Commercial Arbitration in the Philippines

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INTRODUCTION

This essay will give an overview of arbitration law in the Philippines. The discussion will be limited to commercial arbitration. Special arbitration laws[1] will not be discussed. They will be discussed only by way of tracing the evolution of arbitration law in the Philippines. Since the objective is to give the reader an overview, this essay will deal only with the basics of arbitration law. Thorny issues or the finer legal questions on arbitration will be avoided.

Part I will give some historical perspective. Part II will deal with Republic Act (R.A.) No. 876, which is the principal arbitration law in the Philippines. Part III will deal with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which the Philippines is a party. Part IV will deal with recent developments in arbitration law.

I. HISTORICAL BACKGROUND

A. Pre-Hispanic Period

Before the Spaniards discovered the Philippines in 1521, arbitration, as a mode of settling disputes, was practiced in *barangays* and other forms of village settlements. In those early days, the *datu* (chieftain) settled the disputes of his constituents, and his decisions were accepted as having authority and finality. Also, the elders and parents acted as arbiters of family quarrels and their decisions were binding upon the parties concerned.[2]

B. Spanish Regime

During the Spanish regime, the *Codigo Civil* of Spain was extended by a Royal Decree in 1889 to the Philippines. This Code specifically provided for

1. The essay will not deal with the arbitration of construction disputes, Executive Order No. 1008, *barangay* arbitration under the Local Government Code of 1991, arbitration of disputes among government agencies and entities under Presidential Decree No. 242 and voluntary and compulsory arbitration under Presidential Decree No. 442, the Labor Code of the Philippines.
2. *See generally* RUFUS B. RODRIGUEZ, PHILIPPINE ARBITRATION LAW AND THE UNCITRAL MODEL LAW (1996); JOSE K. MANGUIAT, COMMERCIAL ARBITRATION, VOLUNTARY ARBITRATION: WHYS AND WHEREFORES (1987).

arbitration in Book IV, Title XII, "*De los transacciones y compromisos*" (compromise and arbitration).

The provisions on compromises under the *Codigo* Civil were made applicable to arbitration under articles 1820 and 1821 of the same code.[3]

The Spanish Civil Code contained these provisions and more elaborate provisions governing the amicable adjustment of controversies out of court. The procedure for this kind of litigation was minutely outlined in some articles of the *Ley Enjuicinamente de Civil*.[4] Under this law, arbitration was done before friendly adjusters (*juicio de amigables componedores*). The adjusters had to be men who could read and write. The number had to be odd and could not exceed five. A third person could not be given the power to name them. Unless the agreement or submission was executed before a notary public, it was void. An adjuster could be challenged if he had an interest in the subject-matter of the suit or was manifestly antagonistic to either party, provided, the cause for challenge arose or came to the knowledge of the party after the appointment. If the adjuster challenged refused to withdraw, the matter had to be tried in the Court of First Instance where the adjuster resided. The decision of the adjuster was void if not made before a notary public. The aggrieved party could, within sixty days, appeal the decision to the Supreme Court of Spain, on the ground that the judgment was rendered outside of the time limit therefor or that it decided questions not submitted. If no appeal was made, the judgment of the adjusters was to be executed by the Court of First Instance of the district where the decision was made in the same manner as other judgments.[5]

C. American Regime

The Spaniards ceded the Philippines to the Americans under the Treaty of Paris in 1898. After the Americans took over, the Code of Civil Procedure was enacted on August 7, 1901. This Code abrogated the *Ley de Enjuicimiento Civil* which contained provisions on friendly adjusters. The Code of Civil Procedure did not mention arbitration as a mode of settling disputes. The effect of the enactment of the Code of Civil Procedure on arbitration was elucidated in the case of *Cordoba v. Conde*.[6] In this case, the parties formed a mercantile partnership. The contract provided that all doubts, disputes, or disagreements which might arise between the partners would be decided by friendly adjusters as provided for by the *Ley de Enjuicimiento Civil*. When differences arose, the plaintiff brought an action for the dissolution of the partnership without first

3. *See* Chung Fu Industries (Phils.), Inc. v. Court of Appeals, 206 SCRA 545 (1992).
4. Mariano P. Marcos, *Concept, Legal Basis and Scope of Commercial Arbitration, in* COMMERCIAL ARBITRATION 5 (Proceedings of the Symposium on Commercial Arbitration, 1981).
5. *See* Cordoba v. Conde, 2 Phil. 445 (1903).
6. *Id.*

resorting to friendly adjusters. The trial court held that it had no jurisdiction to try the case. The Supreme Court held that since the method agreed upon by the parties had been abolished by the Code of Civil Procedure, the plaintiff was at liberty to resort to the court for the resolution of the dispute at hand.[7]

Earlier, in *Wahl and Wahl v. Donaldson, Sims & Co.*,[8] the petitioners leased a certain ship to the respondents for a term of six months. The contract provided for arbitration as follows:

> If there should arise any difference of opinion between the parties to this contract, whether it may be with reference to the principal matter or in any detail, this difference shall be referred for arbitration to two competent persons in Hongkong, one of which shall be selected by each of the contracting parties, with the power to call in a third party in the event of a disagreement; the majority of the opinions will be final and obligatory to the end of compelling any payment. This award may be made a rule of the court.[9]

The question presented for determination was whether a provision of this character was valid. The Supreme Court invalidated the arbitral agreement for being contrary to public policy as it ousted the courts of their jurisdiction under the law.

In 1907, the Supreme Court softened its stance against arbitration as a mode of settling disputes. In *Chang v. Royal Exchange Assurance Corporation of London*,[10] which involved an arbitration clause in a fire insurance policy, the Supreme Court held that where the parties agree that arbitration was a condition precedent to court litigation, a court action that failed to comply with said agreement must be dismissed for being premature.[11]

Judicial endorsement of arbitration was strengthened in *Allen v. Province of Tayabas*.[12] In this case, the Province of Tayabas entered into a contract for the construction of five concrete bridges. Four of the bridges were accepted and paid for but the fifth one was rejected for not conforming with specifications. The contractor thereafter brought an action for the recovery of the unpaid balance. The contract between the parties provided for certain conditions precedent to the contractor's right to obtain payment. The Supreme Court viewed this as a species of arbitration which the parties had agreed upon and, therefore, it would be highly improper for courts to annul such agreements. The Supreme Court held that, unless the arbitration agreement absolutely closed the door to judicial review, it would be enforced by the court and only

7. MANGUIAT, *supra* note 2, at 47.

8. 2 Phil. 301 (1903).

9. *Id.* at 302.

10. 8 Phil. 399 (1907).

11. *Id.* at 400.

12. 38 Phil. 356 (1918); *See also* Manila Electric Co. v. Pasay Transportation Co., 57 Phil. 600 (1932).

with great reluctance would the Court interfere with or nullify the action of the arbitrator.[13]

D. Post-American Regime

1. Civil Code of the Philippines

In 1950, or four years after Philippine Independence from the Americans was declared, the present Civil Code took effect. Taking its cue from the Spanish experience, the Philippine Congress again adopted arbitration as part of the Philippine statute books. Thus, the present Civil Code[14] contains a chapter on arbitration consisting of five (5) articles, Articles 2042 to 2046 thereof. This is under Title XIV, Book IV of the Civil Code. Article 2043 also expressly adopted the provisions on compromise as part of the arbitration law. Because of this reference, certain disputes are non-arbitrable under present Philippine law. For example, the civil status of persons, validity of a marriage or legal separation, any ground for legal separation, future support, the jurisdiction of courts, and future legitime are non-arbitrable matters under Philippine law.[15]

2. The Arbitration Law

The Civil Code did not contain the procedure to be followed in arbitration. For this reason, Congress, in 1953, enacted Republic Act No. 876, otherwise known as The Arbitration Law. By enacting The Arbitration Law, Congress officially adopted the policy that arbitration should receive every encouragement as a method of settling disputes.[16]

3. New York Convention

In 1958, the United Nations adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, more popularly known as the New York Convention. This Convention, in substance, binds the Contracting States to recognize and enforce not only an arbitral agreement but more importantly, arbitral awards rendered in another contracting State. The procedure for recognition and enforcement is summary in nature, the pervading spirit being to favor arbitration to the greatest extent possible.

13. *Allen*, 38 Phil. at 364, *citing* Wahl and Wahl v. Donaldson, Sims & Co., 2 Phil. 301 (1903).

14. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE].

15. CIVIL CODE, art. 2035.

16. *See* Eastboard Navigation Ltd. v. Juan Ysmael & Co., Inc., 102 Phil. 1 (1957); Chung Fu Industries (Phil.), Inc. v. Court of Appeals, 206 SCRA 545 (1992).

In 1965, the Philippine Senate, by virtue of Senate Resolution No. 71, concurred in the ratification by the President of the Philippines of the New York Convention.

E. Marcos Regime

For all its faults, the Marcos regime, unknown to many, significantly strengthened arbitration as a mode of resolving disputes. Less than a year after the declaration of Martial Law, or on 9 July 1973, then President Marcos issued Presidential Decree No. (P.D.) 242 which provided for arbitration as a means of resolving disputes between or among government agencies, instrumentalities, and government-owned and controlled corporations. Our Supreme Court upheld the constitutionality of this law in *PHIVIDEC v. Velez*.[17] In upholding the law, the Supreme Court pointed out that the procedure prescribed by the law is as desirable as the arbitration procedures provided in R.A. 876.[18]

P.D. 242 was followed by P.D. 442, otherwise known as the Labor Code of the Philippines, issued on 1 May 1974. This Decree, which codified all labor laws of the country, provided for compulsory and voluntary arbitration of labor disputes.

