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OVERVIEW OF ARBITRATION IN THE PHILIPPINES

필리핀의 중재제도 고찰

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Key Words : arbitration statutes in the Philippines, applicable laws, domestic and international arbitration, UNCITRAL Model Law

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Ⅰ. Introduction

This short paper gives an overview of arbitration in the Philippines, with emphasis on the following issues, namely: (i) applicable laws; and (ii) a comparison between domestic and international commercial arbitration under the Arbitration Law and the UNCITRAL Model Law, respectively.

The following statutes govern arbitration in the Philippines:

i. Republic Act No. 386 (The Civil Code of the Philippines)
ii. Republic Act No. 876 (The Arbitration Law)
iii. Republic Act No. 9285 (The Alternative Dispute Resolution Act)
iv. The UNCITRAL Model Law on International Commercial Arbitration
v. Executive Order No. 1008 (Construction Industry Arbitration)

Ⅱ. Arbitration Statutes in the Philippines

1. The Civil Code (RA 386)

The Civil Code of the Philippines was enacted in 1950 to replace the Spanish Civil Code of 1889. The arbitration provisions in the Civil Code are contained in the chapters on Compromises and Arbitrations in Title XIV of the Code.[1] The Civil Code provisions on arbitration apply to all types of arbitration conducted in the Philippines, but they are so generally worded that they merely constitute general principles on arbitration rather than specific guidelines governing commencement, conduct and enforcement of arbitration proceedings and awards. The most important Civil Code provisions on arbitration are those that identify the types of disputes that may not be submitted to arbitration for public policy reasons.[2]

1) Arts. 2028 to 2046, Civil Code.
2) Art. 2035 of the Civil Code prohibits the arbitration of any matter involving the following:
(1) The civil status of persons;

2. The Arbitration Law (RA 876)

The Philippine Congress enacted RA 876 in 1953 "to afford the public a cheap and expeditious procedure of settling not only commercial but other kinds of disputes."[3] According to the Supreme Court, the law constituted a declaration of policy by Congress in favor of arbitration. With its approval, Congress had officially adopted the modern view that arbitration as an inexpensive, speedy and amicable method of settling disputes and as a means of avoiding litigation should receive every encouragement from the courts.[4] The law was patterned after the United States Federal Arbitration Act of 1925, and sought to provide a comprehensive framework for arbitrating disputes in the country. However, one of the limitations of RA 876 was that even after the Philippines became a signatory in 1958 to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), the law was not amended to incorporate the obligation undertaken by the Philippines under the New York Convention to recognize the binding character of foreign arbitral awards and enforce them in accordance with the rules of procedure in force in the Philippines, subject only to the defenses provided in Article V of the Convention. [5] Because of the failure to timely update RA 876, the courts, when confronted with a petition to enforce a foreign arbitral award, oftentimes treated such award as a foreign judgment, [6] which became subject to defenses available under the Rules of Court against foreign judgments. [7]

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

On the other hand, Art. 2034 of the Civil Code allows arbitrations to be conducted on issues involving the civil liability for a criminal offense, but not the criminal offense itself.

Also, labor and employment disputes are also not considered arbitrable because by law, it is the National Labor and Relations Commission that has exclusive and original jurisdiction over these disputes. (Sec. 3, RA 876, as amended by the Labor Code of the Philippines).

3) Eastboard Navigation Ltd. vs. Juan Ysmael & Co., Inc., September 10, 1957; 102 Phil. 1, 17.

4) Ibid.

5) Art. III, New York Convention.

6) See, for example, Nagarmull vs. Binalbagan-Isabela Sugar Company, Inc., G.R. No. L-22470, May 28, 1970, where the Supreme Court reversed the decision of the Court of Appeals allowing the enforcement of a foreign arbitral award issued by the Tribunal of Arbitration of the Bengal Chamber of Commerce. In reversing the Court of Appeals, the Supreme Court ruled that the award "is based upon a clear mistake of law and its enforcement will give rise to a patent injustice."

