

Philippines

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Litigation

1 What is the structure of the legal profession?

Any person who has been licensed as a member of the Philippine Bar and who is of good standing may practise law in the Philippines. Lawyers may represent clients before Philippine Courts or administrative agencies with quasi-judicial functions.

By constitutional fiat, the Supreme Court of the Philippines exercises disciplinary authority over attorneys.

Judges must be citizens of the Philippines and members of the Philippine Bar and of proven competence, integrity, probity and independence. A member of the Supreme Court must be at least 40 years of age and have been a judge of a lower Court or engaged in the practice of law in the Philippines for 15 years or more.

2 What is the structure of the Court system?

The regular Courts are organised into four levels. The first consists of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts. These are trial Courts that decide only particular types or classes of cases. The second level consists of Regional Trial Courts, which are trial Courts, but also have general jurisdiction over cases not within the jurisdiction of Courts of the first level or any other tribunal, and particular classes of cases. The third level is Court of Appeals which reviews cases from the Regional Trial Courts and quasi-judicial agencies. At the highest level is the Supreme Court which exercises appellate and review jurisdiction over cases decided by the Court of Appeals or Regional Trial Courts. As a rule, only questions of law may be raised before the Supreme Court.

3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

Judges are neutral, impartial arbiters who decide on questions of fact and law after hearing and considering the evidence submitted by the parties. There are no juries in the Philippine Court system.

Past judicial decisions of the Supreme Court are authoritative and precedent-setting, while those of the lower Courts and the Court of Appeals are merely persuasive.

4 What are the time limits for bringing civil claims?

Civil claims arising from a written contract, an obligation created by law, or a judgment, must be brought within 10 years from the time the right of action accrues. The prescriptive period for actions based upon an oral contract or a quasi-contract is six years, while the prescriptive period for those based on an injury to the plaintiff's rights or on quasi-delict is four years. All other actions with periods not fixed in the Civil Code or in other laws must be brought within five years from the time the right of action accrues.

5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

A civil action is commenced by filing an original complaint in Court. A summons and a copy or copies of the complaint are then served on the defendant or defendants in accordance with the Rules of Court (ROC). An exchange of pleadings between the parties occurs, and issues of fact and of law to be tried are identified. After the last pleading is filed, the plaintiff is obliged to set the case for pre-trial. At this time the possibility of amicable settlement is considered and ways of expediting resolution are explored (eg, resort to discovery procedures). Generally the parties are referred to

mediation at this stage to try to settle the case. If this is unsuccessful it proceeds to trial. After the trial, the parties may submit closing written memoranda, and the case is submitted for the judge's decision.

6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Parties are required to file with the Court and serve on each other a pre-trial brief containing:

- (i) a statement of their willingness to enter into an amicable settlement or submit to alternative modes of dispute resolution, indicating the desired terms of such settlement or submission;
- (ii) a summary of admitted facts and proposed stipulation of facts;
- (iii) the issues to be tried or resolved;
- (iv) the documents or exhibits to be presented, stating their respective purposes;
- (v) a manifestation that they have followed (or intend to follow) the discovery procedures of the ROC or referral of the case to commissioners; and
- (vi) the number and names of witnesses to be presented and a summary of their testimony.

Discovery procedures include:

- (i) depositions upon oral examination or written interrogatories;
- (ii) perpetuation of testimony prior to action pending appeal;
- (iii) written interrogatories to parties;
- (iv) written requests for admission of material documents or facts;
- (v) production or inspection of documents or other material matters; and
- (vi) physical and mental examination of persons.

Discovery by production or inspection of documents or other matters extends to any evidence, not otherwise privileged, material to any matter involved in the action in a party's possession, custody, or control.

Documentary and object evidence are offered after the presentation of a party's testimonial evidence. For evidentiary purposes, a properly authenticated electronic document is the functional equivalent of a written document. The examination and cross-examination of witnesses is done in open Court and under oath or affirmation.

7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The ROC fixes definite periods for the filing of pleadings. It is not uncommon for parties to apply to the Court for an extension. The parties must agree on the particular dates of trial which should be continuous and concluded within 90 days of commencement. As a matter of policy, postponements and adjournments are not granted, except on meritorious grounds. In practice, however, except in cases where summary procedure is required, hearings are scheduled approximately three weeks apart. As a result, it takes approximately two years to complete a trial. Intra-corporate matters and other special cases (eg, ejectment), must undergo summary procedure, and thus are decided within a shorter period.

Substantial changes to prescribed procedures are uncommon, but with Court approval the parties have flexibility to adopt procedures that suit the dispute. The ROC also permits summary judgments and judgments based on pleadings where actions are decided in an expedited manner.

