.

If on the basis of the petition, the opposition, the affidavits and reply affidavits of the parties, the court finds that there is a need to conduct an oral hearing, the court shall set the case for hearing. This case shall have preference over other cases before the court, except criminal cases. During the hearing, the affidavits of witnesses shall take the place of their direct testimonies and they shall immediately be subject to cross-examination thereon. The Court shall have full control over the proceedings in order to ensure that the case is heard without undue delay.¹²⁴

Court action

Unless a ground to vacate an arbitral award under Rule 11.5 above is fully established, the court shall confirm the award.

An arbitral award shall enjoy the presumption that it was made and released in due course of arbitration and is subject to confirmation by the court.

In resolving the petition or petition in opposition thereto in accordance with these Special ADR Rules, the court shall either confirm or vacate the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.

¹²⁴AM No. 07-11-08-SC, Rule 11.8.

In a petition to vacate an award or in petition to vacate an award in opposition to a petition to confirm the award, the petitioner may simultaneously apply with the Court to refer the case back to the same arbitral tribunal for the purpose of making a new or revised award or to direct a new hearing, or in the appropriate case, order the new hearing before a new arbitral tribunal, the members of which shall be chosen in the manner provided in the arbitration agreement or submission, or the law. In the latter case, any provision limiting the time in which the arbitral tribunal may make a decision shall be deemed applicable to the new arbitral tribunal.

In referring the case back to the arbitral tribunal or to a new arbitral tribunal pursuant to Rule 24 of Republic Act No. 876, the court may not direct it to revise its award in a particular way, or to revise its findings of fact or conclusions of law or otherwise encroach upon the independence of an arbitral tribunal in the making of a final award.¹²⁵

RULE 12: RECOGNITION AND ENFORCEMENT OR SETTING ASIDE OF AN INTERNATIONAL COMMERCIAL ARBITRATION AWARD

Who may request recognition and enforcement or setting aside

Any party to an international commercial arbitration in the Philippines may petition the proper court to recognize and enforce or set aside an arbitral award.¹²⁶

When to file petition

(A) Petition to recognize and enforce. — The petition for enforcement and recognition of an arbitral award may be filed anytime from receipt of the award. If, however, a timely petition to set aside an arbitral award is filed, the opposing party must file therein and in opposition thereto the petition for recognition and enforcement of the same award within the period for filing an opposition.

(B) Petition to set aside. — The petition to set aside an arbitral award may only be filed within three (3) months from the time the petitioner receives a copy thereof. If a timely request is made with

¹²⁵AM No. 07-11-08-SC, Rule 11.9.

¹²⁶AM No. 07-11-08-SC, Rule 12.1.

the arbitral tribunal for correction, interpretation or additional award, the three (3) month period shall be counted from the time the petitioner receives the resolution by the arbitral tribunal of that request.

A petition to set aside can no longer be filed after the lapse of the three (3) month period. The dismissal of a petition to set aside an arbitral award for being time-barred shall not automatically result in the approval of the petition filed therein and in opposition thereto for recognition and enforcement of the same award. Failure to file a petition to set aside shall preclude a party from raising grounds to resist enforcement of the award.¹²⁷

Venue

A petition to recognize and enforce or set aside an arbitral award may, at the option of the petitioner, be filed with the Regional Trial Court: (a) where arbitration proceedings were conducted; (b) where any of the assets to be attached or levied upon is located; (c) where the act to be enjoined will be or is being performed; (d) where any of the parties to arbitration resides or has its place of business; or (e) in the National Capital Judicial Region.¹²⁸

Grounds to set aside or resist enforcement

The court may set aside or refuse the enforcement of the arbitral award 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 thereof, under Philippine law; or
 - (ii). The party making the application to set aside or resist enforcement was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

¹²⁷AM No. 07-11-08-SC, Rule 12.2.

¹²⁸AM No. 07-11-08-SC, Rule 12.3.

- (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 that part of the award which contains decisions on matters not submitted to arbitration may be set aside or only that part of the award which contains decisions on matters submitted to arbitration may be enforced; 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 Philippine law from which the parties cannot derogate, or, failing such agreement, was not in accordance with Philippine law;
- 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 recognition or enforcement of the award would be contrary to public policy.

In deciding the petition, the Court shall disregard any other ground to set aside or enforce the arbitral award other than those enumerated above.

The petition to set-aside or a pleading resisting the enforcement of an arbitral award on the ground that a party was a minor or an incompetent shall be filed only on behalf of the minor or incompetent and shall allege that (a) the other party to arbitration had knowingly entered into a submission or agreement with such minor or incompetent, or (b) the submission to arbitration was made by a guardian or guardian *ad litem* who was not authorized to do so by a competent court.¹²⁹

Exclusive recourse against arbitral award

Recourse to a court against an arbitral award shall be made only through a petition to set aside the arbitral award and on

¹²⁹AM No. 07-11-08-SC, Rule 12.4.

grounds prescribed by the law that governs international commercial arbitration. Any other recourse from the arbitral award, such as by appeal or petition for review or petition for *cetiorari* or otherwise, shall be dismissed by the court.¹³⁰

Form

The application to recognize and enforce or set aside an arbitral award, whether made through a petition to recognize and enforce or to set aside or as a petition to set aside the award in opposition thereto, or through a petition to set aside or petition to recognize and enforce in opposition thereto, shall be verified by a person who has personal knowledge of the facts stated therein.

When a petition to recognize and enforce an arbitral award is pending, the application to set it aside, if not yet time-barred, shall be made through a petition to set aside the same award in the same proceedings.

When a timely petition to set aside an arbitral award is filed, the opposing party may file a petition for recognition and enforcement of the same award in opposition thereto.¹³¹

Contents of petition

(A) Petition to recognize and enforce. — The petition to recognize and enforce or petition to set aside in opposition thereto, or petition to set aside or petition to recognize and enforce in opposition thereto, shall state the following:

- a. The addresses of record, or any change thereof, of the parties to arbitration;
- b. A statement that the arbitration agreement or submission exists;
- c. The names of the arbitrators and proof of their appointment;
- d. A statement that an arbitral award was issued and when the petitioner received it; and
- e. The relief sought.

¹³⁰AM No. 07-11-08-SC, Rule 12.5

¹³¹AM No. 07-11-08-SC, Rule 12.6.

Apart from other submissions, the petitioner shall attach to the petition the following:

- a. An authentic copy of the arbitration agreement;
- b. An authentic copy of the arbitral award;
- c. A verification and certification against forum shopping executed by the applicant in accordance with Sections 4 and 5 of Rule 7 of the Rules of Court; and
- d. An authentic copy or authentic copies of the appointment of an arbitral tribunal.

(B) Petition to set aside.—The petition to set aside or petition to set aside in opposition to a petition to recognize and enforce an arbitral award in international commercial arbitration shall have the same contents as a petition to recognize and enforce or petition to recognize and enforce in opposition to a petition to set aside an arbitral award. In addition, the said petitions should state the grounds relied upon to set it aside.

Further, if the ground of the petition to set aside is that the petitioner is a minor or found incompetent by a court, there shall be attached to the petition certified copies of documents showing such fact. In addition, the petitioner shall show that even if the submission or arbitration agreement was entered into by a guardian or guardian *ad litem*, the latter was not authorized by a competent court to sign such the submission or arbitration agreement.