In 1978, P.D. 1508 was issued providing for a system of settling disputes at the *barangay* or *barrio* level. This system provided for conciliation and arbitration as a mode of settling disputes among residents of the same *barangay*. This law provides that at any time during the conciliation proceedings, the parties may agree in writing to submit their dispute to arbitration by the *barangay* captain or *pangkat*.[19] No court case could be instituted for covered cases unless the parties had undergone the conciliation proceedings prescribed by this law.[20]

Still later, or in 1985 before his ouster in 1986, President Marcos issued Executive Order No. 1008 creating the Construction Industry Arbitration Commission (CIAC) and vested it with original and exclusive jurisdiction over disputes arising from or connected with government or private construction contracts.

F. Post-EDSA Revolution

In 1986, the Filipino people staged the world-renowned bloodless People Power Revolution that resulted to the overthrow of then President Marcos.

17. 199 SCRA 405 (1991).
18. *Id.* at 408-09.
19. Katarungang Pambarangay Law, Presidential Decree No. 1508, § 7.
20. *Id.* § 6.

Although no new arbitration law has been enacted since then, this period has seen the growing acceptance of arbitration as a mode of settling disputes.

Judicial precedents laid down by the Supreme Court during this period attest to this point. For example, in *Chung Fu Industries*, the parties expressly agreed that the arbitral judgment shall be "final and unappealable" and that "there shall be no judicial recourse if either party disagrees with the whole or part of the arbitrator's award."[21] After going through arbitration, one of the parties moved to reconsider the arbitral award in court claiming that the arbitrator committed grave error. Under the previous regimes, the Supreme Court would have ruled that this kind of arbitral agreement is void for ousting the courts of their jurisdiction.[22] The Supreme Court, however, did not declare the arbitral agreement ineffective. What was declared void was only the clause that makes the arbitral award unappealable. Also, in *B.F. Corporation v. Court of Appeals*,[23] the Supreme Court categorically recognized that the arbitration's potentials as one of the alternative dispute resolution methods are now the wave of the future in international relations worldwide. As late as 1999, the Supreme Court, in *Home Bankers Savings & Trust Company v. Court of Appeals*, stated:

> At this point, we emphasize that arbitration, as an alternative method of dispute resolution, is encouraged by this Court. Aside from unclogging judicial dockets, it also hastens solutions especially of commercial disputes. The Court looks with favor upon such amicable arrangement and will only interfere with great reluctance to anticipate or nullify the action of the arbitrator. [24]

During this period, the Philippines has seen the advent and increasing use of institutional arbitral fora. For example, in 1992, the Philippine Clearing House Corporation (PCHC), composed of banks as members, created an Arbitration Committee to resolve disputes involving checks cleared through the PCHC.

In 1996, the Philippine Chamber of Commerce Committee on Arbitration was reorganized into a non-stock, non-profit organization known as the Philippine Dispute Resolution Center, Inc. (PDRCI). The PDRCI was created to provide dispute resolution services to the business community and the public at large. The PDRCI now has rules on domestic arbitration, international commercial arbitration, maritime arbitration rules, and rules on intellectual property disputes. The PDRCI has also entered into Cooperation Agreements with the Singapore International Arbitration Center, Korean Commercial Arbitration Board, and Indian Arbitration Council of Arbitration.

21. *Chung Fu Industries (Phil.), Inc.*, 206 SCRA 545 (1992).
22. *See, e.g., Cordoba*, 2 Phil 445 (1903); *Wahl*, 2 Phil 301 (1903).
23. 288 SCRA 267 (1998).
24. 318 SCRA 558, 568 (1999).

In the case of CIAC, at no point in its history has CIAC arbitration been as widely used as it is now. Out of the 313 arbitration cases filed with the CIAC since 1989, 74 cases were filed in the last three years.

Furthermore in November 1998, the International Chamber of Commerce of the Philippines (ICCP) was formed, envisioned to serve as the National Committee under the Rules of Arbitration of the International Chamber of Commerce.

Lastly, there were legislative initiatives[25] to adopt a new arbitration law that is more attuned with the times. One of this is Senate Bill No. 422[26] introduced by Senate President Franklin M. Drilon in the present Congress which will be discussed in more detail in Part IV of this paper.

II. The Arbitration Law

Republic Act No. 876, otherwise known as The Arbitration Law, is the basic arbitration law in the Philippines. It was enacted in 1953 in recognition of the need for a more speedy and efficient means of resolving disputes outside of the regular courts. It was meant to provide the procedure for arbitration proceedings in civil controversies.

R.A. 876 supplements, but does not supplant, the New Civil Code provisions on arbitration.[27] It expressly declares that the provisions of Chapters One and Two, Title XIV, Book IV of the Civil Code, shall remain in force.[28]

A. Arbitral Agreement

1. Consensual Nature

Arbitration is essentially consensual in nature. Under R.A. 876, for a dispute to be referred to arbitration, it is essential that two or more persons or parties submit the controversy to arbitration either by (a) agreeing, in the contract governing their relationship, to settle by arbitration a controversy thereafter arising between them[29] or (b) submitting the dispute to arbitration after the dispute has arisen.

Any person may enter into an arbitration or submission agreement. However, the court's approval is necessary where the arbitral or submission agreement is entered into by guardians, parents, absentee's representatives and

25. *See, e.g.*, S. 294, S. 580, H. R. 1985, 11th Cong. (2000); S. 442, 12th Cong. (2001).
26. 12th Cong. (June 30, 2001).
27. *See* Umbao v. Yap, 100 Phil. 1008.
28. The Arbitration Law, R.A. 876, § 31.
29. *Id.* § 2.

executors, or the administrator of a decedent's estate.[30] Where the arbitral or submission agreement is entered into by an agent, a special power of attorney from his principal is necessary.[31] Juridical persons may also enter into arbitration agreements, but they must be specifically authorized for the purpose.[32]

2. Form

The arbitral agreement must be in writing and duly subscribed to by the parties. However, it is not necessary that the contract must itself contain the arbitral clause. It is enough that it adopts or refers to a document containing an arbitration clause. This is in recognition of the fact that a contract need not be contained in a single document but may consist of several documents. Thus, in *B.F. Corporation,* the Supreme Court held:

> The formal requirements of an agreement to arbitrate are: (a) it must be in writing, and (b) it must be subscribed by the parties or their representatives. There is no denying that the parties entered into a contract that was submitted in evidence before the lower court. To "subscribe" means to write underneath, as one's name; to sign at the end of a document. That word may sometimes be construed to mean to give consent to or to attest.
>
> The Court finds these requisites complied with. The Articles of Agreement, which incorporates all the other contracts and agreements between the parties, was signed by both parties and duly notarized. The failure of SPI to initiate the "Conditions of Contract" would not affect compliance with the formal requirements for arbitration agreement because that portion of the agreement was included by reference in the Articles of Agreement.
>
> A contract need not be contained in a single writing. It may be collected from several different writings which do not conflict with each other and which, when connected, show the parties, subject, matter, terms, and consideration, as in contracts entered into by correspondence. A contract may be encompassed in several instruments even though every instrument is not signed by the parties, since it is sufficient if the unsigned instruments are clearly identified or referred to and made part of the signed instrument or instruments. Similarly, a written agreement of which there are two copies, one signed by each of the parties, is binding on both to the same extent as though there had been only one copy of the agreement and both had signed it.[33]

Furthermore, an agreement to arbitrate may be inferred from membership in an association whose rules prescribe arbitration as a mode for settling dispute among its members. For example, in *Associated Bank v. Court of Appeals,*[34] a case involving members of the Philippine Clearing House, the Supreme Court held that where the contending parties are members of an organization whose

30. *Id.* § 2; Civil Code, arts. 2032 & 2043.
31. Civil Code, art. 1878(3).
32. *Id.* arts. 2033 & 1878(3).
33. *BF Corporation,* 288 SCRA at 282-83.
34. 233 SCRA 137 (1994).

rules prescribe arbitration as a mode of settling disputes among its members, no member can resort to the courts against another member on a covered matter, without first complying with the arbitration process prescribed by the rules. The Supreme Court held:

> Under the rules and regulations of the Philippine Clearing House Corporation (PCHC), the mere act of participation of the parties concerned in its operations in effect amounts to a manifestation of agreement by the parties to abide by its rules and regulations. As a consequence of such participation, a party cannot invoke the jurisdiction of the courts over disputes and controversies which fall under the PCHC Rules and Regulations without first going through the arbitration processes laid out by the body.[35]

> Clearly, therefore, petitioner Associated Bank, by its voluntary participation and its consent to the arbitration rules cannot go directly to the Regional Trial Court when it finds it convenient to do so. The jurisdiction of the PCHC under the rules and regulations is clear, undeniable and is particularly applicable to all the parties in the third party complaint under their obligation to first seek redress of their disputes and grievances with the PCHC before going to the trial court.[36]

3. Autonomy of the Arbitral Agreement

An arbitral clause is considered separate or independent from the main contract. This is known as the autonomy principle in arbitration law. This means that the validity of the arbitral agreement must be distinguished from the validity of the agreement within which an arbitration clause is embodied. This is consistent with the presumption of divisibility or separability of contractual stipulations[37] in this jurisdiction. This autonomy principle is recognized not only by Section 6 of The Arbitration Law but also by the Supreme Court in *General Insurance and Surety Corporation v. Union Insurance Society of Canton, Ltd.*,[38] where the Supreme Court compelled the parties to arbitrate pursuant to their arbitral agreement despite the alleged nullity of the contract containing the arbitral clause. Indeed, in the recent case of *Del Monte Corporation-USA v. Court of Appeals*,[39] the Supreme Court stated that a "provision to submit to arbitration any dispute ... is itself a contract."

