

2021 Update on the Dispute Resolution and Arbitration System in the Philippines

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1. Introduction

Japan has always been considered as one of the most important strategic economic partners of the Philippines. It is the countries' second largest trading partner, export market, and import supplier. However, in the first quarter of 2021, the growth rate of foreign direct investment in the Philippines by Japanese companies was reported to be -58.42%. This is believed to be due to the impact of the COVID-19 pandemic. Despite this, it is expected that business relations between Japan and the Philippines will recover after the pandemic.

This article provides a practical overview of dispute resolution and arbitration system in the Philippines that would be useful to Japanese companies considering to enter, invest, or expand their business in the Philippines.

Although Philippine courts can conduct proceedings in English, as will be explained below, these proceedings are not necessarily transparent to foreign investors. For this reason, many foreign investors choose arbitration instead of resolution by the Philippine courts. In this regard, while they can rely on dispute resolution in Japanese courts (foreign courts), we have yet to wait for a precedent by the Philippine courts, applying the comprehensive international framework that corresponds to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") for the recognition and enforcement of judgment by a foreign court.

In 2006, a Japanese company sought recognition and enforcement in the Philippines of a foreign judgment obtained from a court in London, but the case has not yet been resolved¹. The Supreme Court of the Philippines has indicated that the foreign judgment is not yet binding until its recognition and enforcement have been decided by the Philippine courts. Under Rule 39, Section 48 of the Rules of Civil Procedure, the mere entry of a foreign judgment is not conclusive and may be reversed for lack of jurisdiction, lack of notice to the parties, conspiracy, fraud, or manifest error of law or fact. Under Philippine laws and international laws, there is also a possibility that a foreign judgment may not be recognized if it is contrary to public policy².

In case of a judgment or final order against a person, there is a precedent³ where the court affirmed that a foreign judgment is effective only as evidence to presume the existence of the right (1997 Rules of Civil Procedure, Article 48, Rule 39)⁴.

In contrast, since the Philippines became a signatory to the New York Convention in 1967, arbitral awards have an advantage in terms of recognition and enforcement. Although the current arbitration system in the Philippines is generally considered to be in line with international standards, the most prominent arbitration institution in the Philippines, the Philippine Dispute Resolution Centre, Inc. (PDRCI), is still not a preferred arbitration institution internationally. Therefore, many foreign investors often choose foreign arbitration institutions such as the

¹ G.R. No. 202166 in relation to Decision March 13, 2013 in CA-G.R. CV No. 96502, Takenaka Corporation and Asahikosan Corporation vs. International Air Terminals Company, Inc.

² G.R. 181892.

³ Republic of the Philippines, Supreme Court, Second Division, G.R. No. 140288, October 23, 2006 ST. Aviation Services Co. International Airways, Inc., in which a foreign judgment rendered in Singapore was recognized and enforced by the Philippine Court.

⁴ The same provision has been retained in the Rules of Civil Procedure, as amended in 1997 (1997 Rules of Civil Procedure, as amended Rule 39, Article 48).

International Chambers of Commerce (ICC) and the Singapore International Arbitration Centre (SIAC).

The Philippine government is working to establish a framework suitable for arbitration. In 2019, the Philippines became a signatory to the Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention"), which is a uniform and efficient framework for international settlement agreements resulting from mediation. The Convention applies to international settlement agreements resulting from mediation to resolve commercial disputes. The Singapore Convention is intended to facilitate international trade and commerce by making it easier for the disputing parties to enforce settlement agreements across borders. However, the Philippine government has yet to ratify the Convention.

In the same year, the Philippine International Center for Conflict Resolution (PICCR) was launched by the Integrated Bar of the Philippines (IBP) as a non-stock, non-profit arbitration institution providing commercial arbitration and other ADR services. Furthermore, the Revised Corporation Code,⁶ which came into effect in February 2019, expressly provides that a company's articles of incorporation or by-laws may contain an arbitration clause, making intra-corporate disputes arbitrable under the Philippine law.