In either case, if another court was previously requested to resolve and/or has resolved, on appeal, the arbitral tribunal's preliminary determination in favor of its own jurisdiction, the petitioner shall apprise the court before which the petition to recognize and enforce or set aside is pending of the status of the appeal or its resolution.¹³²

Notice

Upon finding that the petition filed under this Rule is sufficient both in form and in substance, the court shall cause notice and a copy of the petition to be delivered to the respondent directing him to file an opposition thereto within fifteen (15) days from receipt of the petition. In lieu of an opposition, the respondent may file a petition to set aside

¹³²AM No. 07-11-08-SC, Rule 12.7

in opposition to a petition to recognize and enforce, or a petition to recognize and enforce in opposition to a petition to set aside.

The petitioner may within fifteen (15) days from receipt of the petition to set aside in opposition to a petition to recognize and enforce, or from receipt of the petition to recognize and enforce in opposition to a petition to set aside, file a reply.¹³³

Submission of documents

If the court finds that the issue between the parties is mainly one of law, the parties may be required to submit briefs of legal arguments, not more than fifteen (15) days from receipt of the order, sufficiently discussing the legal issues and the legal basis for the relief prayed for by each of them.

If the court finds from the petition or petition in opposition thereto that there are issues of fact relating to the ground(s) relied upon for the court to set aside, it shall require the parties within a period of not more than fifteen (15) days from receipt of the order simultaneously to submit the affidavits of all of their witnesses and reply affidavits within ten (10) days from receipt of the affidavits to be replied to. There shall be attached to the affidavits or reply affidavits, all documents relied upon in support of the statements of fact in such affidavits or reply affidavits.¹³⁴

Hearing

If on the basis of the petition, the opposition, the affidavits and reply affidavits of the parties, the court finds that there is a need to conduct an oral hearing, the court shall set the case for hearing. This case shall have preference over other cases before the court, except criminal cases. During the hearing, the affidavits of witnesses shall take the place of their direct testimonies and they shall immediately be subject to cross-examination thereon. The court shall have full control over the proceedings in order to ensure that the case is heard without undue delay.¹³⁵

Suspension of proceedings to set aside

The court when asked to set aside an arbitral award may, where appropriate and upon request by a party, suspend the proceedings

¹³³AM No. 07-11-08-SC, Rule 12.8

¹³⁴AM No. 07-11-08-SC, Rule 12.9

¹³⁵AM No. 07-11-08-SC, Rule 12.10

for a period of time determined by it to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside. The court, in referring the case back to the arbitral tribunal may not direct it to revise its award in a particular way, or to revise its findings of fact or conclusions of law or otherwise encroach upon the independence of an arbitral tribunal in the making of a final award.

The court when asked to set aside an arbitral award may also, when the preliminary ruling of an arbitral tribunal affirming its jurisdiction to act on the matter before it had been appealed by the party aggrieved by such preliminary ruling to the court, suspend the proceedings to set aside to await the ruling of the court on such pending appeal or, in the alternative, consolidate the proceedings to set aside with the earlier appeal.¹³⁶

Presumption in favor of confirmation

It is presumed that an arbitral award was made and released in due course and is subject to enforcement by the court, unless the adverse party is able to establish a ground for setting aside or not enforcing an arbitral award.¹³⁷

Judgment of the court

Unless a ground to set aside an arbitral award under Rule 12.4 above is fully established, the court shall dismiss the petition. If, in the same proceedings, there is a petition to recognize and enforce the arbitral award filed in opposition to the petition to set aside, the court shall recognize and enforce the award.

In resolving the petition or petition in opposition thereto in accordance with the Special ADR Rules, the court shall either set aside or enforce the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.¹³⁸

Costs

Unless otherwise agreed upon by the parties in writing, at the time the case is submitted to the court for decision, the party praying

¹³⁶AM No. 07-11-08-SC, Rule 12.11

¹³⁷AM No. 07-11-08-SC, Rule 12.12

¹³⁸AM No. 07-11-08-SC, Rule 12.13

for recognition and enforcement or setting aside of an arbitral award shall submit a statement under oath confirming the costs he has incurred only in the proceedings for such recognition and enforcement or setting aside. The costs shall include the attorney's fees the party has paid or is committed to pay to his counsel of record.

The prevailing party shall be entitled to an award of costs, which shall include reasonable attorney's fees of the prevailing party against the unsuccessful party. The court shall determine the reasonableness of the claim for attorney's fees.¹³⁹

RULE 13: RECOGNITION AND ENFORCEMENT OF A FOREIGN ARBITRAL AWARD

Who may request recognition and enforcement

Any party to a foreign arbitration may petition the court to recognize and enforce a foreign arbitral award.¹⁴⁰

When to petition

At any time after receipt of a foreign arbitral award, any party to arbitration may petition the proper Regional Trial Court to recognize and enforce such award.¹⁴¹

Venue

The petition to recognize and enforce a foreign arbitral award shall be filed, at the option of the petitioner, with the Regional Trial Court (a) where the assets to be attached or levied upon is located, (b) where the act to be enjoined is being performed, (c) in the principal place of business in the Philippines of any of the parties, (d) if any of the parties is an individual, where any of those individuals resides, or (e) in the National Capital Judicial Region.¹⁴²

Governing law and grounds to refuse recognition and enforcement

The recognition and enforcement of a foreign arbitral award shall be governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New

¹³⁹AM No. 07-11-08-SC, Rule 12.14

¹⁴⁰AM No. 07-11-08-SC, Rule 13.1

¹⁴¹AM No. 07-11-08-SC, Rule 13.2

¹⁴²AM No. 07-11-08-SC, Rule 13.3

York Convention") and this Rule. The court may, upon grounds of comity and reciprocity, recognize and enforce a foreign arbitral award made in a country that is not a signatory to the New York Convention as if it were a Convention Award.

A Philippine court shall not set aside a foreign arbitral award but may refuse its recognition and enforcement on any or all of the following grounds:

- a. The party making the application to refuse recognition and enforcement of the award 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 thereof, under the law of the country where the award was made; 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 that 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 or, failing such agreement, was not in accordance with the law of the country where arbitration took place; or
 - (v). The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which that award was made; or
- b. The court finds that:
 - (i). The subject-matter of the dispute is not capable of settlement or resolution by arbitration under Philippine law; or

- (ii). The recognition or enforcement of the award would be contrary to public policy.

The court shall disregard any ground for opposing the recognition and enforcement of a foreign arbitral award other than those enumerated above.¹⁴³

Contents of petition

The petition shall state the following:

- a. The addresses of the parties to arbitration;
- b. In the absence of any indication in the award, the country where the arbitral award was made and whether such country is a signatory to the New York Convention; and
- c. The relief sought.

Apart from other submissions, the petition shall have attached to it the following:

- a. An authentic copy of the arbitration agreement; and
- b. An authentic copy of the arbitral award.

If the foreign arbitral award or agreement to arbitrate or submission is not made in English, the petitioner shall also attach to the petition a translation of these documents into English. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.¹⁴⁴

Notice and opposition

Upon finding that the petition filed under this Rule is sufficient both in form and in substance, the court shall cause notice and a copy of the petition to be delivered to the respondent allowing him to file an opposition thereto within thirty (30) days from receipt of the notice and petition.¹⁴⁵

Opposition

The opposition shall be verified by a person who has personal knowledge of the facts stated therein.¹⁴⁶

¹⁴³AM No. 07-11-08-SC, Rule 13.4

¹⁴⁴AM No. 07-11-08-SC, Rule 13.5

¹⁴⁵AM No. 07-11-08-SC, Rule 13.6

¹⁴⁶AM No. 07-11-08-SC, Rule 13.7

York Convention") and this Rule. The court may, upon grounds of comity and reciprocity, recognize and enforce a foreign arbitral award made in a country that is not a signatory to the New York Convention as if it were a Convention Award.