7) Under Rule 39, Sec. 48 of the Rules of Court, which applies to foreign judgments in general:

"Sec. 48. Effect of foreign judgments or final orders. - The effect of a judgment or a final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon

3. The Alternative Dispute Resolution Act (RA 9285) and the UNCITRAL Model Law (Model Law)

The Philippine Congress enacted RA 9285 in 2004 for the purpose of providing comprehensive support to the resolution of disputes outside the judicial system. [8] The most important contribution of RA 9285 to Philippine arbitration practice is its adoption of the UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") to form part of Philippine law.[9] Consequently, all international commercial arbitration proceedings conducted in the Philippines, as well as applications for recognition, enforcement or refusal of foreign arbitral awards, are now governed by the Model Law.[10]

Through RA 9285, the Philippines has adopted a dual system of arbitration, in which different laws govern arbitration proceedings conducted in the Philippines depending on whether the arbitration is classified as international, non-international, or specialized.

In order to determine which arbitration law applies, it is helpful for a party seeking to arbitrate in the Philippines to first refer to RA 9285 since it sets out the legal framework for

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the title to the thing; and

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law or fact."

8) Sec. 2, RA 9285 provides:

"Sec. 2. Declaration of Policy. - It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time."

9) RA 9285, Sec. 19 provides:

"Sec. 19. Adoption of the Model Law on International Commercial Arbitration. - International commercial arbitration shall be 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, copy of which is hereto attached as Appendix A."

10) Art. 1(2), Model Law, in relation to RA 9285, Sec. 19.

Art. 1(2) provides:

"(2) The provisions of this law [the Model Law], except Articles 8 [arbitration agreement and substantive claim before the court], 9 [arbitration agreement and interim measures by court], 35 [recognition and enforcement] and 36 [grounds for refusing recognition and enforcement], apply only if the place of arbitration is the territory of this State."

arbitration, provides the necessary guidance for the parties, and identifies the applicable statute. If the arbitration is in the nature of a domestic non-international proceeding,[11] (i.e., a "domestic arbitration") RA 9285 stipulates that the same shall be governed by RA 876.[12] On the other hand, if the arbitration is classified as a domestic international proceeding,[13] (i.e., an "international arbitration") RA 9285 provides that the UNCITRAL Model Law shall be the governing law.[14] In the case of foreign arbitral awards, RA 9285 likewise points to the UNCITRAL Model Law as the applicable law as regards issues relating to their recognition, enforcement or refusal.[15]

4. Construction Industry Arbitration Law (Executive Order No. 1008)

The Philippines also has a specialized arbitration statute that applies solely to construction disputes. This is Executive Order No. 1008, which was promulgated in 1985. Under this law, all disputes between parties involved in construction in the Philippines shall fall within the exclusive jurisdiction of the Construction Industry Arbitration Commission (CIAC) for as long as the parties entered into an agreement to arbitrate.[16] CIAC's exclusive jurisdiction is

11) A domestic non-international arbitration proceeding is an arbitration that is not international within the meaning of Art. 1(3) of the UNCITRAL Model Law on Arbitration (Sec. 32, RA 9285).

12) Sec. 32, 9285. In addition, by express provision of RA 9285, the provisions in the UNCITRAL Model Law concerning

13) A domestic international arbitration proceeding is one where one of the elements of internationality stated in Art. 1(3) of the UNCITRAL Model Law are present. Under Art. 1(3), "an arbitration is international if:
(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
(b) one of the following places is situated outside the State in which the parties have their places of business:
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
(iii) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country."

14) Sec. 19, RA 9285.

15) Sec. 19, RA 9285.

16) EO 1008, Sec. 4 provides:
"Sec. 4. 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. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
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

re-affirmed in Secs. 34 [17] and 35 [18] of RA 9285. [19]

According to the Supreme Court, EO 1008 was issued "in recognition of the pressing need for an arbitral machinery for the early and expeditious settlement of disputes in the construction industry." [20] In another case, it held that "[t]he basic objective of arbitration is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. The Executive Order was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a pubic policy the implementation of which is necessary and important for the realization of national development goals."[21]

One interesting thing to note about construction arbitration practice in the Philippines is that for as long as there is an agreement to arbitrate a dispute involving construction in the Philippines, the CIAC has jurisdiction to hear the dispute even if the parties to the construction agreement have specifically provided that disputes shall be submitted to arbitration before a different arbitral institution. This is because of a provision in the CIAC Rules of Procedure that says parties are deemed to have submitted to CIAC jurisdiction any construction dispute so long as their construction agreement contains an arbitration clause, even where the clause

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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."