It is also worth noting that there are special laws regarding arbitration in the Philippines. For example, Executive Order (E.O.) No. 1008, creating the Construction Industry Arbitration Commission (hereinafter referred to as "CIAC"), which have exclusive jurisdiction over construction disputes, as will be discussed below.

2. Overview of the Legal and Court System of the Philippines

2.1 Basic legal system of the Philippines

As a former colony of the United States, the Philippines has a common law legal system. And, since it was once under the U.S. regime, it can be said that it is a common law jurisdiction with a strong influence of U.S. law, unlike other Asian jurisdictions such as Singapore, Malaysia, Hong Kong, and India, which were under British rule.

In addition, since the Philippines was also under the Spanish rule in the 1920s, it has the characteristics of a civil law jurisdiction. As an example, it has the Civil Code of the Philippines.

2.2 Court System in the Philippines

As mentioned above, the Philippines follows the common law legal system, and has a legal system for discovery and attorney-client privilege in court proceedings.

The courts in the Philippines are composed of ordinary courts and special courts. The ordinary courts are categorized into (1) the Metropolitan Trial Courts (MeTC), Municipal Trial Courts (MTC), and Municipal Circuit Trial Courts (MCTC), (2) the Regional Trial Courts, (3) the Court of Appeals, and (4) the Supreme Court. The special courts include the Sandiganbayan, which exclusively handles corruption cases and offenses committed by public officers and employees, and the Shari'a District Court.

In the Philippines, legal proceedings are conducted in English, and if testimony is given in Filipino, it will be interpreted into English by a court-appointed interpreter. Therefore, it is possible for a Japanese company to pursue litigation in English.

However, in the Philippines, judicial dysfunction due to delays in litigation has been a persisting problem. The causes of delay in litigation include, for example, the complexity of

⁶ Republic Act No. 11232, Act Providing for the Revised Corporation Code of the Philippines

court procedures and the increase in the number of cases filed beyond the processing capacity of the courts due to the growing awareness of people's rights in the country⁷. In response to this, an additional legislation is underway that seeks to de-clog the cases in the courts by expanding the jurisdiction of first-level courts (MTC etc.). It is expected to reduce the burden of the RTC. As such, since the RTC is the body of first instance for the recognition of foreign judgments, it is expected to streamline the recognition of foreign arbitral awards⁸.

3. Overview of the Arbitration System in the Philippines

As mentioned above, many foreign investors choose arbitration due to the delays in obtaining judgments with the Philippine courts. The following is an overview of the arbitration system in the Philippines.

3.1 Overview of the Law on Arbitration

Arbitration has traditionally been recognized as a common method of dispute resolution in the Philippines, as stipulated in Articles 2028 to 2046 of the Philippine Civil Code. However, until the 1920s, the Philippine courts were not necessarily friendly to the arbitration system, as there were a number of cases wherein arbitration agreements between parties were invalidated by the Philippine courts.

In the 1950s, the Philippines began to be more open to the concept of arbitration, and in 1953, the Congress of the Philippines enacted Republic Act (R.A.) No. 876 (the "Arbitration Act"). Later, on June 10, 1958, the Philippines signed the New York Convention, which was ratified on July 6, 1967, aimed to promote the development of basic laws on arbitration.

However, the above Arbitration Law contains many ambiguities, for example, it does not set out the details of arbitration procedure. Also, it does not describe the method to enforce foreign arbitral awards, and does not comply with the United Nations Commission on International Trade Model Law on International Arbitration (the "UNCITRAL Model Law") adopted on June 21, 1985.

In 2004, about 50 years after the enactment of the Arbitration Act, the congress enacted R.A. No. 9285 (the "Alternative Dispute Resolution Act of 2004", or the "ADR Act"), which was based on the UNCITRAL Model Law. The ADR Act forms part of the core of the Philippine arbitration system, amending and supplementing the Arbitration Act.

Although the ADR Act explicitly provides for the adoption of the UNCITRAL Model Law, it refers to the original 1985 version. Since the UNCITRAL Model Law was amended in 2006, it is necessary for the ADR Act to be amended to incorporate the amendments to the UNCITRAL Model Law in 2006. In 2017, the Office for Alternative Dispute Resolution ("OADR")⁹, an agency under the Department of Justice, was tasked to propose amendments to the ADR. Several proposals have been made, but have not yet been enacted into law.