A Philippine court shall not set aside a foreign arbitral award but may refuse its recognition and enforcement on any or all of the following grounds:

- a. The party making the application to refuse recognition and enforcement of the award 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 thereof, under the law of the country where the award was made; 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 that 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 or, failing such agreement, was not in accordance with the law of the country where arbitration took place; or
 - (v). The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which that award was made; or
- b. The court finds that:
 - (i). The subject-matter of the dispute is not capable of settlement or resolution by arbitration under Philippine law; or

- (ii). The recognition or enforcement of the award would be contrary to public policy.

The court shall disregard any ground for opposing the recognition and enforcement of a foreign arbitral award other than those enumerated above.¹⁴³

Contents of petition

The petition shall state the following:

- a. The addresses of the parties to arbitration;
- b. In the absence of any indication in the award, the country where the arbitral award was made and whether such country is a signatory to the New York Convention; and
- c. The relief sought.

Apart from other submissions, the petition shall have attached to it the following:

- a. An authentic copy of the arbitration agreement; and
- b. An authentic copy of the arbitral award.

If the foreign arbitral award or agreement to arbitrate or submission is not made in English, the petitioner shall also attach to the petition a translation of these documents into English. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.¹⁴⁴

Notice and opposition

Upon finding that the petition filed under this Rule is sufficient both in form and in substance, the court shall cause notice and a copy of the petition to be delivered to the respondent allowing him to file an opposition thereto within thirty (30) days from receipt of the notice and petition.¹⁴⁵

Opposition

The opposition shall be verified by a person who has personal knowledge of the facts stated therein.¹⁴⁶

¹⁴³AM No. 07-11-08-SC, Rule 13.4

¹⁴⁴AM No. 07-11-08-SC, Rule 13.5

¹⁴⁵AM No. 07-11-08-SC, Rule 13.6

¹⁴⁶AM No. 07-11-08-SC, Rule 13.7

Submissions

If the court finds that the issue between the parties is mainly one of law, the parties may be required to submit briefs of legal arguments, not more than thirty (30) days from receipt of the order, sufficiently discussing the legal issues and the legal bases for the relief prayed for by each other.

If, from a review of the petition or opposition, there are issues of fact relating to the ground/s relied upon for the court to refuse enforcement, the court shall, *motu proprio* or upon request of any party, require the parties to simultaneously submit the affidavits of all of their witnesses within a period of not less than fifteen (15) days nor more than thirty (30) days from receipt of the order. The court may, upon the request of any party, allow the submission of reply affidavits within a period of not less than fifteen (15) days nor more than thirty (30) days from receipt of the order granting said request. There shall be attached to the affidavits or reply affidavits all documents relied upon in support of the statements of fact in such affidavits or reply affidavits.¹⁴⁷

Hearing

The court shall set the case for hearing if on the basis of the foregoing submissions there is a need to do so. The court shall give due priority to hearings on petitions under this Rule. During the hearing, the affidavits of witnesses shall take the place of their direct testimonies and they shall immediately be subject to cross-examination. The court shall have full control over the proceedings in order to ensure that the case is heard without undue delay.¹⁴⁸

Adjournment/deferral of decision on enforcement of award

The court before which a petition to recognize and enforce a foreign arbitral award is pending, may adjourn or defer rendering a decision thereon if, in the meantime, an application for the setting aside or suspension of the award has been made with a competent authority in the country where the award was made. Upon application of the petitioner, the court may also require the other party to give suitable security.¹⁴⁹

¹⁴⁷AM No. 07-11-08-SC, Rule 13.8

¹⁴⁸AM No. 07-11-08-SC, Rule 13.9

¹⁴⁹AM No. 07-11-08-SC, Rule 13.10

Court action

It is presumed that a foreign arbitral award was made and released in due course of arbitration and is subject to enforcement by the court.

The court shall recognize and enforce a foreign arbitral award unless a ground to refuse recognition or enforcement of the foreign arbitral award under this rule is fully established.

The decision of the court recognizing and enforcing a foreign arbitral award is immediately executory.

In resolving the petition for recognition and enforcement of a foreign arbitral award in accordance with these Special ADR Rules, the court shall either [a] recognize and/or enforce or [b] refuse to recognize and enforce the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.¹⁵⁰

Note that the court has no power to vacate or set aside a foreign arbitral award simply for lack of jurisdiction. It cannot confirm such foreign arbitral award. Hence the court can only either 1) recognize and/or enforce or 2) refuse to recognize and/or enforce such foreign arbitral award.

Recognition and enforcement of non-convention award

The court shall, only upon grounds provided by these Special ADR Rules, recognize and enforce a foreign arbitral award made in a country not a signatory to the New York Convention when such country extends comity and reciprocity to awards made in the Philippines. If that country does not extend comity and reciprocity to awards made in the Philippines, the court may nevertheless treat such award as a foreign judgment enforceable as such under Rule 39, Section 48, of the Rules of Court.¹⁵¹

¹⁵⁰AM No. 07-11-08-SC, Rule 13.11

¹⁵¹AM No. 07-11-08-SC, Rule 13.12

III. Provisions Specific to Mediation

RULE 14: GENERAL PROVISIONS

Application of the rules on arbitration

Whenever applicable and appropriate, the pertinent rules on arbitration shall be applied in proceedings before the court relative to a dispute subject to mediation.¹⁵²

RULE 15: DEPOSIT AND ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENTS

Who makes a deposit

Any party to a mediation that is not court-annexed may deposit with the court the written settlement agreement, which resulted from that mediation.¹⁵³

When deposit is made

At any time after an agreement is reached, the written settlement agreement may be deposited.¹⁵⁴

Venue

The written settlement agreement may be jointly deposited by the parties or deposited by one party with prior notice to the other party/ies with the Clerk of Court of the Regional Trial Court (a) where the principal place of business in the Philippines of any of the parties is located; (b) if any of the parties is an individual, where any of those individuals resides; or (c) in the National Capital Judicial Region.¹⁵⁵

Registry Book

The Clerk of Court of each Regional Trial Court shall keep a Registry Book that shall chronologically list or enroll all the mediated settlement agreements/settlement awards that are deposited with the court as well as the names and address of the parties thereto

¹⁵²AM No. 07-11-08-SC, Rule 14.1

¹⁵³AM No. 07-11-08-SC, Rule 15.1

¹⁵⁴AM No. 07-11-08-SC, Rule 15.2

¹⁵⁵AM No. 07-11-08-SC, Rule 15.3

and the date of enrollment and shall issue a Certificate of Deposit to the party that made the deposit.¹⁵⁶

Enforcement of mediated settlement agreement

Any of the parties to a mediated settlement agreement, which was deposited with the Clerk of Court of the Regional Trial Court, may, upon breach thereof, file a verified petition with the same court to enforce said agreement.¹⁵⁷

Contents of petition

The verified petition shall:

- a. Name and designate, as petitioner or respondent, all parties to the mediated settlement agreement and those who may be affected by it;
- b. State the following:
 - (i). The addresses of the petitioner and respondents; and
 - (ii). The ultimate facts that would show that the adverse party has defaulted to perform its obligation under said agreement; and
- c. Have attached to it the following:
 - (i). An authentic copy of the mediated settlement agreement; and
 - (ii). Certificate of Deposit showing that the mediated settlement agreement was deposited with the Clerk of Court.¹⁵⁸

Opposition

The adverse party may file an opposition, within fifteen (15) days from receipt of notice or service of the petition, by submitting written proof of compliance with the mediated settlement agreement or such other affirmative or negative defenses it may have.¹⁵⁹