17) EO 1008, Sec. 34 provides:
"SEC. 34. Arbitration of Construction Disputes: Governing Law. - The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

18) EO 1008, Sec. 35 provides:
SEC. 35. Coverage of the Law. - Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, quantity surveyor, bondsman or issuer of an insurance policy in a construction project. The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act."

19) In a paper written in 2004, Atty. Victor P. Lazatin, a CIAC arbitrator and current President of PDRCI, reported that "the CIAC has become one of the premier specialized arbitration institutions in the Philippines. From the time of its creation until 15 January 2000, at least two hundred thirty-five (235) cases have been filed involving an aggregate amount of P 7.22 billion (1 U.S. $ = roughly P 50). Of these 235 cases, 38 (or sixteen percent), involved foreign companies and/or subsidiaries of multinational companies."(See Arbitration in the Philippines, Victor P. Lazatin and Patricia Ann T. Prodigalidad, at http://www.aseanlawassociation.org/9GAdocs/w4_Philipines.pdf).

20) Chung Fu Industries (Phils). Inc. vs. Court of Appeals, 203 SCRA, 545 [1992].

21) Hi-Precision Steel Center, Inc. vs. Lim Kim Steel Builders, Inc., 228 SCRA 397.

stipulates reference to arbitration under a different arbitral institution or set of arbitral rules. [22] In a suit filed questioning the validity of this provision in the CIAC Rules, the Supreme Court ruled that the provision was valid. [23]

Ⅲ. Domestic Non-International Arbitration under the Arbitration Law

1. Scope of Arbitration

As mentioned above, domestic non-international arbitration (or simply, "domestic arbitration,") is governed by RA 876, as supplemented by selected provisions of RA 9285

22) Art. III, Sec. 1 of the CIAC Rules provides:
"Sec. 1. Submission to CIAC jurisdiction. - An arbitral clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of the CIAC.
An arbitration agreement or a submission to arbitration shall be in writing, but it need not be signed by the parties, as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration.
It may be in the form of an exchange of letters sent by post or telefax, telexes, telegrams or any other mode of communication."

23) China Chiang Jiang Energy Corporation vs. Court of Appeals, 30 September 1996. The China Chiang Jiang ruling was re-affirmed by the Supreme Court in the subsequent case of National Irrigation Administration vs. Court of Appeals, 318 SCRA 255 [1999]. In China Chiang Jiang, the Supreme Court held:
"A mere cursory reading of Section 1, Art. III of the CIAC Rules, as amended by Resolution 3-93 reveals no restriction whatsoever on any party from submitting the dispute for arbitration to an arbitral body other than respondent CIAC. On the contrary, the new Rule, as amended, merely implements the letter and spirit of the enabling law, Executive Order No. 1008, which vests jurisdiction upon the CIAC in the following manner:
"Section 4. 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. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration."
What the law merely requires for a particular construction contract to fall within the jurisdiction of CIAC is for the parties to submit the same to voluntary arbitration. Unlike in the original version of Sec. 1, as applied in the Tesco case, the law does not mention that the parties should agree to submit disputes arising from their agreement specifically to the CIAC for the latter to acquire jurisdiction over their disputes. Rather, it is plain and clear that as long as the parties 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., EO No. 1008" (China Chiang Jiang Energy Corp. vs. Court of Appeals).

and the UNCITRAL Model Law.[24] Under RA 876, parties may submit to arbitration any controversy existing between them[25] at the time of the submission, or may agree to submit by contract any future controversy thereafter arising between them. The agreement to arbitrate is considered valid, enforceable and irrevocable, save only upon such grounds as may exist at law for the revocation of any contract. [26] The proceeding is considered a domestic arbitration where none of the elements of internationality enumerated in Art. 1(3) of the UNCITRAL Model Law are present. [27]