B. Arbitrable Disputes

Generally, all disputes are arbitrable under Philippine law. As a matter of public policy, however, there are disputes that cannot be arbitrated under Philippine law. For example, disputes regarding the civil status of persons, the validity of a

35. *Id.* at 142-43.
36. *Id.* at 145.
37. CIVIL CODE, art. 1420.
38. 179 SCRA 130 (1989).
39. G.R. No. 136154 (Feb. 7, 2001).

marriage or legal separation, any ground for legal separation, future support, the jurisdiction of courts, and future legitime cannot be submitted to arbitration.[40] Likewise, while the civil liability arising from an offense may be submitted to arbitration, such arbitration shall not extinguish the public action for the imposition of the legal penalty.[41]

Notably, R.A. 876 expressly excludes labor controversies from its operation.[42] This does not mean, however, that labor disputes cannot be arbitrated. On the contrary, the Labor Code of the Philippines provides for compulsory and voluntary arbitration of labor disputes.[43]

C. Scope of Arbitration

The scope of arbitration under Republic Act No. 876 may be as general as the parties wish it to be. The arbitral agreement is all-inclusive if it covers any and all disputes arising from or in connection with the contract.

The arbitral agreement can also be limited. For example, it may be restricted to questions arising out of valuations, appraisals, or other specified controversies between the parties.[44]

The question of whether a particular dispute comes within the arbitral clause depends on the terms thereof. This is illustrated by *Western Minolco Corporation v. Court of Appeals*,[45] which involves a series of contracts entered into between Western Minolco Corporation and Gregorian Mining Company for the operation by the former of the latter's mining claims. The arbitral clause was limited to: (a) the meaning, application, and effect of the agreement; and (b) the amount and computation of royalties, deductions or other forms of expenses. Considering the limited terms of the arbitral clause, the Supreme Court held that a controversy relating to the "breach of faith" or "double dealing" by one of the parties is beyond the scope of the arbitral agreement.[46]

Similarly, in *Bay View Hotel, Inc. v. Ker & Co. Ltd.*,[47] the plaintiff, Bay View Hotel, secured a guarantee bond from Ker & Co. Ltd. against acts of fraud and dishonesty of its employees. Condition 8 of the policy provided that any dispute that shall arise as to the amount of the company's liability under the policy must be submitted to arbitration as a condition precedent to any

40. CIVIL CODE, arts. 2035 & 2043.
41. *Id.* arts. 2034 & 2043.
42. R.A. 876, § 3.
43. Labor Code of the Phils., Presidential Decree No. 442, arts. 217, 261-62 (1974).
44. R.A. 876, § 2.
45. 167 SCRA 592 (1988).
46. *Id.* at 597.
47. 116 SCRA 327 (1982).

right of action. When one of Bay View's employees was discovered to have a cash shortage, Bay View sought indemnification from Ker & Co. The latter rejected the claim. Bay View instituted a civil action. In response, Ker & Co. and its principal, Phoenix Assurance, averred that Bay View must be deemed to have abandoned its claim because of its failure to comply with the arbitral clause prescribed by the insurance policy. The Supreme Court held that arbitration could not be compelled because the insurer completely denied liability, observing that the arbitral clause was limited to the amount of the liability of the company under the policy.

But where the arbitral agreement stipulates that any dispute arising from the contract shall be subject to arbitration, the trend of jurisprudence has been to interpret the clause broadly. Thus, in *Mindanao Portland Cement Corporation v. McDonough Construction Company of Florida,*[48] the contract provided that, subject to certain exceptions, arbitration shall be used to settly any disagreement between the parties in respect of the rights and obligations specified in the contract. The Supreme Court held that the arbitral clause was broad enough to include claims for damages and losses filed by the parties against each other.

The same principle was followed by the Supreme Court in *Puromines v. Court of Appeals,*[49] where the dispute centered on the applicability of the arbitration agreement when the damage arose from violation of a contract of carriage. In this case, Puromines, Inc. entered into an agreement with Philipp Brothers Oceanic, Inc. for the sale of certain cargo. The sales contract contained an arbitration clause. Philipp Brothers chartered a vessel to deliver the goods subject of the contract of sale. Upon arrival of the goods, some were found to be in bad order and condition. Puromines filed a complaint against the owner of the vessel and Philipp Brothers. Philipp Brothers contended that the arbitration clause was applicable only to any dispute arising under their contract and not for claims arising out of the contract of carriage. The Supreme Court ruled that the arbitration clause was broad enough to include cargo claims against vessel owners for breach of contract of carriage. The reason is that the obligation of a seller generally includes the obligation to deliver the goods to the buyer.

D. Enforcement of Arbitral Agreement

Section 2 of the Philippine Arbitration Law provides in part:

> Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission and which may be the subject of an action, or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract.[50]

48. 19 SCRA 808 (1967).

49. 220 SCRA 281(1993).

When the parties agree to arbitrate their disputes, their agreement is binding on them, and they are expected to abide in good faith with the arbitration clause of their contract. Not even the presence of a third party renders the arbitral agreement dysfunctional.[51]

There are times when a party to an arbitration agreement refuses to proceed with the arbitration. In such an event, the aggrieved party may file with the Regional Trial Court a petition to compel arbitration. Five days notice is required to be served in writing upon the party in default before a hearing on such a motion.[52] The trial court will, then, conduct a summary hearing in order to determine the existence of the arbitration agreement and the default or failure of the other party to comply therewith. If the court finds that a written agreement for arbitration was concluded and that there was a default thereunder, the court will summarily order the defaulting party to proceed to arbitration. The Regional Trial Court is mandated by the Arbitration Law to act on such petition within ten days of the hearing.[53]

In a petition to compel arbitration, the defaulting party is not allowed to raise defenses that touch upon the merits of the dispute. Nor does the trial court have the power to rule thereon because:

> This proceeding is merely a summary remedy to enforce the agreement to arbitrate. The duty of the court in this case is not to resolve the merits of the parties' claims but only to determine if they should proceed to arbitration or not. And although it has been ruled that a frivolous or patently baseless claim should not be ordered to arbitration, it is also recognized that the mere fact that a defense exists against a claim does not make it frivolous or baseless.[54]

Jurisprudence prescribes that the court cannot refuse to refer to arbitration an issue involved in the proceeding on the ground of inconvenience to the parties, the expense a foreign arbitration would entail,[55] the alleged nullity of a provision of a contract which did not affect the validity of the arbitration agreement,[56] or the arbitration agreement was embodied in another document

50. R.A. 876, § 2.

51. Toyota Motor Philippines Corp. v. Court of Appeals, 216 SCRA 236 (1992).

52. R.A. 876, § 6.

53. *Id.*

54. Mindanao Portland Cement Corp. v. McDonough Construction Company of Florida, 19 SCRA 808, 815 (1967).

55. National Union Fire Insurance Co. v. Stolt-Nielsen Philippines, Inc., 184 SCRA 682 (1990).

56. General Insurance & Surety Corp. v. Union Insurance Society of Canton, Ltd., 179 SCRA 530 (1989).

(e.g., a sales contract) and not in the contract of carriage between the parties (e.g., bill of lading) when the latter incorporated the former by reference.[57]

E Stay of Court Proceedings

In the event that a party to a contract with an arbitration clause files an action in the regular courts without first resorting to arbitration, the other party may apply for an order to stay or suspend the court case. Section 7 of Republic Act No. 876 provides:

> Sec. 7. *Stay of civil action.* If any suit or proceeding be brought upon an issue arising out of an agreement providing for arbitration thereof, the court in which such suit or proceeding is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration, shall stay the action or proceeding until an arbitration has been had in accordance with the terms of the agreement: *Provided,* That the applicant for the stay is not in default in proceeding to such arbitration.[58]

Moreover, even if there is no prior arbitral agreement, a court must suspend the suit before it, if one of the parties expresses his willingness to submit the controversy to arbitration.[59] In such a case, the court shall endeavor to persuade the parties to arbitrate their dispute.[60]

The most that the court can do is to suspend the civil action pending the arbitration proceedings. The court cannot dismiss it. In *Bengson v. Chan,* a case involving a contract for the construction of a building which provides for arbitration by two persons chosen by the parties, the Supreme Court stated:

> Therefore, instead of dismissing the case, the proceedings therein should be suspended and the parties should be directed to go through with the motions of arbitration at least within a sixty day period. With the consent of the parties, the trial court may appoint a third arbitrator to prevent a deadlock between the two arbitrators. In the event that the disputes between the parties could not be settled definitively by arbitration, then the hearing of the instant case should be resumed. [61]

In a few cases, however, the Supreme Court disregarded the rule enunciated in Section 7 and affirmed the dismissal of a case where a party to an arbitration agreement had by-passed the arbitration procedure. For example, in *Puromines,* the parties did not proceed to arbitration. Instead of staying the court action, the Supreme Court dismissed it.[62] Also, in *Associated Bank,* the

57. *National Union Fire Insurance Co.,* 184 SCRA 682 (1990).
58. R.A. 876, § 7.
59. CIVIL CODE, arts. 2030(1) & 2043.
60. *Id.* arts. 2029 & 2043.
61. 78 SCRA 113, 119 (1977).
62. *See Puromines,* 220 SCRA 281 (1993).