¹⁵⁶AM No. 07-11-08-SC, Rule 15.4

¹⁵⁷AM No. 07-11-08-SC, Rule 15.5

¹⁵⁸AM No. 07-11-08-SC, Rule 15.6

¹⁵⁹AM No. 07-11-08-SC, Rule 15.7

Court action

After a summary hearing, if the court finds that the agreement is a valid mediated settlement agreement, that there is no merit in any of the affirmative or negative defenses raised, and the respondent has breached that agreement, in whole or in part, the court shall order the enforcement thereof; otherwise, it shall dismiss the petition.¹⁶⁰

IV. Provisions Specific to Construction Arbitration**RULE 16: GENERAL PROVISIONS*****Application of the rules on arbitration***

Whenever applicable and appropriate, the rules on arbitration shall be applied in proceedings before the court relative to a dispute subject to construction arbitration.¹⁶¹

RULE 17: REFERRAL TO CIAC***Dismissal of action***

A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware that the parties have entered into an arbitration agreement, *motu proprio* or upon motion made not later than the pre-trial, dismiss the case and refer the parties to arbitration to be conducted by the Construction Industry Arbitration Commission (CIAC), unless all parties to arbitration, assisted by their respective counsel, submit to the court a written agreement making the court, rather than the CIAC, the body that would exclusively resolve the dispute.¹⁶²

Form and contents of motion

The request for dismissal of the civil action and referral to arbitration shall be through a verified motion that shall (a) contain a statement showing that the dispute is a construction dispute; and (b) be accompanied by proof of the existence of the arbitration agreement.

If the arbitration agreement or other document evidencing the existence of that agreement is already part of the record, those documents need not be submitted to the court provided that the movant has cited in the motion particular references to the records where those documents may be found.

The motion shall also contain a notice of hearing addressed to all parties and shall specify the date and time when the motion will be heard, which must not be later than fifteen (15) days after the filing of the motion. The movant shall ensure receipt by all parties of the motion at least three days before the date of the hearing.¹⁶³

Opposition

Upon receipt of the motion to refer the dispute to arbitration by CIAC, the other party may file an opposition to the motion on or before the day such motion is to be heard. The opposition shall clearly set forth the reasons why the court should not dismiss the case.¹⁶⁴

Hearing

The court shall hear the motion only once and for the purpose of clarifying relevant factual and legal issues.¹⁶⁵

Court action

If the other parties fail to file their opposition on or before the day of the hearing, the court shall *motu proprio* resolve the motion only on the basis of the facts alleged in the motion.

After hearing, the court shall dismiss the civil action and refer the parties to arbitration if it finds, based on the pleadings and supporting documents submitted by the parties, that there is a valid and enforceable arbitration agreement involving a construction dispute. Otherwise, the court shall proceed to hear the case.

All doubts shall be resolved in favor of the existence of a construction dispute and the arbitration agreement.¹⁶⁶

¹⁶⁰AM No. 07-11-08-SC, Rule 15.8

¹⁶¹AM No. 07-11-08-SC, Rule 16.1

¹⁶²AM No. 07-11-08-SC, Rule 17.1

¹⁶³AM No. 07-11-08-SC, Rule 17.2

¹⁶⁴AM No. 07-11-08-SC, Rule 17.3

¹⁶⁵AM No. 07-11-08-SC, Rule 17.4

¹⁶⁶AM No. 07-11-08-SC, Rule 17.5

Referral immediately executory

An order dismissing the case and referring the dispute to arbitration by CIAC shall be immediately executory.¹⁶⁷

Multiple actions and parties

The court shall not decline to dismiss the civil action and make a referral to arbitration by CIAC for any of the following reasons:

- a. Not all of the disputes subject of the civil action may be referred to arbitration;
- b. Not all of the parties to the civil action are bound by the arbitration agreement and referral to arbitration would result in multiplicity of suits;
- c. The issues raised in the civil action could be speedily and efficiently resolved in its entirety by the Court rather than in arbitration;
- d. Referral to arbitration does not appear to be the most prudent action; or
- e. Dismissal of the civil action would prejudice the rights of the parties to the civil action who are not bound by the arbitration agreement.

The court may, however, issue an order directing the inclusion in arbitration of those parties who are bound by the arbitration agreement directly or by reference thereto pursuant to Section 34 of Republic Act No. 9285.

Furthermore, the court shall issue an order directing the case to proceed with respect to the parties not bound by the arbitration agreement.¹⁶⁸

Referral

If the parties manifest that they have agreed to submit all or part of their dispute pending with the court to arbitration by CIAC, the court shall refer them to CIAC for arbitration.¹⁶⁹

¹⁶⁷AM No. 07-11-08-SC, Rule 17.6

¹⁶⁸AM No. 07-11-08-SC, Rule 17.7

¹⁶⁹AM No. 07-11-08-SC, Rule 17.8

Note that an appeal from the decision, judgment, final order or award of the CIAC shall be made by petition for review under Rule 43 of the Rules of Court.¹⁷⁰ The appeal shall be taken within fifteen (15) days from notice of award, judgment, final order or resolution of the CIAC.¹⁷¹

V. Provisions Specific to Other Forms of ADR**RULE 18: GENERAL PROVISIONS***Applicability of rules to other forms of ADR*

This rule governs the procedure for matters brought before the court involving the following forms of ADR:

- a. Early neutral evaluation;
- b. Neutral evaluation;
- c. Mini-trial;
- d. Mediation-arbitration;
- e. A combination thereof; or
- f. Any other ADR form.¹⁷²

Applicability of the rules on mediation

If the other ADR form/process is more akin to mediation (i.e., the neutral third party merely assists the parties in reaching a voluntary agreement), the herein rules on mediation shall apply.¹⁷³

Applicability of rules on arbitration

If the other ADR form/process is more akin to arbitration (i.e., the neutral third party has the power to make a binding resolution of the dispute), the herein rules on arbitration shall apply.¹⁷⁴

¹⁷⁰The 1997 Rules on Civil Procedure, Rule 43, Sections 1 and 5.

¹⁷¹The 1997 Rules on Civil Procedure, Rule 43, Section 4.

¹⁷²AM No. 07-11-08-SC, Rule 18.1; See definitions on Chapter 1, Supra.

¹⁷³AM No. 07-11-08-SC, Rule 18.2.

¹⁷⁴AM No. 07-11-08-SC, Rule 18.3.

Referral

If a dispute is already before a court, either party may before and during pre-trial, file a motion for the court to refer the parties to other ADR forms/processes. At any time during court proceedings, even after pre-trial, the parties may jointly move for suspension of the action pursuant to Article 2030 of the Civil Code of the Philippines where the possibility of compromise is shown.¹⁷⁵

Submission of settlement agreement

Either party may submit to the court, before which the case is pending, any settlement agreement following a neutral or an early neutral evaluation, mini-trial or mediation-arbitration.¹⁷⁶

VI. Motion for Reconsideration, Appeal and Certiorari**RULE 19: MOTION FOR RECONSIDERATION, APPEAL AND CERTIORARI****A. MOTION FOR RECONSIDERATION*****Motion for reconsideration, when allowed***

A party may ask the Regional Trial to reconsider its ruling on the following:

- a. That the arbitration agreement is nonexistent, invalid or unenforceable pursuant to Rule 3.10 (B);
- b. Upholding or reversing the arbitral tribunal's jurisdiction pursuant to Rule 3.19;
- c. Denying a request to refer the parties to arbitration;
- d. Granting or denying a party an interim measure of protection;
- e. Denying a petition for the appointment of an arbitrator;
- f. Refusing to grant assistance in taking evidence;
- g. Enjoining or refusing to enjoin a person from divulging confidential information;

¹⁷⁵AM No. 07-11-08-SC, Rule 18.4.