⁷ The Philippine Constitution guarantees the right to a speedy trial (Article 3 (16)) and provides that a judgment or decision must be rendered within 24 months after the case is filed in the Supreme Court, within 12 months in the lower courts of the collegium, and within 3 months in other lower courts (Article 8 (15)). In practice, however, the above deadlines are very rarely met.

⁸ Senate Bill (S.B. No. 1353), An Act Further Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts, amending for the purpose Batas Pambansa Blg. 129, otherwise known as the 'Judiciary Reorganization Act of 1980,' as amended. of 1980,' as amended

⁹ Office for Alternative Dispute Resolution (OADR), Department of Justice Padre Faura Street, Ermita Manila Sunny Oak, JDC Building, 571 Engracia Reyes St. Ermita, Manila, Manila (2021) (govserv.org)

In addition, in 2010, the Special Rules of Court on Alternative Dispute Resolution (the " Special ADR Rules") were enacted. It provides for a system whereby courts shall refer the parties to arbitration, upon mutual consent.

As described above, arbitration in the Philippines is regulated by (1) the Philippine Civil Code, (2) the Arbitration Act, (3) the ADR Act, and (4) the ADR Special Court Rules. Of these, the ADR Act provides the foundation of the arbitration system.

3.2 Distinction between domestic and international arbitration

Under the ADR Act, a distinction is made between domestic arbitration and international arbitration. In the Philippines, domestic arbitration is defined as arbitration that is not defined as international arbitration in Article 1(3) of the Model Law (Article 32 of the ADR Act). According to Article 1(3) of the Model Law, arbitration is considered to be international if:

- (a) the parties to an arbitration agreement have, at the time of conclusion of that agreement, their places of business in different States¹⁰;
- (b) one of the following places is situated outside the State in which the parties have their places of business:
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (ii) 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
- (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

Accordingly, it is stipulated to the ADR Act, that international commercial arbitration shall be governed by the UNCITRAL Model Law (Article 19 of the ADR Act). Also, Article 40 of the same Act provides that the recognition and enforcement of international arbitration shall be governed by Article 35 of the UNCITRAL Model.

The following sections will focus on international arbitration, which is considered to be mainly relevant to Japanese companies.

3.3 Arbitration Institutions in the Philippines

Both ad hoc arbitration and institutional arbitration are recognized in the Philippines.

With regard to ad hoc arbitration, the parties may pursue the arbitration in accordance with their agreement provided it is not contrary to law, morals, good customs, public order, or public policy¹¹.

On the other hand, Institutional arbitration can be pursued according to the unique rules of each institution. Among them, the most prominent arbitral institution is the PDRCI. However, in the Philippines, especially for international arbitration cases, foreign arbitration centers such as the ICC and SIAC are often agreed upon¹². The reason for this is that the PDRCI has not

¹⁰ If the parties have more than one business locations, the location most relevant to the arbitration agreement shall be the business location. If there is no business location, the place of habitual residence shall be deemed to be the place of business (Article 1(4) of the Model Law).

¹¹ Article 1306 of the Civil Code

¹² Based on Victor P. Lazatin and Patricia Ann T. Prodigalidad, "Arbitration in the Philippines," and other

yet gained enough trust among Philippine lawyers to be able to handle international cases, and the old PDRCI rules was not in line with the global trends in arbitration (e.g. no rules on multiple parties, no rules on emergency arbitration and simplified arbitration). Nonetheless, the PDRCI issued an Arbitration Rules Booklet¹³ in 2016, which provides for multiple parties and expedited or simplified arbitration, as will be discussed later.

Moreover, in 2019, the PICCR was launched as an arbitration institution and is expected to compete with the PDRCI. Since it was launched by the IBP, the mandatory legal association for qualified lawyers in the Philippines, which has branches throughout the country, having a vast network, the PICCR has the potential to promote ADR more effectively throughout the Philippines.