8 What interim remedies are available to preserve the parties' interests pending judgment?

The ROC provides for the provisional remedies of preliminary attachment, preliminary injunction, receivership, replevin and support *pendente lite*. A writ of preliminary attachment is an order to the sheriff to attach or seize the property of the party against whom it is issued as may be sufficient to satisfy any judgment for the applicant. A preliminary injunction is an order requiring a party, Court, agency, or person to refrain from or to perform a particular act or acts. In receiverships, a receiver is generally appointed to preserve, administer or dispose of the property in litigation. Replevin is the remedy for the recovery of possession of personal property alleged to be wrongfully detained. The interim remedy of support *pendente lite* mandates the provision of financial support to the applicant party while the suit is pending.

9 What substantive remedies are available?

Substantive remedies include specific performance, injunctions (prohibitory or mandatory), accounting of profits, transfers of property, and/or the payment of compensatory damages. In certain cases, the Court may also order the payment of moral and exemplary damages, interest, attorneys' fees and costs. In general, the Court may grant such relief sought by the prevailing party as may be consistent with the established facts and applicable law.

10 What means of enforcement are available?

Generally, the prevailing party seeks a writ of execution after a final judgment is entered. The Court issues a writ of execution requiring the sheriff or other proper Court officer to whom the writ is directed to enforce it according to its terms. The sheriff or other proper officer invariably enforces judgments for money by immediate payment on demand, satisfaction by levy of personal and real properties, or garnishment of debts and credits. Judgments for specific acts are executed by conveyance or delivery of deeds, sale of real or personal property, delivery or restitution of real property, removal of improvements on property subject to execution, or delivery of personal property.

The losing party or other person against whom a judgment is being enforced is required to obey the writ of execution under pain of contempt. Proceedings may be heard for the application of his property and income towards the satisfaction of the judgment.

11 Does the Court have power to order costs? Are foreign claimants required to provide security for costs?

The Court generally orders the losing party to pay the costs of the suit. As a jurisdictional requirement, the plaintiffs must pay the prescribed docket fees for their action at its commencement, or within such reasonable period of time as may be granted by the Court. Applicants are invariably required to put up a bond when provisional remedies are sought.

There is no provision for requiring security for costs.

12 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

An appeal may be made on any ground that would warrant the reversal of the judgment or final order. The ROC prescribes specific periods for appeal, depending on the mode of appeal. An appeal is made to the Courts of the next higher level, and the decision of such Courts may be further appealed, generally, to the Courts of the next higher level.

An appeal generally stays the execution of the relevant judgment or final order, except judgments in actions for injunction, receivership, accounting and support. However, judgments or final orders may be executed even pending appeal. This is generally left to the Court's discretion. Decisions in intra-corporate matters and special cases (eg, ejection) by the Regional Trial Court are immediately executory, even pending appeal, unless the trial Court approves a bond filed by the judgment debtor or the appellate Court restrains the execution. Discretionary execution pending appeal may be further stayed upon the Court's approval of a bond filed by the judgment debtor for satisfaction of the judgment in the case that it is finally sustained in whole or in part.

13 To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

The Philippines employs the restrictive form of the doctrine of sovereign immunity. Philippine Courts distinguish between governmental or sovereign acts of foreign governments and acts that are proprietary or commercial in character. The immunity of states extends only to governmental or sovereign acts and not to private or proprietary acts.

14 What procedures exist for recognition and enforcement of foreign judgments?

The judgment of a foreign tribunal cannot be enforced by execution in the Philippines. For this to occur a suit must be brought upon the foreign judgment in Philippine Courts in order for enforcement. A confirmatory judgment may be refused in cases where the foreign Court lacked jurisdiction, failed to give proper notice to the defendant, or where there is evidence of fraud or collusion, or a clear mistake of fact or law.

15 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of the litigation/arbitration?

A contingency fee arrangement (or other fee arrangement based on the result of the litigation/arbitration) is not prohibited by law. It is valid provided that it is reasonable under the circumstances of the case.

Arbitration

16 Is the arbitration law based on the UNCITRAL Model Law?

Arbitration in the Philippines is governed by the relevant provisions of the Civil Code and by the Alternative Dispute Resolution Act 2004 (ADR Act). The ADR Act provides that international commercial arbitration is governed primarily by the UNCITRAL Model Law. Domestic commercial arbitration is governed primarily by the Philippine Arbitration Law, whose provisions are not patterned after the UNCITRAL Model Law. However, certain provisions of the UNCITRAL Model Law (ie, Articles 8, 10 to 14, 18, 19, 29 to 32) were expressly made applicable also to domestic arbitration. Arbitration of construction disputes continues to be governed primarily by the Construction Industry Arbitration Law.