Supreme Court affirmed the dismissal of a third-party complaint because of the presence of an arbitral agreement.[63]

Where the court suspends the case pursuant to Section 7 of The Arbitration Law, it does not lose jurisdiction over it. After arbitration had been pursued and completed, the same court may confirm the award made by the arbitrator.[64] But where the trial court erroneously dismisses the case instead of merely suspending it, it has no longer any power to confirm the arbitral award as it already lost its jurisdiction over the case.[65]

The question is whether or not the court proceedings should be suspended if parties other than the contracting parties are made party-litigants to the court case.

In the cases of *Associated Bank* and *Sea-Land Service, Inc. v. Court of Appeals,*[66] the Supreme Court referred the parties to arbitration. In *Associated Bank,* what was referred to arbitration was the third-party complaint of the bank against the third-party defendants while the main case remained with the trial court for appropriate disposition. In *Sea-Land,* the third-party complaint by the defendant against the third-party defendant was bifurcated for arbitration. In both cases, the Court compelled arbitration of the claims covered by the parties' arbitration agreement while the main case before the trial court proceeded to trial.

In two recent cases, however, the Supreme Court seems to have reversed its stand on the issue of whether or not the presence of third parties would have an effect on the arbitral proceedings. In *Heirs of Salas v. Laperal,* involving third parties, the Court held that:

> To split the proceedings into arbitration for respondent Laperal Realty and trial for the respondent lot buyers, or to hold trial in abeyance pending arbitration between petitioners and respondent Laperal Realty, would in effect result in multiplicity of suits, duplicitous procedure and unnecessary delay. On the other hand, it would be in the interest of justice if the trial court hears the complaint against all herein respondents and adjudicates petitioners' rights as against theirs in a single and complete proceeding. [67]

In the subsequent case of *Del Monte Corporation,* the Supreme Court even went to the extent of saying that the *Salas* case had already superseded *Toyota Motor Philippines v. Court of Appeals.*[68] Thus, the High Court held that:

63. *Associated Bank,* 233 SCRA at 143 & 145.
64. *B.F. Corporation,* 288 SCRA at 285.
65. Asset Privatization Trust v. Court of Appeals, 300 SCRA at 599.
66. 327 SCRA 135 (2000).
67. 320 SCRA 610, 616 (1999).
68. 216 SCRA 236 (1992).

> The object of arbitration is to allow the expeditious determination of a dispute. Clearly, the issue before us could not be speedily and efficiently resolved in its entirety if we allow simultaneous arbitration proceedings and trial, or suspension of trial pending arbitration.[69]

The *Salas* and *Del Monte* cases raised the interesting issue of whether the court must refer the parties to arbitration in compliance with their arbitration agreement if such reference will collide with the rule against multiple actions prescribed by the Rules of Court. The Court held that while either party has a right to compel the other to submit their dispute to arbitration,

> the splitting of the proceedings to arbitration as to some of the parties on the one hand and trial for the others on the other hand, or the suspension of trial pending arbitration between some of the parties, should not be allowed as it would, result in multiplicity of suits, duplicitous procedure and unnecessary delay.[70]

In justifying its decision, the High Court explained that:

> The object of arbitration is to allow the expeditious determination of a dispute. Clearly, the issue before us could not be speedily and efficiently resolved in its entirety if we allow simultaneous arbitration proceedings and trial, or suspension of trial pending arbitration. Accordingly, the interest of justice would only be served if the trial court hears and adjudicates the case in a single and complete proceeding.[71]

F. Interim/Conservatory Measures

Prior to and in the course of the arbitration, interim or conservatory measures may be needed to preserve the *status quo ante*.

The question is whether pending the arbitral proceeding, a party can go to the regular courts to obtain provisional relief. This question was affirmatively answered by the Supreme Court in the fairly recent case of *Home Bankers Savings & Trust Co.*,[72] where one of the parties filed a collection case with a prayer for preliminary attachment pending arbitration. In this case, Victor Tancuan issued a Home Bankers Savings and Trust Company (HBSTC) check for the amount of PhP25,250,000.00 while Eugene Arriesgado issued three checks drawn against Far East Bank and Trust Company totaling PhP25,250,000.00. The two exchanged each other's check and deposited them with their respective banks for collection. When FEBTC presented Tancuan's HBSTC check for clearing, HBSTC dishonored it for being drawn against insufficient funds. Similarly, HBSTC sent the three checks of Arriesgado to FEBTC through the Philiippine Clearing House Corporation (PCHP) but the same also were returned for being drawn against insufficient funds. HBSTC refused, however, to accept the notice of dishonor sent by FEBTC, implying

69. *Del Monte Corporation*, G.R. No. 136154 at 10.

70. *Id.* at 9.

71. *Id.* at 10.

72. *Home Bankers Savings & Trust Co.*, 318 SCRA at 565-66 (2000).

that it had already cleared the three checks and allowed the proceeds thereof to be withdrawn.

This prompted FEBTC to submit the dispute to arbitration before the PCHC Arbitration Committee. Pending arbitration, however, FEBTC filed an action for sum of money and damages with preliminary attachment against HBSTC. The latter filed a motion to dismiss the complaint stating that it has no cause of action because it seeks to enforce an arbitral award that as yet does not exist. The trial court denied the motion to dismiss and also the subsequent motion for reconsideration of HBSTC. The issue was brought on certiorari to the Court of Appeals which affirmed the denial of the motions to dismiss and reconsideration on the ground that FEBTC can file the complaint since it was not for enforcement of an arbitral award but merely for collection of a sum of money. Furthermore, the Court of Appeals ruled that the complaint should merely be suspended and not dismissed, pursuant to Sec. 7 of the Arbitration Law (R.A. 876). HBSTC brought this decision of the appellate court to the Supreme Court for review.

The issue is whether a party to an arbitration pending with the PCHC may file a petition in court to obtain the provisional remedy of attachment.

The Supreme Court held:

> The Arbitration Law allows any party to the proceeding to petition the court to take measures to safeguard and/or conserve any matter which is subject of the dispute in arbitration, thus:
>
> > Section 14. *Subpoena and subpoena duces tecum.* — Arbitrators shall have the power to require any person to attend a hearing as a witness. They shall have the power to subpoena witnesses and documents when the relevancy of the testimony and the materiality thereof has been demonstrated to the arbitrators. Arbitrators may also require the retirement of any witness during the testimony of any other witness. All of the arbitrators appointed in any controversy must attend all the hearings in the matter and hear all the allegations and proofs of the parties; but an award by the majority of all of them is valid unless the concurrence of all of them is expressly required in the submission or contract to arbitrate. The arbitrator or arbitrators shall have the power at any time, before rendering an award, without prejudice to the rights of any party to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration.
>
> Participants in the regional clearing operations of the PCHC cannot bypass the arbitration process laid out by the body and seek relief directly from the courts. But the respondent in this case, after having initiated the arbitration proceedings, has sought relief from the trial court for measures to safeguard and conserve the subject of the dispute in arbitration. Undoubtedly, such action involved the same subject matter as that in the arbitration, i.e., the sum of PhP25,250,000.00 which was allegedly deprived from the private respondent in what is known in banking as a kiting scheme. However, the civil action is not a simple case of money claim since the private

respondent has included a prayer for a writ of preliminary attachment, which is sanctioned by Sec. 14 of the Arbitration Law.[73]

Another question is whether or not prior to the appointment of the arbitrator, a party may go directly to a court for interim or conservatory measures. One view is that resorting to the courts would be in derogation of the arbitral agreement. Obviously, however, a party cannot secure any relief from the arbitrator who is not yet appointed nor from the arbitral tribunal not yet constituted. In the light of the *Home Bankers Savings & Trust* Co. case, the better rule seems to be that despite an arbitration agreement, a request for interim measures addressed to a judicial authority is not deemed incompatible therewith. Arbitral agreements cannot shackle judicial authorities of their inherent jurisdiction to prevent injustice and grave and irreparable injury to parties prior to the commencement of arbitration.

G. *The Arbitrators*

1. Number of arbitrators

An arbitral case may be decided by one arbitrator or a panel of at least three (3) arbitrators depending on the agreement of the parties. Arbitrators are appointed either in accordance with the procedure laid down by the parties in their arbitration agreement or by the Regional Trial Court in case there is no stipulated procedure for their appointment.[74] However, any clause that gives one of the parties power to choose more arbitrators than the other is void and of no effect. Note that what is void and ineffective is only the clause, not the arbitral agreement. [75] Where the arbitral agreement does not specify the number of arbitrators, the court shall appoint one or three arbitrators depending on the importance of the case.[76]

2. Qualifications/Disqualifications

R.A. 876 does not prescribe any educational background for arbitrators. All that is required is that the arbitrators must be of legal age, in full enjoyment of their civil rights and must know how to read and write. The lack of any prescribed educational background ensures flexibility in the choice of the arbitrators depending on the needs of the arbitral case. This is unlike court proceedings where the litigants do not have a say in the choice of a judge, no matter how uneducated or inexperienced he is with respect to their dispute.

73. *Id.* at 565-66.
74. R.A. 876, § 8.
75. CIVIL CODE, art. 2045.
76. R.A. 876, § 8(e).