3.4 Special Provisions on Jurisdiction and Governing Law

As mentioned above, while the international arbitral institutions are common option, it is important to note that arbitral institutions are identified by law in special cases.

In 1985, Executive Order (E.O.) No. 1008 established the CIAC, which has jurisdiction over construction arbitration (Articles 34 and 35 of the ADR Act). In other words, E.O. No. 1008 provided that the CIAC would have exclusive jurisdiction over all construction-related arbitrations unless otherwise agreed by the parties. In this regard, the Supreme Court held that even if the parties agree on a different arbitral institution, the parties may, by law, apply to the CIAC for arbitration¹⁴. Accordingly, even if the parties agree to submit to arbitration with the SIAC, the parties would still have the right to submit to arbitration with the CIAC. This means that the parties can file for arbitration not only with the SIAC but also with the CIAC, resulting to the problem of double pendency. Therefore, in practice, it is recommended that parties choose CIAC arbitration for construction disputes¹⁵.

As such, it is important to note that in the Philippines, special arbitration institutions and governing laws must be agreed upon depending on the content of the contract.

3.5 Place of arbitration

The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be in Metro Manila (Article 30 of the ADR Act). However, the arbitral tribunal may determine the place of arbitration and the place of the hearing.

3.6 Language of Arbitration

The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the language to be used shall be English in international arbitration, and English or Filipino for domestic arbitration, unless otherwise determined by the arbitral tribunal (Article 31 of the ADR Act).

interviews conducted by the author.

¹³ PDRCI-Arbitration-Rules-Booklet.pdf

¹⁴ China Chiang Jiang Energy Corp. v. Court of Appeals, et al. G.R. No. 125706, Sept. 30, 1996; National Irrigation Administration v. Court of Appeals, CIAC, et al., G.R. No. 129169, Nov. 17, 1999, 318 SCRA 255, 268. It should be noted that there is a possibility that this decision will be reviewed in the future, as it has been assessed that it violates the New York Convention.

¹⁵ The definition of a construction dispute in this case is said to include the following (Article 35 of the ADR). It should be noted that this is a relatively broad definition.

"Directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, "directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project."

3.7 Governing Law

In arbitration, the choice of governing law, place of arbitration, and arbitration rules is generally left to the parties.

However, it should be noted that Article 88 of the Intellectual Property Code of the Philippines, (R.A. No. 8293¹⁶ or the "IP Code") provides that, with respect to Technology Transfer Agreements, (1) the laws of the Philippines shall govern the interpretation of the the arbitration act, (2) the place of arbitration shall be the Philippines or a neutral third country, and (3) the arbitration shall be conducted in accordance with the laws of the Philippines, the UNCITRAL Model Law, or the rules of the ICC.

In this regard, care must be exercised when drafting the arbitration clause if the transaction falls within the meaning of Technology Transfer Agreement as defined below.

The term "technology transfer arrangements" refers to contracts or agreements involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts; and the transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software except computer software developed for mass market.

Currently, House Bill (H.B.) No. 8062¹⁷ is pending in the House of Representatives. This H.B. provides that in the absence of agreement of the parties, the rules of alternative dispute resolution promulgated by the Intellectual Property Office of the Philippines (IPOP HL) shall apply. It is said that IPOP HL wants to institutionalize the use of ADR in the IP Code so that there is no need to refer to the ADR Act. Such institutionalization would give IPOP HL the authority to pursue an effective ADR program as a means of dispute resolution.

3.8 Discovery procedures

Although there is no clear provision in the ADR Act regarding the procedure for discovery, it can be implemented by agreement of the parties.

3.9 Interim Measure of Protection

The parties may make a request for an interim measure of protection with the Philippine courts or arbitral tribunal before or simultaneously with filing an application for arbitral proceedings (Articles 28 and 29 of the ADR Act).