¹⁷⁶AM No. 07-11-08-SC, Rule 18.5.

- h. Confirming, vacating or correcting a domestic arbitral award;
- i. Suspending the proceedings to set aside an international commercial arbitral award and referring the case back to the arbitral tribunal;
- j. Setting aside an international commercial arbitral award;
- k. Dismissing the petition to set aside an international commercial arbitral award, even if the court does not recognize and/or enforce the same;
- l. Recognizing and/or enforcing, or dismissing a petition to recognize and/or enforce an international commercial arbitral award;
- m. Declining a request for assistance in taking evidence;
- n. Adjourning or deferring a ruling on a petition to set aside, recognize and/or enforce an international commercial arbitral award;
- o. Recognizing and/or enforcing a foreign arbitral award, or refusing recognition and/or enforcement of the same; and
- p. Granting or dismissing a petition to enforce a deposited mediated settlement agreement.

No motion for reconsideration shall be allowed from the following rulings of the Regional Trial Court:

- a. A prima facie determination upholding the existence, validity or enforceability of an arbitration agreement pursuant to Rule 3.1 (A);
- b. An order referring the dispute to arbitration;
- c. An order appointing an arbitrator;
- d. Any ruling on the challenge to the appointment of an arbitrator;
- e. Any order resolving the issue of the termination of the mandate of an arbitrator; and
- f. An order granting assistance in taking evidence.¹⁷⁷

¹⁷⁷AM No. 07-11-08-SC, Rule 19.1.

When to move for reconsideration

A motion for reconsideration may be filed with the Regional Trial Court within a non-extendible period of fifteen (15) days from receipt of the questioned ruling or order.¹⁷⁸

Contents and notice

The motion shall be made in writing stating the ground or grounds therefor and shall be filed with the court and served upon the other party or parties.¹⁷⁹

Opposition or comment

Upon receipt of the motion for reconsideration, the other party or parties shall have a non-extendible period of fifteen (15) days to file his opposition or comment.¹⁸⁰

Resolution of motion

A motion for reconsideration shall be resolved within thirty (30) days from receipt of the opposition or comment or upon the expiration of the period to file such opposition or comment.¹⁸¹

No second motion for reconsideration

No party shall be allowed a second motion for reconsideration.¹⁸² This is obviously dilatory.

B. GENERAL PROVISIONS ON APPEAL AND CERTIORARI*No appeal or certiorari on the merits of an arbitral award*

An agreement to refer a dispute to arbitration shall mean that the arbitral award shall be final and binding. Consequently, a party to an arbitration is precluded from filing an appeal or a petition for *certiorari* questioning the merits of an arbitral award.¹⁸³

Subject matter and governing rules

The remedy of an appeal through a petition for review or the remedy of a special civil action of *certiorari* from a decision of the Regional Trial Court made under the Special ADR Rules shall be allowed in the instances, and instituted only in the manner, provided under this Rule.¹⁸⁴

Prohibited alternative remedies

Where the remedies of appeal and *certiorari* are specifically made available to a party under the Special ADR Rules, recourse to one remedy shall preclude recourse to the other.¹⁸⁵

Rule on judicial review on arbitration in the Philippines

As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.

If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only if the same amounts to a violation of public policy.

The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal.¹⁸⁶

Rule on judicial review of foreign arbitral award

The court can deny recognition and enforcement of a foreign arbitral award only upon the grounds provided in Article V of the

¹⁷⁸AM No. 07-11-08-SC, Rule 19.2.

¹⁷⁹AM No. 07-11-08-SC, Rule 19.3.

¹⁸⁰AM No. 07-11-08-SC, Rule 19.4.

¹⁸¹AM No. 07-11-08-SC, Rule 19.5.

¹⁸²AM No. 07-11-08-SC, Rule 19.6.

¹⁸³AM No. 07-11-08-SC, Rule 19.7.

¹⁸⁴AM No. 07-11-08-SC, Rule 19.8.

¹⁸⁵AM No. 07-11-08-SC, Rule 19.9.

¹⁸⁶AM No. 07-11-08-SC, Rule 19.10.

New York Convention, but shall have no power to vacate or set aside a foreign arbitral award.¹⁸⁷

Again, the court has no power to vacate or set aside a foreign arbitral award simply for lack of jurisdiction.

Further under the law, it is presumed that a foreign arbitral award was made and released in due course of arbitration and is subject to enforcement by the court.¹⁸⁸

The decision of the court recognizing and enforcing a foreign arbitral award is immediately executory.¹⁸⁹

In resolving the petition for recognition and enforcement of a foreign arbitral award in accordance with these Special ADR Rules, the court shall either [a] recognize and/or enforce or [b] refuse to recognize and enforce the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.¹⁹⁰

C. APPEALS TO THE COURT OF APPEALS

Appeal to the Court of Appeals

An appeal to the Court of Appeals through a petition for review under this Special Rule shall only be allowed from the following final orders of the Regional Trial Court:

- a. Granting or denying an interim measure of protection;
- b. Denying a petition for appointment of an arbitrator;
- c. Denying a petition for assistance in taking evidence;
- d. Enjoining or refusing to enjoin a person from divulging confidential information;
- e. Confirming, vacating or correcting/modifying a domestic arbitral award;
- f. Setting aside an international commercial arbitration award;

¹⁸⁷AM No. 07-11-08-SC, Rule 19.11.

¹⁸⁸AM No. 07-11-08-SC, Rule 13.11, Supra.

¹⁸⁹AM No. 07-11-08-SC, See Rule 13.11.

¹⁹⁰Ibid.

- g. Dismissing the petition to set aside an international commercial arbitration award even if the court does not decide to recognize or enforce such award;
- h. Recognizing and/or enforcing an international commercial arbitration award;
- i. Dismissing a petition to enforce an international commercial arbitration award;
- j. Recognizing and/or enforcing a foreign arbitral award;
- k. Refusing recognition and/or enforcement of a foreign arbitral award;
- l. Granting or dismissing a petition to enforce a deposited mediated settlement agreement; and
- m. Reversing the ruling of the arbitral tribunal upholding its jurisdiction.¹⁹¹

Where to appeal

An appeal under this Rule shall be taken to the Court of Appeals within the period and in the manner herein provided.¹⁹²

When to appeal

The petition for review shall be filed within fifteen (15) days from notice of the decision of the Regional Trial Court or the denial of the petitioner's motion for reconsideration.¹⁹³

How appeal taken

Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the Regional Trial Court. The original copy of the petition intended for the Court of Appeals shall be marked original by the petitioner.

Upon the filing of the petition and unless otherwise prescribed by the Court of Appeals, the petitioner shall pay to the clerk of

¹⁹¹AM No. 07-11-08-SC, Rule 19.12.

¹⁹²AM No. 07-11-08-SC, Rule 19.13.

¹⁹³AM No. 07-11-08-SC, Rule 19.14.

court of the Court of Appeals docketing fees and other lawful fees of P3,500.00 and deposit the sum of P500.00 for costs.

Exemption from payment of docket and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen days from the notice of the denial.¹⁹⁴

Contents of the Petition

The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondent, (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review, (c) be accompanied by a clearly legible duplicate original or a certified true copy of the decision or resolution of the Regional Trial Court appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers, and (d) contain a sworn certification against forum shopping as provided in the Rules of Court. The petition shall state the specific material dates showing that it was filed within the period fixed herein.¹⁹⁵

Effect of failure to comply with requirements

The court shall dismiss the petition if it fails to comply with the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, the contents and the documents, which should accompany the petition.¹⁹⁶

Action on the petition

The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, within ten (10) days from notice, or dismiss the petition if it finds, upon consideration of the grounds alleged and the legal briefs submitted by the parties, that the petition does not appear to be *prima facie* meritorious.¹⁹⁷

¹⁹⁴AM No. 07-11-08-SC, Rule 19.15.