2. Arbitration proceedings under domestic arbitration rules

How domestic arbitration proceedings are commenced depends on the arbitration agreement between the disputing parties. Where the disputants have agreed to submit any dispute to arbitration under the rules of a particular arbitration institution, or in accordance with a pre-agreed procedure, then those rules shall be followed, not only as regards the commencement of the proceedings, but as to the appointment of the arbitrators, arbitrator

24) Sec. 32, RA 9285. Sec. 32 provides that domestic arbitration shall be governed by RA 876, together with the following provisions of the UNCITRAL Model Law: Art. 8 [arbitration agreement and substantive claim before the court]; Art. 10 [number of arbitrators]; Art. 11 [appointment of arbitrators; Art. 12 [grounds for challenge]; Art. 13 [challenge procedure]; Article 14 [failure or impossibility to act]; Art. 18 [equal treatment of parties]; Art. 19 [determination of rules of procedure]; Art. 29 [decision-making by panel of arbitrators; Art. 30 [settlement]; Art. 31 [form and contents of award]; and Art. 32 [termination of proceedings]. Additionally, the following provisions of RA 9285 were also considered applicable to domestic arbitration: Sec. 22 [legal representation in international arbitration]; Sec. 23 [confidentiality of arbitration proceedings]; Sec. 24 [referral to arbitration]; Sec. 25 [interpretation of the Act]; Sec. 26 [meaning of "Appointing Authority"]; Sec. 27 [What functions may be performed by the "Appointing Authority"]; Sec. 28 [grant of interim measures of protection]; Sec. 29 [further authority for arbitrator to grant interim measures of protection]; Sec. 30 [place of arbitration]; Sec. 31 [language of arbitration].

25) Except for those matters that are considered not arbitrable under Philippine law (see footnote 3).

26) RA 876, Sec. 1. The grounds for revocation or nullifcation of a contract include mistake, violence, intimidation, undue influence, or fraud (Arts. 1330 and 1390, Civil Code). On the other hand, under Art. 1409 of the Civil Code, void contracts include (1) those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy; (2) those which are absolutely simulated or fictitious; (3) those whose cause or object did not exist at the time of the transaction; (4) those whose object is outside the commerce of men; (5) those which contemplate an impossible service; (6) those where the intention of the parties relative to the principal object of the contract cannot be ascertained; and (7) those expressly prohibited or declared void by law.

27) RA 9285, Sec. 32. Thus, the arbitration is considered domestic where either:
(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in the Philippines; or
(b) the place of arbitration is in the Philippines; or
(c) the place of contract performance is in the Philippines; or
(d) the parties have expressly agreed that the subject-matter of the arbitration agreement relates only to the Philippines.

challenges and the conduct of the entire arbitration proceedings. [28]

In the absence of any such agreement, and if the parties have an agreement to submit a future dispute to arbitration, the arbitration is commenced by the claimant sending a demand for arbitration to the other party. Such demand shall set forth the nature of the controversy, the amount involved, if any, and the relief sought, together with a true copy of the contract providing for arbitration. The demand must be served either personally 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.[29]

In the event the parties have entered into a submission agreement to submit an existing dispute to arbitration, arbitration is commenced by the claimant's filing of the submission agreement in court, setting forth the nature of the claim as well as the amount. [30] The same procedure applies where the respondent, after having received the demand for arbitration, ignores it or fails to submit his answer or statement of defense.[31] The court shall then, upon finding that an arbitration agreement exists, is then required to direct the parties to proceed to arbitration. In the event either party files any suit in court that involves any matter falling under an agreement to arbitrate or a submission agreement, the court shall stay the court action and direct the parties into arbitration. [32]