4. Arbitration Procedures in PDRCI, PICCR and CIAC

4.1 History

¹⁶ An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and for Other Purposes

¹⁷ HB08062.pdf (congress.gov.ph); proposing "An Act Providing for the Revised Intellectual Property Code of the Philippines, and for Other Purposes"; the bill has been pending in the Committee on Trade and Industry since November 24, 2020. ; 2021-03-Philippine-ADR-Review.pdf (pdrci.org)

The PDRCI is a non-profit corporation established in 1996 as an independent entity from the Arbitration Board of the Philippine Chamber of Commerce and Industry.

The CIAC, on the other hand, is a non-profit corporation established in 1985 in accordance with Executive Order No. 1008 and has exclusive jurisdiction over construction arbitrations.

As mentioned earlier, the PICCR was established by the IBP in 2019 as a non-stock, non-profit arbitration institution to provide commercial arbitration and other ADR services and facilities to disputes, whether international or domestic.

4.2 PDRCI Arbitration Rules

The PDRCI has published the “2015 PDRCI Arbitration Rules”, which became effective on January 1, 2015. The current PDRCI Arbitration Rules are more in line with the rules of recent international arbitration institutions. Particularly, it includes rules on multi-party, simplified and expedited arbitration.

4.1.1 PDRCI's Model Arbitration Clause

The PDRCI's model arbitration clause (English version), as published by the PDRCI, is as follows:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration by accordance with the PDRCI Arbitration Rules as at present in force at the time of the commencement of the arbitration."

Parties may wish to consider adding:

"The number of arbitrators shall be ... (one or three);

The place of arbitration shall be ... (city or country);

The language(s) to be used in the arbitral proceedings shall be...(language)

4.1.2 Arbitrator

(a) PDRCI's list of arbitrators

The list of accredited arbitrators of the PDRCI is available on the website¹⁸.

(b) Number of arbitrators

The PDRCI Rules provide that the number of arbitrators shall be one in the case of a sole arbitrator and three in the case of an arbitral tribunal. If the parties have not agreed in advance on the number of arbitrators, the PDRCI shall determine the number of arbitrators to be appointed, taking into account the circumstances of each case¹⁹.

(c) Procedure

In 2015, the PDRCI updated its Arbitration Rules to make it in line with international standards and actual arbitration scenarios. The update includes important improvements in the rules regarding multi-party, simplified and expedited arbitration.

¹⁸ <http://www.pdrcli.org/ neutrals-members/ accredited-arbitrators/>

¹⁹ Section 11, 2015 PDRCI

Arbitration procedures under the PDRCI Rules are as follows.



(d) Rules on multiple parties ²⁰

The PDRCI Rules 2015 allow for multi-party arbitration. Claims may be made by any party against any other party in accordance with the provisions of the Pleas as to the Jurisdiction of the Arbitral Tribunal (Article 30), Multiple Contracts (Article 9), Claims between Multiple Parties (Article 8) and Joinder of Additional Parties (Article 7). In principle, however, no new claims may be made after the conclusion of the Terms of Reference. As an exception, new claims are permitted in certain cases, such as when a claim or defense is amended for the purpose of set-off (Article 29) or when an issue defined under the Terms of Reference is amended (Article 26).

(e) Simplified and expedited procedure²¹

The absence of a provision for expedited arbitration in the PDRCI Rules enacted in 2005 had been a source of dissatisfaction among parties to the arbitration. Therefore, the rules were amended in 2015 to allow parties to apply for simplified and expedited arbitration prior to the constitution of the arbitral tribunal under the following conditions.

- The amount in dispute representing the aggregate of any claim, counterclaim of any other claim, does not exceed Php25,000,000.

²⁰ *ibid* Article 8

²¹ *Ibid.* Article 52

- The parties so agree.
- In case of exceptional urgency.

The main features of expedited arbitration are as follows.

- the case shall be heard by a sole arbitrator, unless otherwise provided under the arbitration agreement, in which case the parties shall agree on a sole arbitrator unless otherwise agreed.
- PDRCI may shorten the time limits provide in the rules and other rules.
- the arbitral tribunal shall adopt simplified procedures to expedite the arbitration.
- after the submission of the response to the Notice of Arbitration, the parties shall in principle be entitled to submit one Statement of Claim and Statement of Defense.
- the arbitral tribunal shall decide the dispute on the basis of the documents and materials.
- the award shall be made within six months from the date PDRCI sent the file to the arbitral tribunal.
- the arbitral tribunal may state in summary form the reasons upon which the award is based, unless the Parties have agreed that no reasons are to be given.