¹⁹⁵AM No. 07-11-08-SC, Rule 19.16.

¹⁹⁶AM No. 07-11-08-SC, Rule 19.17.

¹⁹⁷AM No. 07-11-08-SC, Rule 19.18.

Contents of Comment

The comment shall be filed within ten (10) days from notice in seven (7) legible copies and accompanied by clearly legible certified true copies of such material portions of the record referred to therein together with other supporting papers. The comment shall (a) point out insufficiencies or inaccuracies in petitioner's statement of facts and issues, and (b) state the reasons why the petition should be denied or dismissed. A copy thereof shall be served on the petitioner, and proof of such service shall be filed with the Court of Appeals.¹⁹⁸

Due course

If upon the filing of a comment or such other pleading or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the basis of the petition or the records, the Court of Appeals finds *prima facie* that the Regional Trial Court has committed an error that would warrant reversal or modification of the judgment, final order, or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same.¹⁹⁹

Transmittal of records

Within fifteen (15) days from notice that the petition has been given due course, the Court of Appeals may require the court or agency concerned to transmit the original or a legible certified true copy of the entire record of the proceeding under review. The record to be transmitted may be abridged by agreement of all parties to the proceeding. The Court of Appeals may require or permit subsequent correction of or addition to the record.²⁰⁰

Effect of appeal

The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals directs otherwise upon such terms as it may deem just.²⁰¹

¹⁹⁸AM No. 07-11-08-SC, Rule 19.19.

¹⁹⁹AM No. 07-11-08-SC, Rule 19.20.

²⁰⁰AM No. 07-11-08-SC, Rule 19.21.

²⁰¹AM No. 07-11-08-SC, Rule 19.22.

Submission for decision

If the petition is given due course, the Court of Appeals may set the case for oral argument or require the parties to submit memoranda within a period of fifteen (15) days from notice. The case shall be deemed submitted for decision upon the filing of the last pleading or memorandum required by the Court of Appeals.

The Court of Appeals shall render judgment within sixty (60) days from the time the case is submitted for decision.²⁰²

Subject of appeal restricted in certain instance

If the decision of the Regional Trial Court refusing to recognize and/or enforce, vacating and/or setting aside an arbitral award is premised on a finding of fact, the Court of Appeals may inquire only into such fact to determine the existence or non-existence of the specific ground under the arbitration laws of the Philippines relied upon by the Regional Trial Court to refuse to recognize and/or enforce, vacate and/or set aside an award. Any such inquiry into a question of fact shall not be resorted to for the purpose of substituting the court's judgment for that of the arbitral tribunal as regards the latter's ruling on the merits of the controversy.²⁰³ (AM No. 07-11-08-SC, Rule 19.24.)

Party appealing decision of court confirming arbitral award required to post bond

The Court of Appeals shall within fifteen (15) days from receipt of the petition require the party appealing from the decision or a final order of the Regional Trial Court, either confirming or enforcing an arbitral award, or denying a petition to set aside or vacate the arbitral award to post a bond executed in favor of the prevailing party equal to the amount of the award.

Failure of the petitioner to post such bond shall be a ground for the Court of Appeals to dismiss the petition.²⁰⁴

D. SPECIAL CIVIL ACTION FOR CERTIORARI*Certiorari to the Court of Appeals*

When the Regional Trial Court, in making a ruling under the Special ADR Rules, has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law, a party may file a special civil action for *certiorari* to annul or set aside a ruling of the Regional Trial Court.

A special civil action for *certiorari* may be filed against the following orders of the court.

- a. Holding that the arbitration agreement is nonexistent, invalid or unenforceable;
- b. Reversing the arbitral tribunal's preliminary determination upholding its jurisdiction;
- c. Denying the request to refer the dispute to arbitration;
- d. Granting or refusing an interim relief;
- e. Denying a petition for the appointment of an arbitrator;
- f. Confirming, vacating or correcting a domestic arbitral award;
- g. Suspending the proceedings to set aside an international commercial arbitral award and referring the case back to the arbitral tribunal;
- h. Allowing a party to enforce an international commercial arbitral award pending appeal;
- i. Adjourning or deferring a ruling on whether to set aside, recognize and or enforce an international commercial arbitral award;
- j. Allowing a party to enforce a foreign arbitral award pending appeal; and
- k. Denying a petition for assistance in taking evidence.²⁰⁵

²⁰²AM No. 07-11-08-SC, Rule 19.23.

²⁰³AM No. 07-11-08-SC, Rule 19.24.

²⁰⁴AM No. 07-11-08-SC, Rule 19.25.

²⁰⁵AM No. 07-11-08-SC, Rule 19.26.

Form

The petition shall be accompanied by a certified true copy of the questioned judgment, order or resolution of the Regional Trial Court, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the Rules of Court.

Upon the filing of the petition and unless otherwise prescribed by the Court of Appeals, the petitioner shall pay to the clerk of court of the Court of Appeals docketing fees and other lawful fees of P3,500.00 and deposit the sum of P500.00 for costs. Exemption from payment of docket and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen days from the notice of the denial.²⁰⁶

When to file petition

The petition must be filed with the Court of Appeals within fifteen (15) days from notice of the judgment, order or resolution sought to be annulled or set aside. No extension of time to file the petition shall be allowed.²⁰⁷

Arbitral tribunal a nominal party in the petition

The arbitral tribunal shall only be a nominal party in the petition for certiorari. As nominal party, the arbitral tribunal shall not be required to submit any pleadings or written submissions to the court. The arbitral tribunal or an arbitrator may, however, submit such pleadings or written submissions if the same serves the interest of justice.

In petitions relating to the recognition and enforcement of a foreign arbitral award, the arbitral tribunal shall not be included even as a nominal party. However, the tribunal may be notified of the proceedings and furnished with court processes.²⁰⁸

²⁰⁶AM No. 07-11-08-SC, Rule 19.27.

²⁰⁷AM No. 07-11-08-SC, Rule 19.28.

²⁰⁸AM No. 07-11-08-SC, Rule 19.29.

Court to dismiss petition

The court shall dismiss the petition if it fails to comply with Rules 19.27 and 19.28 above, or upon consideration of the ground alleged and the legal briefs submitted by the parties, the petition does not appear to be *prima facie* meritorious.²⁰⁹

Order to comment

If the petition is sufficient in form and substance to justify such process, the Court of Appeals shall immediately issue an order requiring the respondent or respondents to comment on the petition within a non-extendible period of fifteen (15) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.²¹⁰

Arbitration may continue despite petition for certiorari

A petition for *certiorari* to the court from the action of the appointing authority or the arbitral tribunal allowed under this Rule shall not prevent the arbitral tribunal from continuing the proceedings and rendering its award. Should the arbitral tribunal continue with the proceedings, the arbitral proceedings and any award rendered therein will be subject to the final outcome of the pending petition for *certiorari*.²¹¹

Prohibition against injunctions

The Court of Appeals shall not, during the pendency of the proceedings before it, prohibit or enjoin the commencement of arbitration, the constitution of the arbitral tribunal, or the continuation of arbitration.²¹²

Proceedings after comment is filed

After the comment is filed, or the time for the filing thereof has expired, the court shall render judgment granting the relief prayed for or to which the petitioner is entitled, or denying the same, within a non-extendible period of fifteen (15) days.²¹³

²⁰⁹AM No. 07-11-08-SC, Rule 19.30.