R.A. 876 also guarantees neutrality on the part of arbitrators. A person is disqualified as an arbitrator on account of relationship or interest in the controversy. Thus, the following are disqualified from being appointed as arbitrators: (a) persons who are related by blood or marriage within the sixth degree to either party to the controversy; and (b) persons who have a financial, fiduciary or other interest in the controversy or cause to be decided or in the result of the proceeding, or has any personal bias, which might prejudice the right of any party to a fair and impartial award.[77] R.A. 876 further provides that no party shall select as an arbitrator any person who would act as his champion or to advocate his cause. Where the arbitrator possesses any of these disqualifications, he must immediately disclose them to the parties,[78] otherwise the arbitral award may be vacated on that ground.[79]

The arbitrators may be challenged for the above stated reasons, on account of lack of qualifications or the existence of a ground for disqualification in them. The challenge, however, shall be made before the arbitrators. In the event the challenged arbitrator does not yield to the challenge, the challenge may be renewed in the Regional Trial Court where the challenged arbitrator resides. During the pendency of the proceedings in the Regional Trial Court, the arbitration proceedings shall be suspended, but shall be continued immediately after the challenge has been decided by the court.[80]

3. Jurisdiction and Competence

The competence of arbitrators is based on the arbitration agreement and is neither unlimited nor unrestrained. Under The Arbitration Law, arbitrators are empowered to resolve only those issues that have been submitted to them under the submission agreement or arbitration clause.[81] Although once an arbitration has commenced, the question of what is within the arbitrator's jurisdiction is decided by the arbitrator himself or herself, any such determination will always be subject to review by the Regional Trial Court upon a petition by any party to vacate an award on the ground that the arbitrators have exceeded their powers.[82]

77. *Id.* § 10.
78. *Id.*
79. *Id.* § 24.
80. *Id.*
81. *Id.* § 20.
82. *Id.* § 24(d).

H. The Arbitral Proceedings

1. Expedited Proceedings

Arbitral proceedings are intended to provide for an expeditious resolution of the dispute under arbitration. Thus, not later than fifteen (15) days from their appointment, the arbitrators must set the case for hearing.[83] The contracting parties may, by written agreement, submit their dispute other than by oral hearing.[84] Hearings can be postponed only for good and sufficient cause. Furthermore, the arbitrators may proceed in the absence of a party if such party fails to be present after receiving due notice of the hearing. However, the award shall not be rendered solely on the default of such party. The arbitrators must receive *ex-parte* the evidence of the claimant and shall render an award in accordance therewith.[85] A definite time limit for the filing of briefs must be fixed by the arbitrators at the close of the hearings.[86] Unless otherwise stipulated by the parties, an arbitral judgment must be rendered within thirty (30) days from the close of the hearings.[87]

2. Confidentiality of the Proceedings

Unlike court proceedings, arbitration proceedings are confidential. Only the parties to the arbitration, or persons authorized to appear at the hearings by a party thereto, may attend the hearings. Also, a party desiring to be represented by counsel must notify the other party of such intention at least five days prior to the hearing.[88]

3. Conduct of the Hearings

In arbitration, the arbitrators have full control of the proceedings. They may utilize any means consistent with procedural due process to accelerate the taking of evidence. They may ask both parties for a brief statement of the issues in controversy or for an agreed statement of facts. This is commonly referred to as the Terms of Reference. The arbitrators have the power to subpoena witnesses and documents, to inspect premises, to require the retirement of any witness during the testimony of another, and to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration.[89]

83. *Id.* § 12.
84. *Id.* § 18.
85. *Id.* § 12.
86. *Id.* § 16.
87. *Id.* § 19.
88. *Id.* § 12.
89. *Id.* § 14.

The arbitrators shall be the sole judge of the relevancy and materiality of the evidence offered or produced. They are not bound to conform with the Rules of Court provisions on evidence. Since they are the sole judge of the relevance of the evidence offered or produced, the arbitrators may require the parties to produce such additional evidence as they deem necessary to an understanding and determination of the dispute.[90]

I. The Arbitral Award

1. Forms and Contents

The award of the arbitrators must be rendered, unless otherwise stipulated by the parties, within thirty (30) days after the close of the hearings.[91] It must be in writing, signed, and acknowledged by a majority of the arbitrators. The arbitrators can decide only those matters which have been submitted to them.[92]

The question of whether the arbitral award should, like a court judgment, contain a statement of the reasons on which it is based is unresolved in the Philippines. However, the statutory characterization of arbitration as a special proceeding within the jurisdiction of the courts,[93] would imply the need for compliance with the basic requirements of a court judgment, including the need to present the facts and the law on which the award is based.

As a matter of principle, the parties are bound by the arbitrator's award only to the extent and in the manner prescribed by the contract or submission agreement and only if the award is rendered in conformity thereto.[94] Should the arbitrator's award fail to so conform, the parties may petition the proper Regional Trial Court to vacate the award.[95]

In addition to the jurisdiction expressly bestowed by the submission agreement or arbitration clause, arbitrators are granted certain statutory powers that may be exercised in all cases. Section 20 of The Arbitration Law allows arbitrators to "grant any remedy or relief which they deem just and equitable and within the scope of the agreement of the parties, which shall include, but not be limited to, the specific performance of a contract."[96] Some authors are of the belief that such a mandate is an authority for the arbitrators to assume powers of *amiable compositeurs*, or to decide the case *ex aequo et bono* and in

90. *Id.* § 15.
91. *Id.* § 19.
92. *Id.* § 20.
93. *Id.* § 22.
94. *Id.* § 24(d); *Asset Privatization Trust*, 300 SCRA at 602.
95. R.A. 876, § 24.
96. *Id.* § 20.

disregard of all rules of law except those relating to morality and public policy.[97] However, the competence of arbitrators to grant relief that is just and equitable is still subject to the condition that such relief be within the scope of the agreement of the parties. Unfortunately, the extent of the power granted under Section 20 of The Arbitration Law has yet not been judicially determined. Consequently, in the absence of any other Philippine rule on this point, the validity of arbitration *ex aequo et bono* is still subject to debate.

2. Voting

The parties may stipulate the vote required for a valid and binding award, provided that in the case of multiple arbitrators, at least a majority of the arbitrators concur therewith.[98] Thus, under The Arbitration Law, "an award by the majority of [the arbitrators] is valid unless the concurrence of all of them is expressly required in the submission or contract to arbitrate."[99]

Surprisingly, however, in the recent case of *Asset Privatization Trust*,[100] the Supreme Court recognized an award that, although signed by all members of the arbitral panel, was not supported by a majority thereof with regard to every issue. Instead, the award reflected the decision of the Chairman of the panel, rendered without considering the separate and conflicting opinions written by the other two members of the panel. On one of the issues resolved by the Chairman, each of the three arbitrators held a different view. Although the Supreme Court ultimately vacated the award on other grounds, the fact remains that the decision, as one Justice pointed out, could not be valid because there was no true majority of the panel.

3. Enforcing the Arbitral Award

There are times when the party against whom an arbitral award is rendered refuses to abide by the award. Unfortunately, the arbitrator, while performing quasi-judicial functions, does not have the authority to enforce the arbitral award. In such a case, the prevailing party must go to court for the confirmation and enforcement of the arbitral award.[101]

The Arbitration Law provides that, within one (1) month after the award is made, any party to the controversy may ask for the judicial confirmation of the

97. COMMERCIAL ARBITRATION: PROCEEDINGS OF THE SYMPOSIUM ON COMMERCIAL ARBITRATION 74 (Juliana R. Ricalde ed., 1981).

98. R.A. 876, § 14 in relation to § 20.

99. *Id.* § 14.

100. *Asset Privatization Trust*, 300 SCRA at 645 (Pardo, J., separate and concurring opinion).

101. *See B.F. Corporation*, 288 SCRA.

arbitral award.[102] The motion must be filed with the court specified in the arbitral agreement, or if none is specified, the Regional Trial Court where any of the parties resides or is doing business or in which the arbitration was held.[103] A copy of the motion must be served on the adverse party or his attorney as prescribed by law for the service of pleadings. The motion for confirmation must be granted, unless the award is vacated, modified or corrected.[104]

The judgment of the court confirming, modifying, or vacating an arbitral award shall have the same force and effect in all respects as a judgment in an action. This judgment may be enforced as if it had been rendered in the court in which it is entered.[105] Hence, once the judgment has become final and executory, the prevailing party may apply for a writ of execution from the court that confirmed the arbitral award.

If a prior court case had been filed and suspended pursuant to the Section 7 of The Arbitration Law, the confirmation proceeding must be made in the same court. If the trial court, however, erroneously dismisses the case based on non-compliance of an arbitral agreement, the parties cannot return to that same court for confirmation of their award. In such a case, the parties must file a new case in order to confirm an award.[106]

4. Vacating the Arbitral Award

A petition to vacate an arbitral award may be filed based on the following grounds:

a) the award was procured by corruption, fraud, or other undue means; there was evident partiality or corruption in the arbitrators;

c) 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 and willfully refrained from disclosing disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or

c) 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.[107]

102. R.A. 876, § 23.

103. *Id.* § 22.

104. *Id.* § 23.

105. *Id.* § 28.

106. *Asset Privatization Trust*, 300 SCRA at 598-99.