Where either or both parties have been unable to appoint one or more arbitrators, and the parties have not agreed to submit the dispute to arbitration before institutional arbitration rules, the appointment of the arbitrator/s concerned shall be made by an Appointing Authority in the person of the National President of the Integrated Bar of the Philippines (IBP) or his duly authorized representative. [33] In such a case, the IBP President also has the authority to rule

28) RA 9285, Sec. 26.
29) RA 876, Sec. 5 (a).
30) RA 876, Sec. 5 (c).
31) RA 876, Sec. 5(b).
32) RA 876, Secs. 6 and 7.
33) RA 9285, Sec. 26.

on arbitrator challenges if the challenged arbitrator either rejects or fails to respond to a challenge made by either party to his appointment. [34]

RA 876 sets certain timetables within which the arbitrators must act in the absence of a contrary agreement by the parties. Within five days from their appointment (if the parties reside in the same city or province), or within fifteen days from their appointment (if the parties reside in different provinces), the arbitrators must set a time and place for the hearing of the matters submitted to them and cause notice to be given to the parties. These hearings may be postponed or adjourned only by the parties' agreement.[35]

Arbitrators have the power to require any person to issue subpoenas and subpoenas *duces tecum*, and may require the retirement of any witness during the testimony of any other witness.[36] They are also 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 also have the power to conduct ocular inspections of any matter or premises in dispute.[37] In lieu of hearings, arbitrators may, with the parties consent, do a documents-only arbitration or any other procedure apart from oral hearings. [38]

However, arbitrators only have the power to decide only those matters which have been specifically submitted to them, and the terms of the award shall be confined to such disputes.[39]

Upon the issuance by the arbitrators of the award, any party may within one month from the time the award is made, petition the proper court for an order confirming the award. The court is then required to confirm the award unless it decides to vacate, modify or correct it based on such grounds as are provided in RA 876. [40]

3. Recourse against a domestic arbitral award

A party aggrieved by a domestic award has several options available in order to resist enforcement. These are [41]:

34) RA 9285, Sec. 27
35) RA 876, Sec. 12.
36) RA 876, Sec. 14.
37) RA 876, Sec. 15.
38) RA 876, Sec. 18.
39) RA 876, Sec. 20.
40) RA 876, Sec. 23.
41) RA 876, Sec. 24.

Filing a petition to vacate the award before the appropriate Regional Trial Court within thirty days from receipt of the award; [42] The only grounds allowable for seeking to vacate a domestic arbitral award are the following:

(a) The award was procured by corruption, fraud, or other undue means; or
(b) That there was evident partiality or corruption in the arbitrators or any of them; or
(c) 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 hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or
(d) 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.

In the event the 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.[43]

Filing a petition to modify or correct the arbitral award, also with the Regional Trial Court, and also within thirty days from receipt of the award. The allowable grounds for modifying or correcting an arbitral award are the following: [44]

(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; or
(b) Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; or
(c) Where the award is imperfect in a matter of form not affecting the merits of the

42) RA 876, Sec. 24.
43) RA 876, Sec. 24.
44) RA 876, Sec. 25.

controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the court.

The order may modify and correct the award so as to effect the intent thereof and promote justice between the parties.

Filing an appeal before the Court of Appeals solely on questions of law from any order of the Regional Trial Court vacating, modifying or correcting the arbitral award. [45]

Ⅳ. Domestic International Arbitration under the UNCITRAL Model Law

Domestic international commercial arbitration (simply, "international commercial arbitration,") is governed by the UNCITRAL Model Law, as amended by RA 9285. [46] The Philippines is one of the newest countries to adopt the Model Law for international commercial arbitration without making any significant changes. [47]

The Model Law tries to limit the instances where court intervention in an arbitration proceeding is permitted, but still permits the parties to seek court assistance in order to move the arbitration forward. Principally, court intervention is permitted only in the following instances[48]: (i) referral of the dispute to arbitration;[49] (ii) appointment of arbitrators if the parties, and subsequently, the Appointing Authority fail to act in a timely manner; [50] (iii) arbitrator challenges if the Appointing Authority likewise fails to act;[51] (iv) jurisdiction of the arbitral tribunal after the tribunal has determined that it has jurisdiction and either party elevates the issue to the court; [52] (v) assistance in taking evidence;[53] (vi) applications to set aside the arbitral award; [54] (vii) recognition of arbitration agreement;[55] (viii) recognition and

45) RA 876, Sec. 29.