²¹⁰AM No. 07-11-08-SC, Rule 19.31.

²¹¹AM No. 07-11-08-SC, Rule 19.32.

²¹²AM No. 07-11-08-SC, Rule 19.33.

²¹³AM No. 07-11-08-SC, Rule 19.34.

Service and enforcement of order or judgment

A certified copy of the judgment rendered in accordance with the last preceding section shall be served upon the Regional Trial Court concerned in such manner as the Court of Appeals may direct, and disobedience thereto shall be punished as contempt.²¹⁴

E. APPEAL BY CERTIORARI TO THE SUPREME COURT***Review discretionary***

A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for serious and compelling reasons resulting in grave prejudice to the aggrieved party. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, when the Court of Appeals:

- a. Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules in arriving at its decision resulting in substantial prejudice to the aggrieved party;
- b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;
- c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and
- d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.

The mere fact that the petitioner disagrees with the Court of Appeals' determination of questions of fact, of law or both questions of fact and law, shall not warrant the exercise of the Supreme Court's discretionary power. The error imputed to the Court of Appeals must be grounded upon any of the above prescribed grounds for review or be closely analogous thereto.

²¹⁴AM No. 07-11-08-SC, Rule 19.35.

A mere general allegation that the Court of Appeals has committed serious and substantial error or that it has acted with grave abuse of discretion resulting in substantial prejudice to the petitioner without indicating with specificity the nature of such error or abuse of discretion and the serious prejudice suffered by the petitioner on account thereof, shall constitute sufficient ground for the Supreme Court to dismiss outright the petition.²¹⁵

Filing of petition with Supreme Court

A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals issued pursuant to these Special ADR Rules may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law, which must be distinctly set forth.²¹⁶

Time for filing; extension

The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment.

On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.²¹⁷

Docket and other lawful fees; proof of service of petition

Unless he has theretofore done so or unless the Supreme Court orders otherwise, the petitioner shall pay docket and other lawful fees to the clerk of court of the Supreme Court of P3,500.00 and deposit the amount of P500.00 for costs at the time of the filing of the petition. Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.²¹⁸

²¹⁵AM No. 07-11-08-SC, Rule 19.36.

²¹⁶AM No. 07-11-08-SC, Rule 19.37.

²¹⁷AM No. 07-11-08-SC, Rule 19.38.

²¹⁸AM No. 07-11-08-SC, Rule 19.39.

Contents of petition

The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping.²¹⁹

Dismissal or denial of petition

The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too insubstantial to require consideration.²²⁰

Due course; elevation of records

If the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice.²²¹

²¹⁹AM No. 07-11-08-SC, Rule 19.40.

²²⁰AM No. 07-11-08-SC, Rule 19.41.

²²¹AM No. 07-11-08-SC, Rule 19.42.

VII. Final Provisions

RULE 20: FILING AND DEPOSIT FEES

Filing fee in petitions or counter-petitions to confirm or enforce, vacate or set aside arbitral award or for the enforcement of a mediated settlement agreement

The filing fee for filing a petition to confirm or enforce, vacate or set aside an arbitral award in a domestic arbitration or in an international commercial arbitration, or enforce a mediated settlement agreement shall be as follows:

PhP 10,000.00 - if the award does not exceed PhP 1,000,000.00

PhP 20,000.00 - if the award does not exceed PhP 20,000,000.00

PhP 30,000.00 - if the award does not exceed PhP 50,000,000.00

PhP 40,000.00 - if the award does not exceed PhP 100,000,000.00

PhP 50,000.00 - if the award exceeds PhP 100,000,000.00

*The minimal filing fee payable in "all other actions not involving property" shall be paid by the petitioner seeking to enforce foreign arbitral awards under the New York Convention in the Philippines.*²²²

Filing fee for action to enforce as a counter-petition

A petition to enforce an arbitral award in a domestic arbitration or in an international commercial arbitration submitted as a petition to enforce and/or recognize an award in opposition to a timely petition to vacate or set aside the arbitral award shall require the payment of the filing fees prescribed in Rule 20.1 above.²²³

Deposit fee for mediated settlement agreements

Any party to a mediated settlement agreement who deposits it with the clerk of court shall pay a deposit fee of P500.00.²²⁴

²²²AM No. 07-11-08-SC, Rule 20.1.

²²³AM No. 07-11-08-SC, Rule 20.2.

²²⁴AM No. 07-11-08-SC, Rule 20.3.

Filing fee for other proceedings

The filing fee for the filing of any other proceedings, including applications for interim relief, as authorized under these Special Rules not covered under any of the foregoing provisions, shall be P10,000.00.²²⁵

RULE 21: COSTS*Costs*

The costs of the ADR proceedings shall be borne by the parties equally unless otherwise agreed upon or directed by the arbitrator or arbitral tribunal.²²⁶

However, the party at fault bears the cost.²²⁷

On the dismissal of a petition against a ruling of the arbitral tribunal on a preliminary question upholding its jurisdiction

If the Regional Trial Court dismisses the petition against the ruling of the arbitral tribunal on a preliminary question upholding its jurisdiction, it shall also order the petitioner to pay the respondent all reasonable costs and expenses incurred in opposing the petition. "Costs" shall include reasonable attorney's fees. The court shall award costs upon application of the respondent after the petition is denied and the court finds, based on proof submitted by respondent, that the amount of costs incurred is reasonable.²²⁸

On recognition and enforcement of a foreign arbitral award

At the time the case is submitted to the court for decision, the party praying for recognition and enforcement of a foreign arbitral award shall submit a statement under oath confirming the costs he has incurred only in the proceedings in the Philippines for such recognition and enforcement or setting-aside. The costs shall include attorney's fees the party has paid or is committed to pay to his counsel of record.

The prevailing party shall be entitled to an award of costs which shall include the reasonable attorney's fees of the prevailing

²²⁵AM No. 07-11-08-SC, Rule 20.4.

²²⁶AM No. 07-11-08-SC, Rule 21.1.

²²⁷LICOMCEN, Incorporated v. Foundation Specialist, Inc., G.R. 169678, April 4, 2011, 647 SCRA 83.

²²⁸AM No. 07-11-08-SC, Rule 21.2.

party against the unsuccessful party. The court shall determine the reasonableness of the claim for attorney's fees.²²⁹

Costs

At the time the case is submitted to the court for decision, the party praying for confirmation or vacation of an arbitral award shall submit a statement under oath confirming the costs he has incurred only in the proceedings for confirmation or vacation of an arbitral award. The costs shall include the attorney's fees the party has paid or is committed to pay to his counsel of record.

The prevailing party shall be entitled to an award of costs with respect to the proceedings before the court, which shall include the reasonable attorney's fees of the prevailing party against the unsuccessful party. The court shall determine the reasonableness of the claim for attorney's fees.²³⁰

Bill of Costs

Unless otherwise agreed upon by the parties in writing, at the time the case is submitted to the court for decision, the party praying for recognition and enforcement or for setting aside an arbitral award shall submit a statement under oath confirming the costs he has incurred only in the proceedings for such recognition and enforcement or setting-aside. The costs shall include attorney's fees the party has paid or is committed to pay to his counsel of record.

The prevailing party shall be entitled to an award of costs, which shall include reasonable attorney's fees of the prevailing party against the unsuccessful party. The court shall determine the reasonableness of the claim for attorney's fees.²³¹

Government's exemption from payment of fee

The Republic of the Philippines, its agencies and instrumentalities are exempt from paying legal fees provided in these Special ADR Rules. Local governments and government controlled corporation with or without independent charters are not exempt from paying such fees.²³²

²²⁹AM No. 07-11-08-SC, Rule 21.3.