17 What are the main national arbitration institutions?

The Construction Industry Arbitration Commission has original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. The Philippine Dispute Resolution Center, Inc, and the arbitration arm of the Philippine Chamber of Commerce, provide commercial arbitration services. The Philippine National Committee of the International Chamber of Commerce was established in 1998.

18 Are there any restrictions on who may represent the parties to an arbitration?

Under the ADR Act, a party may be represented by any person of their choice in international commercial arbitrations and domestic arbitrations in the Philippines. However, it is not clear whether the Philippine Supreme Court will allow Philippine counsel to represent a party in a domestic arbitration where the dispute is governed by Philippine Law. Under the ADR Act, only those admitted to the practice of law in the Philippines may appear as counsel in any Philippine Court, or any other quasi-judicial body, whether or not such appearance is in relation to an arbitration in which they appear.

19 What are the formal requirements for an enforceable arbitration agreement?

In domestic arbitration, an agreement to arbitrate a current or future controversy between the parties must be in writing and subscribed by the party sought to be charged, or by their lawful agent. For international commercial arbitration, an arbitration agreement may be an arbitration clause in a contract or a separate agreement. It must be in writing; in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement. It may also be in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. Reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided the contract is in writing and the reference is such as to make that clause part of the contract.

20 Can the Court refuse to stay litigation if there is a valid arbitration clause?

A Court before which an action is brought, in a matter which is the subject 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. The only exception is where the Court finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

21 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

If parties fail to determine the number of arbitrators and the procedure for their appointment, three arbitrators shall be appointed. Each party shall appoint one arbitrator, and the two arbitrators appointed shall appoint the third arbitrator. If a party fails to appoint an arbitrator within 30 days from receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days from their appointment, the appointment shall be made by the “appointing authority” provided by law. Under the ADR Act, the “appointing authority” means 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; or, in *ad hoc* arbitration, the National President of the Integrated Bar of the Philippines or their duly authorised representative.

22 Are restrictions placed on the right to challenge the appointment of an arbitrator?

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to their impartiality or independence, or if they do not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by them, or in whose appointment they have participated, only for reasons of which they become aware after the appointment has been made. The parties are free to agree on a procedure for challenging an arbitrator. In the absence of an agreement, a party who intends to challenge an arbitrator shall, within 15 days of becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance that give rise to justifiable doubts as to an arbitrator’s impartiality or independence, send a written statement of the reasons for the challenge to the arbitral tribunal.

23 Does the domestic law contain substantive requirements for the procedure to be followed?

The ADR Act prescribes the basic procedure to be followed in the arbitration proceedings. Subject to the provisions of the ADR Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. If the parties fail to agree, the arbitral tribunal may generally conduct the arbitration, including determining the admissibility, relevance, materiality and weight of any evidence, in such manner as it considers appropriate.

In domestic arbitration, arbitrators are mandated to set a time and place for the hearing of the matters submitted to them, and must cause notice to be given to each of the parties within a specified period. Before hearing any testimony, arbitrators must be sworn, by any officer authorised by law to administer an oath, 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. Witnesses must also take an oath before the arbitrator. Arbitrators are required to attend every hearing in that matter and hear all allegations and proofs of the parties. Arbitrators shall receive as exhibits in evidence any document that the parties may wish to submit. At the close of the hearings, the arbitrators shall specifically inquire from all parties whether they have any further proof or witnesses to present.

In international commercial arbitration, the arbitral tribunal holds oral hearings for the presentation of evidence or for oral argument at an appropriate stage of the proceedings, if so requested by a party, unless the parties have agreed that no hearings shall be held. The parties shall be given sufficient advance notice of any hearing and meeting of the arbitral tribunal to inspect goods, other property, or documents.

24 On what grounds can the Court intervene during an arbitration?

A party aggrieved by the failure, neglect or refusal of another to perform under a written arbitration agreement may petition the proper Regional Trial Court for an order directing that such arbitration proceed in the manner provided for in the agreement. The Court also has the authority to appoint arbitrators when the parties to the contract or submission

are unable to agree upon a single arbitrator, or when either party to the contract fails or refuses to name his arbitrator within 15 days of receipt of the demand for arbitration. A party may ask the Court to decide on a challenge against an arbitrator if the arbitral tribunal rejects the challenge. A party may also ask the Court to decide on the termination of the mandate of an arbitrator who is unable to perform their functions, or for other reasons fails to act without undue delay, if the arbitrator does not withdraw from office and the parties do not agree on the termination of the mandate. (In international commercial arbitration, a party may apply to the proper Court regarding the appointment of an arbitrator, the challenge against an arbitrator, and the termination of the mandate of an arbitrator, only when the “appointing authority” under the ADR Act, who is supposed to decide on these, fails or refuses to act within 30 days from receipt of the request.) A party may request the proper Court to grant an interim measure of protection before the constitution of the arbitral tribunal. A party may also apply to the proper Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

Judicial action is provided for confirming, vacating, modifying, or correcting the arbitral award (although, in international commercial arbitration, judicial action is provided for setting aside an arbitral award, or for its recognition and enforcement).