46) RA 9285, Sec. 19.

47) The website of the United Nations Commission on International Trade Law (UNCITRAL) lists some 58 States at present (excluding individual states of the US), that have adopted the Model Law. Please refer to http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html.

48) Model Law, Art 5 provides that "[i]n matters governed by this law, no court shall intervene except where so provided in this law."

49) Model Law, Art. 8.

50) Model Law, Art. 11 in relation to RA 9285, Sec. 27.

51) Model Law, Art. 13, in relation to RA 9285, Sec. 27.

52) Model Law, Art. 16.

53) Model Law, Art. 27

enforcement of arbitral awards;[56] and (ix) applications for interim relief. [57]

There are several areas where the practice of international commercial arbitration differs significantly from domestic arbitration in the Philippines. For purposes of this short paper, we shall mention only five of the most significant. These include:

1. Jurisdiction of the arbitral tribunal

The power of the arbitral tribunal to rule on its own jurisdiction at the first instance, also known as the doctrine of *kompetenz-kompetenz*, is plain from a reading of Art. 16 of the Model Law. [58] Curiously, while RA 9285 [59] specifically included Articles 8, 10, 11, 12, 13, 14, 18 and 19 and 29 to 32 of the Model Law as those provisions that would similarly apply to domestic arbitration, Art. 16 was surprisingly not included. This may have been an oversight, as the adoption of these provisions was obviously meant to strengthen arbitration and fill in some gaps in the Arbitration Law. However, as it currently stands, the fact that Art. 16 was excluded from the Model Law provisions that were incorporated into domestic arbitration rules may give rise to arguments that challenges to arbitrator jurisdiction ought to be brought directly to the courts in domestic proceedings.

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54) Model Law, Art. 34.

55) Model Law, Arts. 8 and 9.

56) Model Law, Arts. 35 and 36.

57) Model Law, Art. 9; RA 9285, Secs. 28 and 29.

58) Art. 16 provides:

Article 16. Competence of arbitral tribunal to rule on its Jurisdiction.

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. 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.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he 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.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article 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 days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award."

59) RA 9285, Sec. 33.

2. Grounds for setting aside arbitral awards

The grounds justifying the setting aside of arbitral awards differ significantly depending on whether the arbitration is considered domestic or international. For domestic arbitration, the grounds refer mainly to arbitrator misconduct or lapses committed by the arbitrators. [60] On the other hand, the grounds to set aside international arbitration awards are those based on Art. V of the New York Convention.[61]

3. Correction /modification of arbitral awards

For domestic arbitration, the award may be modified or corrected by the court upon petition by a party on the following grounds:[62]

i. evident miscalculation of figures, or evident mistake in the description of any persons, things or property mentioned in the award;
ii. where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; or
iii. where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been in the commissioner's report, the defect could have been amended or disregarded by the court.

On the other hand, in international arbitration, correction or modification of the award by the court is not possible, since the only recourse to an arbitral award is an application for setting aside under Art. 34. However, the tribunal itself may make minor corrections (i.e., errors in computation, clerical errors, typographical errors or those of a similar nature. It may

60) These include the following grounds:
(a) The award was procured by corruption, fraud, or other undue means; or
(b) That there was evident partiality or corruption in the arbitrators or any of them; or
(c) 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 hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or
(d) 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. (RA 876, Sec. 24)

61) Art. 34(2), Model Law.