²³⁰AM No. 07-11-08-SC, Rule 21.4.

²³¹AM No. 07-11-08-SC, Rule 21.5.

²³²AM No. 07-11-08-SC, Rule 21.6.

RULE 22: APPLICABILITY OF THE RULES OF COURT***Applicability of Rules of Court***

The provisions of the Rules of Court that are applicable to the proceedings enumerated in Rule 1.1 of these Special ADR Rules have either been included and incorporated in these Special ADR Rules or specifically referred to herein.

In connection with the above proceedings, the Rules of Evidence shall be liberally construed to achieve the objectives of the Special ADR Rules.²³³

RULE 23: SEPARABILITY***Separability Clause***

If, for any reason, any part of the Special ADR Rules shall be held unconstitutional or invalid, other Rules or provisions hereof which are not affected thereby, shall continue to be in full force and effect.²³⁴

RULE 24: TRANSITORY PROVISIONS***Transitory Provision***

Considering its procedural character, the Special ADR Rules shall be applicable to all pending arbitration, mediation or other ADR forms covered by the ADR Act, unless the parties agree otherwise. The Special ADR Rules, however, may not prejudice or impair vested rights in accordance with law.²³⁵

RULE 25: ONLINE DISPUTE RESOLUTION***Applicability of the Special ADR Rules to Online Dispute Resolution***

Whenever applicable and appropriate, the Special ADR Rules shall govern the procedure for matters brought before the court involving Online Dispute Resolution.²³⁶

²³³AM No. 07-11-08-SC, Rule 22.1.

²³⁴AM No. 07-11-08-SC, Rule 23.1.

²³⁵AM No. 07-11-08-SC, Rule 24.1.

²³⁶AM No. 07-11-08-SC, Rule 25.1.

Scope of Online Dispute Resolution

Online Dispute Resolution shall refer to all electronic forms of ADR including the use of the internet and other web or computer based technologies for facilitating ADR.²³⁷

RULE A: GUIDELINES FOR THE RESOLUTION OF ISSUES RELATED TO ARBITRATION OF LOANS SECURED BY COLLATERAL***Applicability of an arbitration agreement in a contract of loan applies to the accessory contract securing the loan***

An arbitration agreement in a contract of loan extends to and covers the accessory contract securing the loan such as a pledge or a mortgage executed by the borrower in favor of the lender under that contract of loan.²³⁸

Foreclosure of pledge or extra-judicial foreclosure of mortgage not precluded by arbitration

The commencement of the arbitral proceeding under the contract of loan containing an arbitration agreement shall not preclude the lender from availing himself of the right to obtain satisfaction of the loan under the accessory contract by foreclosure of the thing pledged or by extra-judicial foreclosure of the collateral under the real estate mortgage in accordance with Act No. 3135.

The lender may likewise institute foreclosure proceedings against the collateral securing the loan prior to the commencement of the arbitral proceeding.

By agreeing to refer any dispute under the contract of loan to arbitration, the lender who is secured by an accessory contract of real estate mortgage shall be deemed to have waived his right to obtain satisfaction of the loan by judicial foreclosure.²³⁹

Remedy of the borrower against an action taken by the lender against the collateral before the constitution of the arbitral tribunal

The borrower providing security for the payment of his loan who is aggrieved by the action taken by the lender against the

²³⁷AM No. 07-11-08-SC, Rule 25.2.

²³⁸AM No. 07-11-08-SC, Rule A.1.

²³⁹AM No. 07-11-08-SC, Rule A.2.

collateral securing the loan may, if such action against the collateral is taken before the arbitral tribunal is constituted, apply with the appropriate court for interim relief against any such action of the lender. Such interim relief may be obtained only in a special proceeding for that purpose, against the action taken by the lender against the collateral, pending the constitution of the arbitral tribunal. Any determination made by the court in that special proceeding pertaining to the merits of the controversy, including the right of the lender to proceed against the collateral, shall be only provisional in nature.

After the arbitral tribunal is constituted, the court shall stay its proceedings and defer to the jurisdiction of the arbitral tribunal over the entire controversy including any question regarding the right of the lender to proceed against the collateral.²⁴⁰

Remedy of borrower against action taken by the lender against the collateral after the arbitral tribunal has been constituted

After the arbitral tribunal is constituted, the borrower providing security for the payment of his loan who is aggrieved by the action taken by the lender against the collateral securing the loan may apply to the arbitral tribunal for relief, including a claim for damages, against such action of the lender. An application to the court may also be made by the borrower against any action taken by the lender against the collateral securing the loan but only if the arbitral tribunal cannot act effectively to prevent an irreparable injury to the rights of such borrower during the pendency of the arbitral proceeding.

An arbitration agreement in a contract of loan precludes the borrower therein providing security for the loan from filing and/or proceeding with any action in court to prevent the lender from foreclosing the pledge or extra-judicially foreclosing the mortgage. If any such action is filed in court, the lender shall have the right provided in the Special ADR Rules to have such action stayed on account of the arbitration agreement.²⁴¹

Relief that may be granted by the arbitral tribunal

The arbitral tribunal, in aid of the arbitral proceeding before it, may upon submission of adequate security, suspend or enjoin the lender from proceeding against the collateral securing the loan pending final determination by the arbitral tribunal of the dispute brought to it for decision under such contract of loan.

The arbitral tribunal shall have the authority to resolve the issue of the validity of the foreclosure of the thing pledged or of the extrajudicial foreclosure of the collateral under the real estate mortgage if the same has not yet been foreclosed or confirm the validity of such foreclosure if made before the rendition of the arbitral award and had not been enjoined.²⁴²

Arbitration involving a third-party provider of security

An arbitration agreement contained in a contract of loan between the lender and the borrower extends to and covers an accessory contract securing the loan, such as a pledge, mortgage, guaranty or suretyship, executed by a person other than the borrower only if such third-party securing the loan has agreed in the accessory contract, either directly or by reference, to be bound by such arbitration agreement.

Unless otherwise expressly agreed upon by the third-party securing the loan, his agreement to be bound by the arbitration agreement in the contract of loan shall pertain to disputes arising from or in connection with the relationship between the lender and the borrower as well as the relationship between the lender and such third-party including the right of the lender to proceed against the collateral securing the loan, but shall exclude disputes pertaining to the relationship exclusively between the borrower and the provider of security such as that involving a claim by the provider of security for indemnification against the borrower.

In this multi-party arbitration among the lender, the borrower and the third party securing the loan, the parties may agree to submit to arbitration before a sole arbitrator or a panel of three arbitrators to be appointed either by an Appointing Authority designated by the parties in the arbitration agreement or by a default Appointing Authority under the law.

²⁴⁰AM No. 07-11-08-SC, Rule A.3.

²⁴¹AM No. 07-11-08-SC, Rule A.4.

²⁴²AM No. 07-11-08-SC, Rule A.5.

In default of an agreement on the manner of appointing arbitrators or of constituting the arbitral tribunal in such multi-party arbitration, the dispute shall be resolved by a panel of three arbitrators to be designated by the Appointing Authority under the law. But even in default of an agreement on the manner of appointing an arbitrator or constituting an arbitral tribunal in a multi-party arbitration, if the borrower and the third party securing the loan agree to designate a common arbitrator, arbitration shall be decided by a panel of three arbitrators: one to be designated by the lender; the other to be designated jointly by the borrower and the provider of security who have agreed to designate the same arbitrator; and a third arbitrator who shall serve as the chairperson of the arbitral panel to be designated by the two party-designated arbitrators.²⁴³

ANNEXES

²⁴³AM No. 07-11-08-SC, Rule A.6.