25 Do arbitrators have powers to grant interim or conservatory relief?

A party may request the arbitrators for an interim or provisional relief:

- (i) to prevent irreparable loss or injury;
- (ii) to provide security for the performance of any obligation;
- (iii) to produce or preserve any evidence; or
- (iv) to compel any other appropriate act or omission.

A party may also request the arbitral tribunal to order any party to take interim measures of protection as may be necessary in respect of the subject of the dispute in arbitration. These measures include preliminary injunctions directed against a party, appointment of receivers or detention, preservation, or inspection of property that is the subject of the dispute in arbitration.

26 When and in what form must the award be delivered?

In domestic arbitration, unless the parties stipulated otherwise in writing, the arbitrators must render the award within 30 days of the closing of the hearings. This period may be extended by mutual consent. There is no express rule on when an award must be delivered in international commercial arbitration.

The award must be in writing, signed and acknowledged by a majority of the arbitrators. The reason for any omitted signature must also be stated. The award shall outline the reasons upon which it is based, unless the parties have agreed otherwise or the award is on agreed terms. The award shall also state the date and place of arbitration. Each party shall receive a copy of the award.

27 On what grounds can an award be appealed to the Court?

The ADR Act provides specific grounds for the Court to set aside an arbitral award in a domestic arbitration. They include cases of corruption, fraud, partiality, misconduct, and disqualification of arbitrators. The ADR Act also provides specific grounds for the Court to modify or correct an arbitral award— including miscalculation of figures, mistake in the description of a person, thing or property referred to in the award, an award upon a matter not submitted for arbitration, and imperfect form of the award. The Courts shall disregard any other ground raised against an arbitral award in a domestic arbitration.

In the case of international commercial arbitration, a Court may set aside an arbitral award when the arbitration agreement is invalid; when a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case. Other reasons include situations where an award deals with a dispute which is not arbitrable or contains decisions on matters beyond the scope of the submission to arbitration;

the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the parties' agreement or the law; the subject matter of the dispute is incapable of settlement by arbitration under the law, or when the award is in conflict with the public policy of the Philippines.

An appeal may be taken from the Court order confirming, modifying, correcting or vacating an award to the Court of Appeals through *certiorari* proceedings, but such appeals shall be limited to questions of law.

28 What procedures exist for enforcement of foreign and domestic awards?

At any time within one month after an arbitral award is issued in a domestic arbitration, any party to the arbitration may apply to the appropriate Regional Trial Court for an order confirming the award. The Court must grant the order unless the award is vacated, modified or corrected (see above). Upon the granting of an order that confirms, modifies or corrects an award, judgment may be entered. The judgment may then be enforced as an ordinary judgment of that Court.

For foreign arbitral awards, the New York Convention applies, subject to the commercial and reciprocity reservations. The basic procedure for recognition and enforcement is as laid down by the Convention. The recognition and enforcement of non-Convention awards is in accordance with the procedural rules promulgated by the Supreme Court. The latter may, on grounds of comity and reciprocity, recognise and enforce a non-Convention award as a Convention award.

29 Can a successful party recover its costs?

For domestic arbitration, the ADR Act expressly provides that arbitrators have the power to grant, in the award, expenses of any party against another party, when it is deemed necessary. There is no similar provision for international commercial arbitration.

Alternative dispute resolution

30 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

During pre-trial in civil actions, the parties are required to state in their pre-trial briefs whether or not they are willing to submit to alternative modes of dispute resolution. To this extent, therefore, the parties to a litigation are obliged to consider the possibility of alternative dispute resolution, but they are not necessarily required to submit to it. However, in the pre-trial stage, the parties are generally referred to mediation to try to settle the case amicably. In arbitrations, parties are not required to consider or submit to alternative dispute resolution before or during proceedings, but may do so. In fact, in a domestic arbitration, an arbitrator is expressly prohibited from acting as a mediator in the same proceedings, and all negotiations towards settlement of the dispute is expressly mandated to take place without the presence of arbitrators.

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