107. R.A. 876, § 24.

Also, where the conditions described in Articles 2038, 2039, and 2040 of the Civil Code applicable to compromises and arbitration are attendant, the arbitration award may also be annulled.[108]

The burden of proof rests on the party seeking to vacate an arbitral award. To have the award vacated, the petitioner must affirmatively prove any of the grounds for vacating an award.[109] In *National Steel Corporation v. Regional Trial Court of Lanao del Norte*,[110] the Supreme Court held:

> [I]n a petition to vacate Arbitrator's decision before the trial court, regularity in the performance of official functions is presumed and the complaining party has the burden of proving the existence of any of the grounds for vacating the award as provided for by Section 24 of the Arbitration Law.[111]

In the same case, the Supreme Court further held that in relying on the ground of evident partiality on the part of the Arbitrators: "The fact that a party was disadvantaged by the decision of the Arbitration Committee does not prove evident partiality. Proofs other than mere inference are needed to establish evident partiality."[112]

In the event an award is vacated, the court may direct a new hearing before the same or new arbitrator/s.[113]

108. *Asset Privatization Trust*, 300 SCRA at 602; The provisions of the Civil Code of the Philippines referred to are the following:

> ART. 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of article 1330 of this Code. However, one of the parties cannot set up a mistake of fact as against the other if the latter, by virtue of the compromise, has withdrawn from a litigation already commenced.
>
> ART. 2039. When the parties compromise generally on all differences which they might have with each other, the discovery of documents referring to one or more but not to all of the questions settled shall not itself be a cause for annulment or rescission of the compromise, unless said documents have been concealed by one of the parties. But the compromise may be annulled or rescinded if it refers only to one thing to which one of the parties has no right, as shown by the newly-discovered documents.
>
> ART. 2040. If after a litigation has been decided by a final judgment, a compromise should be agreed upon, either or both parties being unaware of the existence of the final judgment, the compromise may be rescinded. Ignorance of a judgment which may be revoked or set aside is not a valid ground for attacking a compromise.

109. R.A. 876, § 24.

110. 304 SCRA 595 (1999).

111. *Id.* at 602.

112. *Id.* at 603, *citing* Adamson v. Court of Appeals, 232 SCRA 602 (1994).

113. R.A. 876, § 24.

5. Modifying or Correcting the Arbitral Award

A petition to modify or correct the arbitral award may also be made upon any of the following grounds:

a) where there was evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the award;

b) where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted;

c) where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the court.[114]

The provisions for modification or correction of an award contemplate evident typographical or clerical errors and other formal mistakes not relating to the substance of the matter of controversy. Thus, modification and/or correction is ordered for the purpose of effecting "the intent thereof and promot[ing] justice between the parties."[115] If the error is substantial, the proper remedy is to file a petition to quash or vacate the award with respect to the erroneous portions.

A motion to confirm, correct, or vacate an arbitral award must be accompanied by the following papers:

a) The submission, or contract to arbitrate; the appointment of the arbitrator or arbitrators, and each written extension of time, if any, within which to make the award;

b) A verified copy of the award;

c) Each notice, affidavit, or other paper used upon the application to confirm, modify, correct or vacate such award, and a copy of each order of the court upon such application.[116]

6. Judicial Review

Decisions of voluntary arbitrators are given the highest respect, and as a general rule, are accorded a certain measure of finality[117] if supported by substantial evidence, even if the evidence is not overwhelming or preponderant.[118] The award of an arbitrator cannot be set aside because of mere errors of judgment either as to the law or to the facts, and the courts are without power to amend or overrule based only on disagreement on issues of law or fact that were

114. *Id.* § 25.

115. *Id.*

116. *Id.* § 28.

117. Oceanic Bic Division (FFW), et al., v. Romero, et al., 130 SCRA 392, 399 (1984).

118. *National Steel Corporation*, 304 SCRA.

determined by the arbitrators. To hold otherwise would be to render an arbitral award the beginning, not the end, of litigation.[119]

Where grounds exist for vacating, modifying, or rescinding an arbitral award, judicial review may be resorted to even if the arbitral agreement expressly provides that the arbitral award is "final and unappealable" and that "there shall be no further judicial recourse if either party disagrees with the whole or any part of the arbitrator's award."[120]

The power of judicial review over an arbitral award stems from the fact that an arbitrator acts in a quasi-judicial capacity. As held in *San Miguel Corporation v. Secretary of Labor,*

> [t]here is an underlying power of the courts to scrutinize the acts of (quasi-judicial) agencies on questions of law and jurisdiction even though no right of review is given by statute; that the purpose of judicial review is to keep the administrative agency within its jurisdiction and protect the substantial rights of the parties; and that it is part of the checks and balances which restrict the separation of power and forestalls arbitrary and unjust adjudications. [121]

Note that while the law grants the parties to an arbitral agreement the right to judicial review, this right is a limited one. In *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders Inc,*[122] the Supreme Court held that judicial review will not be resorted to in order to overturn an award unless there has been a very clear showing that the arbitral tribunal in reaching its factual conclusions committed an egregious and hurtful error to one party so as to amount to grave abuse of discretion resulting in lack or loss of jurisdiction.

The Arbitration Law provides that any judgment entered by a Regional Trial Court upon an arbitral award may be appealed through *certiorari* proceedings, but such appeal shall be limited to questions of law. The proceedings upon such an appeal, including the judgment thereon, shall be governed by the Rules of Court insofar as they are applicable. [123]

The 1997 Rules of Civil Procedure, however, provides for appeal from voluntary arbitrators authorized by law to the Court of Appeals on questions of law, of fact or mixed questions of law and fact within fifteen days from notice of the award.[124] This recent amendment has spawned much discussion. Some legal practitioners believe that, following the explicit provisions of the 1997 Rules of Civil Procedure, an appeal from an arbitral award may raise questions of fact, of law or mixed questions of fact and law. On the other hand, some

119. *Asset Privatization Trust*, 300 SCRA at 601-02.

120. *Chung Fu Industries (Phils.) Inc.*, 206 SCRA at 547.

121. 64 SCRA 60 (1975).

122. 228 SCRA 397 (1993).

123. R.A. 876, § 29.

124. Rules of Court, Rule 143, §§ 1 & 3 (1997).

still maintain the position that R.A. 876, as a substantive law, should prevail over a procedural rule. Consequently, it is argued that appeals from arbitral awards should be limited to questions of law and should, accordingly, be taken to the Supreme Court.[125] Unfortunately, until a jurisprudential precedent is laid down by the Supreme Court, the issue will remain unresolved.

III. CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS[126]

In 1958, the United Nations adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, more popularly known as the New York Convention. The New York Convention binds the Contracting States to recognize and enforce not only arbitral agreements but more importantly arbitral awards rendered in another Contracting State.

On May 10, 1965, the Senate of the Philippines passed a resolution[127] concurring in the ratification by the President of the Philippines of the New York Convention.

The New York Convention was judicially recognized by our Supreme Court in *National Union.*[128] This case addressed the issue of whether the terms of the Charter Party, particularly the provision on arbitration, is binding on the insurer of the shipper-assured. The insurer claimed that it could not be bound by the Charter Party because, as insurer, it is subrogee only with respect to the bill of lading; that only the bill of lading should regulate the relation among the insurer, the holder of the bill of lading, and the carrier; and that in order to bind it, the arbitral clause in the Charter Party; thus, the insurer should have been incorporated into the bill of lading. The Supreme Court ruled that the insurer is bound by the Charter Party as the bill of lading incorporates by reference the terms of the Charter Party; thus, the parties cannot avoid the arbitral agreement nor feign ignorance thereof. In so ruling, the Supreme Court acknowledged that arbitration, as an alternative mode of settling disputes, has long been recognized and accepted in Philippine jurisdiction. It added that the Philippines adhered to the United Nations Convention on the Recognition and the Enforcement of Foreign Arbitral Awards of 1958, under the 10 May 1965 Resolution No. 71 of the Philippine Senate.

125. PHIL. CONST. art. VIII, § 5(e).

126. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Award, June 10, 1958, III-2 D.F.A. T.S. 97, 330 U.N.T.S. 74, 78 [hereinafter New York Convention].

127. S. Res. No. 71, 5th Cong. (May 10, 1965).

128. *National Union*, 184 SCRA at 688-89.

A. Philippine Reservations

The New York Convention provides that when signing, ratifying or acceding to the Convention, any State may, on the basis of reciprocity, declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships which are considered commercial under the national law of the State making the declaration.[129]

In 1965, the Philippine Senate, under Senate Resolution No. 71, ratified the New York Convention subject to the following reservations: (a) the Philippines will recognize and enforce arbitral awards made only in the territory of another Contracting State; and (b) the New York Convention "will only apply to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration."[130]

B. Obligation of a Contracting State to Recognize a Written Agreement to Refer a Dispute to Arbitration

Each Contracting State shall recognize an agreement in writing to refer a dispute to arbitration.[131] In case of a court suit involving a contract containing an agreement to arbitrate, the court of a Contracting State where the case is filed shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.[132]

Article II of the New York Convention was recently applied in the Philippines by the Philippine Supreme Court. In *National Union*, the parties provided for arbitration of their disputes in New York under the United States Arbitration Act. In a case filed before a Philippine Regional Trial Court, the defendant "moved to dismiss/suspend the proceedings on the ground that the RTC had no jurisdiction over the claim the same being an arbitrable one."[133] The Supreme Court ruled that referral to arbitration in New York pursuant to arbitration clause, and the suspension of the proceeding, pending the return of the arbitral award, are proper. The High Court disregarded arguments based

129. New York Convention, *supra* note 126, art. I(3).

130. Resolution Concurring in the Ratification by the President of the Philippines of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, S. Res. No. 71, 5TH CONG. (1965) (as ratified by the President on Oct. 11, 1965).

131. New York Convention, *supra* note 126, art. I(3).

132. *Id.* art. II(3).