62) RA 876, Sec. 29.

also give an interpretation of a specific point or part of the award. [63]

4. Qualifications/ disqualifications of arbitrators

In domestic arbitration, there are a number of requirements that must be met in order for a person to qualify as an arbitrator. A prospective arbitrator must (i) be of legal age; (ii) in full-enjoyment of his civil rights; and (iii) know how to read and write; (iv) not be related by blood or marriage within the sixth degree to either party to the controversy; (v) not have any financial, fiduciary or other interest in the controversy or cause to be decided or in the result of the proceeding; (vi) not have any personal bias, which might prejudice the right of any party to a fair and impartial award. Such prospective arbitrator must not champion or advocate a party's cause, and there is a requirement to disclose should the arbitrator discover any circumstances likely to create a presumption of bias, or which he believes might disqualify him as an impartial arbitrator. [64]

On the other hand, in international arbitration, the only requirements are that a prospective arbitrator be impartial and independent, and he is required to disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence as soon as he is approached in connection with his possible appointment as arbitrator.[65]

5. Termination of the proceedings

In international arbitrations, the arbitral proceedings are concluded and the mandate of the tribunal ends upon the issuance of the final award,[66] subject only to the residual authority of the tribunal to make minor corrections,[67] to interpret the award[68], or to continue proceedings in the event of an application for setting aside, where the court suspends the application to give the tribunal to resume proceedings to address or eliminate the grounds for setting aside.[69]

63) Art. 33, Model Law.
64) RA 876, Sec. 10.
65) Art. 12(1), Model Law.
66) Model Law, Art. 32.
67) Model Law, Art. 33.
68) Model Law, Art. 33.
69) Model Law, Art. 34(4).

In domestic arbitrations, however, it is possible for the tribunal to maintain its mandate despite having issued the final award in a situation where a court vacates a new award and directs a new hearing before the same tribunal, although the court has discretion to appoint a new one selected in the manner provided in the suission contract or arbitration agreement. [70]

V. Conclusion

The enactment by the Philippine Congress of the ADR Act in 2004 has brought many wide-ranging changes to arbitration practice and procedure in the Philippines and would hopefully help bring the country in the mainstream of international arbitration practice. With the adoption of the UNCITRAL Model Law with hardly any significant changes and the incorporation of Model Law provisions into the law governing domestic arbitration, the Philippines has become even more arbitration-friendly, particularly in view of the policy statement in the ADR Act and the Arbitration Law recognizing the existence of public policy favoring alternative modes of dispute settlement. While the number of international arbitrations conducted in the country is still relatively small, it is hoped that with the strong pro-ADR policy expressed in the ADR Act and the many decisions of the Supreme Court favoring ADR generally and arbitration specifically, there will be in the next few years a growing volume of arbitration submissions in order to help foster the growth of international trade between the Philippines and its neighbors.

70) RA 876, Sec. 24.

국 문 요 약

필리핀의 중재제도 고찰

살바도 에스 판가 주니어

필리핀의 중재제도를 규정하고 있는 법령은 다음과 같다. 즉 필리핀 민법(법률 제386호), 중재법(법률 제876호), 대체분쟁해결법(법률 제9285호), 국제상거래중재에 관한 국제연합 국제상거래법위원회(UNCITRAL) 표준법 및 건설산업중재에 관한 대통령령(제1008호)이다.

2004년의 대체적 분쟁해결 제도(ADR) 에 관련된 필리핀 의회의 입법은 필리핀의 중재실무와 절차에 광범위한 변화를 가져 왔다. 또한 국제중재실무에서 필리핀에 많은 도움을 주었다. 다른 한편으로는 상당한 변화를 가진 UNCITRAL 표준법의 채택과 국내 중재를 관장하는 법률속에 표준법 조항을 편입함으로써 필리핀은 분쟁해결의 대체안으로써 정책결정의 실행에 대한 중재법의 인식과 ADR법에 있어서의 정책조문의 검토로 보다 실질적인 중재제도가 정착되는 기반을 조성하게 되었다.

국내에서 수행하고 있는 국제적인 중재는 아직까지는 비교적 적다고 생각된다. 그러나 ADR법 내에 규정된 강력한 ADR찬성정책과 ADR에 관대하고 특히 중재에 호의적인 대법원의 친중재적 판결로 인해 향후 수년내에 필리핀과 주변국과의 무역이 크게 증대될 것으로 전망된다.

주제어 : 필지핀 중재제도, 준거법, 국내외 중재, UNCITRAL 표준법,