4.3 PICCR

As mentioned above, the PICCR was established by the IBP Board of Directors as a non-stock, non-profit arbitration institution with the purpose of providing commercial arbitration and other ADR services and facilities to disputants.

4.3.1 Model Arbitration Clause in the PICCR

The PICCR Model Arbitration Clause published by the PICCR²², is as follows

"Any dispute, controversy, difference or claim arising out of or in relation to this agreement, including any question as to the interpretation, implementation, existence, validity, breach or termination thereof or as to any non-contractual obligation arising out of or relating thereto, shall be referred to and finally resolved by arbitration administered by the Philippine International Center for Conflict Resolution ("PICCR") in accordance with the PICCR Arbitration Rules in force at the time of the commencement of the arbitration ("PICCR Arbitration Rules"), which rules are deemed incorporated by reference in this clause.

The arbitration shall be conducted by one or more arbitrators to be appointed in accordance with the PICCR Arbitration Rules.

The seat of the arbitration shall be [the Philippines].

The language of the arbitration shall be [English].

This arbitration agreement shall be governed by the laws of [the Philippines]."

4.3.2 Arbitration Procedures under PICCR

²² <https://piccr.com.ph/clauses.php>

Arbitration procedures administered by the PICCR are as follows.



PICCR's detailed arbitration procedures can be found on the PICCR website²³. In addition, the "PICCR 2019 Handbook of Arbitration Rules" sets out rules on emergency arbitration and expedited procedures²⁴.

5 Recognition and Enforcement of Arbitral Awards in the Philippines

5.1 Introduction

Domestic arbitral awards are recognized and enforced in accordance with Article 23 of the Arbitration Law through the RTC. If the RTC upholds the arbitral award, it may be enforced in the same manner as a domestic judgment in the Philippines (Article 40, ADR Act).

As for foreign arbitral awards, the Philippines became a signatory to the Singapore Convention in 2019. Therefore, the enforcement of foreign arbitral awards is now subject to the uniform procedures set forth in the Convention. However, since the Philippines has not yet ratified the Convention, the provisions of UNCITRAL shall be followed in the meantime.

Foreign arbitral awards are recognized and enforced in accordance with Article 35 of the UNCITRAL Model Law (Article 40 of the ADR Act). Therefore, the same procedures as the

²³ <https://piccr.com.ph/rules.php>

²⁴ *ibid*

UNCITRAL Model Law are used for foreign arbitral awards, and the original or certified copy of arbitral award and arbitration agreement and their translation (if not in English) are required (Article 35(2) of the UNCITRAL Model Law). The recognition and enforcement of foreign arbitral awards are categorized according to whether the country is a member of the New York Convention or not, and it is affirmatively stipulated that foreign arbitral awards in countries that are members of the New York Convention will be processed by the RTC in accordance with the rules of the Supreme Court (Article 42 of the ADR Act). With regard to foreign arbitral awards in countries that are not members of the New York Convention, it is only stated that it is possible to recognize and enforce arbitral awards on the grounds of comity (Article 42 of the ADR Act).

On the other hand, an arbitral award by the CIAC can be enforced without the approval of the RTC (Article 40 of the ADR Act).

Article 12 of the ADR Act provides for the recognition and enforcement of arbitral awards and the revocation of arbitral awards in international arbitration. The party asserting the refusal is responsible for proving the following grounds for refusal of the recognition and enforcement of an arbitral award.