133. *National Union*, 184 SCRA at 684-85.

on inconvenience to the parties or the expense that the foreign arbitration would entail. It declared thus:

> Foreign arbitration as a system of settling commercial disputes of an international character was likewise recognized when the Philippines adhered to the United Nations Convention on the Recognition and the Enforcement of Foreign Arbitral Awards of 1958.... It has not been shown that the arbitral clause in the question is null and void, inoperative, or incapable of being performed. Nor has any conflict been pointed out between the Charter Party and the Bill of Lading.[134]

C. Recognition and Enforcement of Arbitral Awards in a Contracting State

Each Contracting State shall recognize arbitral awards and shall enforce the same in accordance with the rules of procedure of the territory where the award is relied upon. The conditions to be imposed for the enforcement of a foreign arbitral award shall not be more onerous as those imposed for domestic arbitral awards.[135]

The following documents should accompany an application for the enforcement of a foreign arbitral award: (a) the duly authenticated original award or a duly certified copy thereof; and (b) the original arbitration agreement or a duly certified copy thereof.[136]

If the foregoing documents are not in the official language of the State where it is sought to be enforced, the applying party shall provide for a translation thereof which shall be certified by an official or sworn translator, or by a diplomatic or consular agent.[137] This is consistent with Philippine Rules of Court which provide that "[d]ocuments in unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino."[138]

D. Grounds for Opposing the Recognition or Enforcement of a Foreign Arbitral Award Under the New York Convention

Recognition and enforcement of the foreign arbitral award may be refused, at the request of the party against whom it is invoked, if that party furnishes to the competent authority where the recognition and enforcement are sought, proof that: (a) either of the parties were incapacitated to enter into the arbitration agreement, the arbitration agreement is not valid under the law to which the parties have subjected it, or the law of the country where the award was made; (b) the party against whom the award was made was not given any

134. *Id.* at 688-89.

135. New York Convention, *supra* note 126, art. III.

136. *Id.* art. IV.

137. *Id.*

138. Rules of Court, Rule 132, § 33.

proper notice of the arbitration proceedings, or was unable to present his case; (c) the award deals with a difference not contemplated by or not falling within the terms of the arbitration agreement, or it contains decisions on matters beyond the scope of the submission to arbitration; (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the arbitration agreement, or in the absence thereof, the law of the State where arbitration took place; and (e) the arbitral award is not yet final and executory or has been suspended or set aside by a competent authority of the State where the award was rendered.[139]

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement are sought finds that: (a) the subject matter of the difference is not arbitrable under the law of that country; and (b) the recognition or enforcement of the award would be contrary to the public policy of that country.[140]

The burden of proof rests on the party opposing the recognition and enforcement of the foreign arbitral award.[141]

Philippine jurisprudence on the New York Convention is close to *nil.* Indeed, since the enactment of the Philippine Arbitration Law in 1953, the Supreme Court has decided only three cases involving foreign arbitral awards. Of those three, only two resulted in the enforcement and recognition of the award rendered in a foreign state.

The first case decided by the Supreme Court on foreign arbitral awards was *Eastboard Navigation, Ltd. v. Juan Ysmael and Co., Inc.*[142] Faced with an application for the enforcement of an arbitral award, rendered and confirmed in New York following arbitration under the rules of the American Arbitration Association, the defendant argued that the award should not be enforced because the arbitration agreement was invalid and because the award was rendered in violation of procedural due process, as the defendant claimed that it was not notified of the confirmation proceedings. Both defenses were rejected by the Supreme Court after it found that the defendant had been represented throughout the arbitral proceedings and the confirmation thereof.[143]

Subsequently, in *Nagarmull v. Binalbagan-Isabela Sugar Co., Inc.,*[144] the Philippine Supreme Court refused recognition of an arbitral award rendered in

139. New York Convention, *supra* note 126, art. V(1).

140. *Id.* art. V.

141. *Id.*

142. 102 Phil. 1 (1957).

143. *Id.*

144. 33 SCRA 46 (1970).

Calcutta, India by the Tribunal of Arbitration of the Bengal Chamber of Commerce and confirmed by the Calcutta High Court. In this case, the Indian exporter breached his contract with the Filipino party, by failing to deliver on time, a part of a shipment of Hessian bags. In view of its late delivery, the Indian exporter was required to pay an export tax that had then become effective. On the issue of which party should bear the burden of the additional export tax, the arbitral tribunal ruled that the obligation fell upon the innocent Filipino party. The Supreme Court, invoking the Philippine procedural rule on enforcement of foreign judgments, held that "the decision sought to be enforced was rendered upon a 'clear mistake of law' and because of that, it makes appellant, an innocent party, suffer the consequences of the default or breach of contract committed by the [Indian] appellee."[145] According to the Supreme Court, the Tribunal of Arbitration of the Bengal Chamber of Commerce and the High Court of Judicature of Calcutta "fail[ed] to apply to the facts of this case, fundamental principles of contract" and, as such, may be impeached on the ground of "clear mistake of law." As a parting shot, the High Court declared that it "can not sanction a clear mistake of law that would work an obvious injustice upon appellant."[146]

After a long respite, the Supreme Court had a third opportunity to rule upon the enforceability of a foreign arbitral award in the case of *Oil and Natural Gas Commission v. Court of Appeals and Pacific Cement Company, Inc.*[147] This case involved an arbitration agreement between an Indian government corporation (Commission) and a domestic private corporation (Pacific Cement). The arbitration agreement provided, in part, that all questions and disputes

> shall be referred to the sole arbitration of the persons appointed by the Member of the Commission at the time of dispute. It will be no objection to any such appointment that the arbitrator so appointed is a Commission employer (sic) that he had to deal with the matter to which the supply or contract relates and that in the course of his duties as Commission's employee he had expressed views on all or any of the matter in dispute or difference.[148]

Pursuant to the arbitration agreement, the Indian Commission appointed a sole arbitrator who, at the time of his appointment, happened to be a consultant of the Indian Commission.[149] Under these circumstances, Pacific Cement pointed out as one of its defenses, "the arbitration proceeding was defective because the arbitrator was appointed solely by the [Indian Commission], and the fact the arbitrator was a former employee of the latter

145. *Id.* at 52.

146. *Id.* at 53.

147. 293 SCRA 26 (1998).

148. *Id.* at 31.

149. C.O. Parlade, *Appointment of Sole Arbitrator by Claimant Alone As Not Sufficient Basis to Disallow Enforcement of Foreign Arbitral Award: The Case of Oil and Natural Gas Commission v. Court of Appeals Revicwed,* 13 LAW. REV., Feb. 28, 1999, at 2.

gives rise to a presumed bias on his part in favor of the [Indian Commission]."[150]

Notwithstanding the foregoing, the Supreme Court, relying upon the procedural rule for enforcement of foreign judgments,[151] recognized and enforced the foreign arbitral award and its confirmatory judgment. In so ruling, the High Court brushed aside the defense of presumed bias stating that the same "deserves scant consideration" in view of the stipulation in the arbitration agreement allowing the Indian Commission to appoint its employee as the sole arbitrator.[152] From the records, it was evident that "the issue on the validity of the arbitration agreement in that it gave one party thereto the exclusive right to appoint a sole arbitrator who may be its employee and the issue of fairness in the arbitration of the dispute by the arbitrator so appointed were not exhaustively discussed"[153] despite the fact that said stipulations contravened fundamental provisions of the Philippine Arbitration Law and the Civil Code. Consequently, such stipulations would void the arbitration agreement and render the arbitral award subject to vacation.

It must be stressed that, in all three cases, the Supreme Court, upon the instance of the litigants themselves, relied upon the procedural rule on the enforcement of foreign judgments and not on the provisions of the New York Convention to which both the Philippines, New York and India are Contracting States. Had Pacific Cement relied on the New York Convention, the Supreme Court might have focused on the "public policy" issue involved in enforcing such a one-sided arbitration agreement.[154] However, the Supreme Court was not given the chance to apply the provisions of the New York Convention for the first time or to lay down the public policy considerations that would warrant a refusal to recognize and enforce a foreign arbitral award in the Philippines. The result is that the decision in the case of *Oil and Natural Gas Commission v. Court of Appeals* has set a jurisprudential precedent that, in the Philippines, an arbitration agreement that is in violation of Philippine laws on arbitration and is patently unfair to one party may be valid and the award arising therefrom recognized and enforced.[155]

150. *Oil and Natural Gas Commission*, 293 SCRA at 36.

151. Rules of Court, Rule 39, § 50 (now Rules of Court, Rule 39, § 48 (1997)).

152. *Oil and Natural Gas Commission*, 293 SCRA at 47.

153. Parlade, *supra* note 148, at 4.

154. Under the New York Convention, the Court of the place may refuse recognition when "recognition or enforcement of the award would be contrary to the public policy of that country."

155. Parlade, *supra* note 148, at 3-10.

D. No Implementing Local Legislation

Despite the fact that the New York Convention had been ratified in 1965, Congress had not passed any law to implement the same. This gives rise to difficulties in implementing the provisions of the Convention in the Philippines. As will be discussed below, however, this deficiency is sought to be addressed by Senate Bill No. (SB) 422, otherwise known as the Drilon Bill on arbitration.[156]

IV. Recent Developments

Legislative initiatives to improve arbitration have been made. The most current initiative is SB 422 introduced by Senator Franklin M. Drilon in the present Congress which seeks to adopt, with modifications, the UNCITRAL Model Law on Commercial Arbitration. The UNCITRAL Model is a product of years of work by member states of the United Nations and international organizations with considerable expertise in arbitration. It harmonizes different national laws to facilitate international arbitration. The UNCITRAL Model Law has been recommended for adoption by the General Assembly for the settlement of disputes arising in the context of international commercial relations. SB 422 seeks to repeal R.A. 876 and adopt the UNCITRAL Model, with modifications, to update the Philippine arbitral system, in keeping with the latest trends in world commercial transactions. [157]

The Bill seeks to prescribe a new arbitration law which will effectively address the problems affecting business and to create an arbitration law that is more attuned with the times.

A. Arbitrable Disputes

The Act is meant to apply to both international and domestic arbitration in the Philippines. International arbitration shall be subject to any agreement in force between the Philippines and any other state or states. [158] International arbitration is defined as the Act as one where:

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

156. An Act to Establish a New Arbitration Law Adopting with Modifications the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Commercial Arbitration and Repealing Republic Act No. 876, Otherwise Known as, 'The Arbitration Law' and for other Purposes, S. 442, 12th Cong. (2001).

157. *Id.* Explanatory Note.

158. *Id.* § 2.

i. the place of arbitration if determined in, or pursuant to, the arbitration agreement; or

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

3. the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

[However,] if a party has more than one place of business, the place of business is that which has the closest connection to the arbitration agreement... [and] if a party does not have a place of business then reference is to be made to his habitual residence. [159]

An arbitration which does not fall within the definition of international arbitration given above is considered as domestic arbitration.[160]

Like R.A. 876, the Act continues to exclude from its coverage, disputes arising from employer-employee relationships. It also codifies as non-arbitrable, certain disputes such as the civil status of persons, the validity of a marriage or legal separation, the grounds of legal separation, future support, future legitime, and the jurisdiction of courts and such other disputes declared by special law as non-arbitrable.[161]

B. *The Arbitration Agreement*

An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

The arbitration agreement shall be in writing. This requirement is complied with if:

> it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, facsimile, or other means or telecommunications which provide a record of the agreement, or in an exchange of statements of claims and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.[162]

159. *Id.* § 3(g).
160. *Id.* § 3(h).
161. *Id.* § 2.
162. *Id.* § 8.

C. *The Arbitral Proceedings*

1. Request for Arbitration

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date on which a request for arbitration is received by the respondent.

A request for arbitration shall include the following:

(a) A demand that the dispute be referred to arbitration;

(b) The names and addresses of the parties;

(c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;

(d) A reference to the contract out of or in relation to which the dispute arises;

(e) The general nature of the claim and an indication of the amount involved, if any; and

(f) The relief or remedy sought.[163]

2. Statement of Claims and Defenses

Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the point in issue and the relief or remedy sought... [The respondent shall be allowed to do likewise in respect of his defense.]

Unless otherwise agreed by the parties, either party may amend or supplement his claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment, having regard to the delay in making it.[164]

D. *Making of Award and Termination of the Proceedings*

1. The Applicable Rules

The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties ... Any designation of a law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not its conflict of laws rules.

[However, if the parties do not designate a particular law to govern the proceedings, the tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.] ...

The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it do so.

163. *Id.* § 22.
164. *Id.* § 24.

[However, i]n all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of trade applicable to the transaction.[165]

In international arbitration conducted in the Philippines, a party may be represented by any person of his choice and the appearance thereat shall not be considered practice of law in the Philippines unless the same is part of a series and constitutes regular practice.[166]

2. Form and Contents of the Award

The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signature of a majority ... [is sufficient,] provided, that the reason for any omitted signature is so stated.

The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is on agreed terms pursuant to a settlement between the parties....[167]

3. Termination of proceedings

The arbitral proceedings are terminated by final award or by an order of the arbitral tribunal [when:]...

(a) the claimant withdraws his claims, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.[168]

4. Correction and interpretation of the award and additional awards

Within thirty days of receipt of the award, unless another period of time has been agreed upon the parties:

(a) ... a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

[The tribunal may, however, make the above corrections on its own initiative within thirty days from the rendition of the award.]

165. *Id.* § 29.
166. *Id.* § 4.
167. *Id.* § 32.
168. *Id.* § 33.

Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.[169]

E. The Arbitral Tribunal

1. The Arbitrators

"The parties are free to determine the number of arbitrators." If the parties do not determine the number, there shall be three arbitrators.[170]

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

The parties are free to agree on a procedure for appointing the arbitrator or arbitrators. ...

Where the parties have agreed to submit their dispute to institutional arbitration rules, and unless they have agreed to a different procedure, they shall be deemed to have agreed to the procedure under such arbitration rules for the selection and appointment of arbitrators.[171]

2. Challenge of an Arbitrator

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

An arbitrator may be challenged only if circumstances exist that give rise to [a] justifiable doubts as to his impartiality or independence or [b] if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for a reason of which he becomes aware only after the appointment has been made.[172]

F. Extent of Court Intervention

"In matters covered by the Act, no court shall intervene except when so provided by the Act itself."[173] The court is allowed to intervene under in the following instances:

169. *Id.* § 34.
170. *Id.* § 11.
171. *Id.* § 12.
172. *Id.* § 13.
173. *Id.* § 6.

1. Referral to Arbitration

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

Where an action referred to in the preceding paragraph above has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.[174]

2. Interim Measures

Where there exists an arbitration agreement, and before the arbitral tribunal has been constituted, a party may request from a court, interim measures for protection. However, after the arbitral tribunal has been constituted, a request for interim measures or a modification thereof should be made with the arbitral Tribunal.[175]

3. Court Assistance In Taking Evidence

"With the approval of the arbitral tribunal, a party or the tribunal itself may request formal court assistance in taking evidence."[176]

4. Appeals Regarding Preliminary Questions

"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, that the court decide the matter, which decision shall be subject to no appeal."[177]

5. Recognition and Enforcement

An arbitral award, irrespective of the country in which it was made, shall be recognized as binding in the Philippines and upon application in writing to the Court.

The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in Section 8 [form of arbitration agreement] or duly certified copy thereof.[178]

6. Application for Setting Aside the Arbitral Award

An arbitral award may be set aside by the Court of Appeals only if:

174. *Id.* § 9.
175. *Id.* § 10.
176. *Id.* § 28.
177. *Id.* § 17.
178. *Id.* § 36.

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

(i) a party to the arbitration agreement referred to in Section 7 [Court or Appointing Authority for Certain Functions for Arbitration Assistance and Supervision] was under incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Philippines; or

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

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or

(v) the award was secured by means of fraud, corruption or bribery, or

(b) the Court of Appeals finds that:

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

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

The Court of Appeals asked to set aside an award may, where appropriate and when requested by a party, suspend the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.[179]

G. Recognition and Enforcement of Awards

An arbitral award, irrespective of the country in which it was made, shall be recognized as binding in the Philippines and upon application in writing to the Court.

The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in Section 8 [form of arbitration agreement] or a duly certified copy thereof...

A party relying on an award or applying for its enforcement shall file with the Court the following documents:

(a) the arbitration award;

(b) the arbitration agreement between the parties; and

179. *Id.* § 35.

(c) the arbitration law of the place of arbitration and/or rules under which the arbitration was conducted. ...

The applicant must also submit proof that the country in which the award was made is a party to the United Nations Conventions on the Recognition and Enforcement of Foreign Arbitral Awards [New York Convention], or that it recognizes and allows enforcement of arbitration awards made in the Philippines.[180]

Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the Court of Appeals proof that:

(i) a party to the arbitration agreement was under incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the appointment of an arbitral tribunal or the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be recognized or enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties [or unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate,] or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or...

(vi) the award was secured by means of fraud, corruption or bribery, or

(b) if the Court of Appeals finds that:

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

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

If an application for setting aside or suspension of an award has been made, the Court of Appeals may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.[181]

H. *Arbitration by Court Reference and Stay of Court Proceedings.*

Where a dispute is referred to arbitration by a court where a case was filed, the referring court shall stay the action until an arbitration has taken place and shall

180. *Id.* § 36.

181. *Id.* § 37.

dismiss the case upon proof being provided by either party that the dispute had been resolved by the arbitral tribunal. ...

Where a construction dispute is referred by a court to the CIAC, the court shall dismiss the case upon proof being provided by either party that the CIAC had taken jurisdiction over the dispute.[182]

All 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, involving government or private contracts, shall be filed for settlement or adjudication with the Construction Industry Arbitration Commission (CIAC) which shall have original and exclusive jurisdiction over such disputes.[183]

I. *Waiver of Rights to Object*

A party who knows that any provision of the Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.[184]

J. *Applicability to Domestic Commercial Arbitration*

The provisions of the Act shall likewise apply to domestic arbitration, in particular, Sections 1 to 38 of the Act except of Section 4, Paragraph 3.[185]

CONCLUSION

This paper has seen the evolution of arbitration as a mode of settling disputes in the Philippines. Likewise, the judicial recognition of arbitration as an alternative to judicial proceedings is beyond doubt. Foreign arbitral awards may now be enforced in the Philippines under the New York Convention. Institutional arbitrations like the CIAC and PDRCI arbitrations are now in place in the Philippines. ICC arbitration is being strengthened in the Philippines with the creation of the International Chamber of Commerce of the Philippines. Most importantly, there are now legislative initiatives to make the Philippine arbitral system at par with those existing in the developed world.

Hopefully, the best is yet to come for the arbitral system in the Philippines!

182. *Id.* § 41.

183. *Id.* § 40.

184. *Id.* § 5.

185. *Id.* §§ 4(3) & 39 provide: In international arbitration conducted in the Philippines, a party may be represented by any person of his choice and the appearance thereat shall not be considered practice of law in the Philippines unless the same is part of a series and constitutes regular practice.