- (i). the party is incompetent or the arbitration agreement is not valid;
 - (ii). there is a defect in service with respect to the appointment of an arbitrator or other arbitral proceedings;
 - (iii). the arbitral award goes beyond the matters alleged in the award;
 - (iv). the composition of the arbitrators or the arbitration procedure differs from the arbitration agreement;
 - (v). the arbitral award is not finalized or is annulled; or
- the court finds the following reasons
- (1) the subject matter of the dispute is not suitable for settlement or resolution under the laws of the Philippines; or
 - (2) the approval or execution is contrary to public order and morals under Philippine law

5.2 Case in which recognition and enforcement was approved

The case of *Mabuhay Holdings Corporation, v. Sembcorp logistics limited*, (G.R. No. 212734, December 05, 2018), involves Mabuhay Holdings (Mabuhay) and Infrastructure Development & Holdings, Inc. (IDHI), which are both Philippine domestic corporations and Sembcorp Logistics Limited (Sembcorp), a company incorporated in Singapore.

The parties engaged in the venture of carrying passengers on a common carriage by inter-island fast ferry. Eventually, the parties entered to a Shareholders' Agreement (Agreement) setting out the terms and conditions governing their relationship with a view of a planned business expansion. The Agreement included an arbitration clause stating that the arbitration proceeding including the rendering of the award shall take place in Singapore.

Since the venture incurred losses, Sembcorp filed a Request for Arbitration before the International Court of Arbitration of the ICC after failure of Mabuhay and IDHI to pay the Guaranteed Return, as stated in the Agreement.

Upon receipt of a favourable Final Award from the ICC, Sembcorp filed a Petition for Recognition and Enforcement of a Foreign Arbitral Award before the RTC of Makati City, which dismissed the petition and ruled that the Final Award could not be enforced.

The case reached the Supreme Court, which ruled in favor of Sembcorp. In this ruling, the

court held that the rejection of a foreign arbitral award can only be based on the grounds enumerated in Article 5 of the New York Convention. Any other grounds should be disregarded by the RTC, and Mabuhay failed to establish these. Moreover, the Supreme Court upheld the Court of Appeals' ("CA") decision that the final award already settled the factual issue on whether Sembcorp acquired the advertised shares of stock in IDHI. Thus, RTC's contrary findings constituted an attack on the merits of the final award. In sum, the CA held that the court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of the law. It recognized the Final Award and remanded the case to the RTC for proper execution.²⁵

5.3 Case in which recognition and enforcement was approved

A case in which the recognition and enforcement of a foreign arbitral award was allowed after the ADR Act came into effect is *Tuna Processing, Inc. v. Philippine Kingford, Inc.* (G.R. No. 185582, February 29, 2012). In this case, a license agreement was concluded between the plaintiff (California company) and the defendant (Philippine company), but the plaintiff had not obtained the necessary permits and licenses to conduct business in the Philippines. A dispute arose, and the plaintiff filed for arbitration and obtained a favorable arbitral award. Thereafter, in order to enforce the arbitral award, the plaintiff filed a petition for recognition and enforcement with the Philippine Court on October 10, 2007. In response, the defendant filed a Motion to Dismiss, arguing that the plaintiff had violated the Philippine Companies Act and had not obtained the necessary permits and licenses in the Philippines.

The Philippine court dismissed the defendant's petition and granted recognition and enforcement on the grounds that the list of grounds in the Special ADR Rules are exclusive and violations of the Companies Act is not included and thus the judgment of the arbitral tribunal should be given weight since the parties agreed to arbitrate, in accordance with the spirit of the New York Convention²⁶.

6. Conclusion

As mentioned above, the Philippines is actively promoting arbitration as an alternative means of dispute resolution between parties. It is also worth noting that the PDRCI and PICCR offer online arbitration in response to the current restrictions due to the coronavirus epidemic.

In addition, the Philippines is striving to catch up with the international trend in arbitration, and with the introduction of new arbitral institutions such as the PICCR, enactment of laws allowing arbitration such as the Revised Corporation Code, and accession to the Singapore Convention, it is expected to become a credible and good option for arbitral proceedings soon.



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²⁵ G.R. No. 212734 - MABUHAY HOLDINGS CORPORATION, PETITIONER, VS. SEMBCORP LOGISTICS LIMITED, RESPONDENT.DECISION - Supreme Court E-Library (judiciary.gov.ph)

²⁶ G.R. No. 185582 (lawphil.net)

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