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## Philippines

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### A. Legislation and rules

#### A.1 Legislation

Republic Act No. (RA) 9285, or the ADR Act, continues to be the principal governing arbitration law in the Philippines. The ADR Act has not been amended since its enactment in 2004. Apart from the ADR Act and its implementing rules and regulations, the following laws and rules also govern arbitration in the Philippines: (i) RA 876, or the Arbitration Law; (ii) the Special Rules of Court on Alternative Dispute Resolution; (iii) Executive Order No. (EO) 1008, which deals specifically with the compulsory jurisdiction of the Construction Industry Arbitration Commission (CIAC) with respect to arbitration of construction disputes, and the CIAC rules of procedure; and (iv) EO 78 and its implementing rules and regulations, which mandate the adoption of ADR mechanisms such as arbitration in certain government contracts.

In September 2018, Senate Bill No. (SB) 2033 was filed before the Philippine Senate, seeking to institutionalize compulsory arbitration for disputes arising from: (i) medical malpractice; (ii) insurance laws; (iii) maritime laws; (iv) intellectual property law; and (e) intra-corporate matters. Under SB 2033, the foregoing areas of dispute shall

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fall under the original and exclusive jurisdiction of the Philippine Arbitration Commission, a body specifically created for such purpose. Should SB 2033 eventually become law, persons or entities involved in the foregoing covered areas and who might, in the future, find themselves being parties to disputes arising from the same, will have to ensure at the outset that their transactions or contracts are covered by arbitration agreements that adequately serve their particular interests and circumstances, to the extent allowed under any implementing rules that may be promulgated pursuant to SB 2033.

As of December 2018, SB 2033 is still pending review before the Senate Committees on Justice and Human Rights and Finance. Should SB 2033 pass committee review, it will be submitted for a second and third reading, voted upon by the Senate, referred to the House of Representatives for concurrence and, thereafter, submitted to the President for approval.

## A.2 Institutions, rules and infrastructure

While several arbitral institutions have been established in the Philippines, the leading commercial arbitration center in the country is the Philippine Dispute Resolution Center (PDRC). As of November 2018, it has a total of 348 members, 235 of whom are trained arbitrators while 56 are accredited. Accredited arbitrators are those who have previously served either as counsel or arbitrator (or both) in at least five arbitration cases. On the other hand, trained arbitrators are those who have undergone PDRC arbitration training and are qualified to serve as arbitrators, but have not completed the requirements for full accreditation.

More than 30% of the total membership of PDRC is female. While only eight out of its 56 accredited arbitrators are female, 84 out of its 235 trained arbitrators are female. This reflects a growing trend of increasing female participation in the traditionally male-dominated field of commercial arbitration. As more trained arbitrators become accredited, it is hoped that women will become better represented in



PDRC's pool of accredited arbitrators, as well as in the greater commercial arbitration field in general.

## B. Cases

### B.1 The factual findings of the CIAC in construction disputes are final, conclusive, and not subject to judicial review on appeal

In *Metro Rail Transit Development Corp. v. Gammon Phils., Inc.*,<sup>3</sup> the Supreme Court denied a petition for review on *certiorari* that questioned the factual findings made by the CIAC in a construction arbitration and further held that a judicial finding upholding the CIAC's jurisdiction over a dispute may be considered a finding as to the existence of the parties' contract and arbitration agreement.

Gammon Phils., Inc. ("Gammon") emerged as the winning bidder for the construction of the concrete works of a portion of the maintenance depot of the rail transit system owned and operated by Metro Rail Transit Development Corporation ("MRT"). However, because the project's scope of work had to be revised, the parties could not agree on new terms and conditions and MRT decided to award the contract to another contractor. Gammon then commenced arbitration before the CIAC, whose jurisdiction was upheld by the Supreme Court in a separate case. The arbitral tribunal constituted by the CIAC eventually issued an award in favor of Gammon. MRT questioned the merits of the arbitral award and claimed that no contract or arbitration agreement had been perfected between the parties.

The Supreme Court held that the CIAC is a quasi-judicial body that exercises quasi-judicial powers. Arbitration under a quasi-judicial body is similar to commercial arbitration in that its factual findings are generally accorded respect and finality. However, the findings in commercial arbitration are respected to uphold the autonomy of arbitral awards, whereas those in CIAC arbitration are respected

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<sup>3</sup> G.R. No. 200401, 17 January 2018.

because the CIAC is presumed to be technically proficient in the efficient and speedy resolution of conflicts in the construction industry. Thus, even though the CIAC rules of procedure expressly refer to a mode of appeal under the Rules of Court that allows both questions of fact and law to be raised on appeal, the SC ruled that CIAC awards are binding and deemed final and unappealable, except on pure questions of law and on certain exceptional grounds<sup>4</sup> (i.e., (i) the procurement of the award by corruption, fraud or undue means; (ii) the evident partiality or corruption of the arbitrators; (iii) the misconduct of the arbitrators in refusing to postpone a hearing upon good cause shown, or refusing to hear evidence pertinent and material to the controversy; (iv) the disqualification of one or more of the arbitrators; and (v) the arbitrators' excess of authority or imperfect execution of their authority). The Supreme Court further held that its earlier ruling upholding the jurisdiction of the CIAC over the dispute necessarily implied that a contract and arbitration agreement had been perfected between the parties. Following the doctrine of the law of the case, the existence of the contract and arbitration agreement could no longer be raised as an issue on appeal.

This case appears to reinforce the Supreme Court's recent jurisprudential inclination to limit the scope of the appellate review of CIAC awards to purely legal questions. In upholding the limited scope of the appellate review of CIAC awards, *Metro Rail Transit Development Corp.* strengthens the legal framework for construction arbitration in the Philippines. However, this decision also shows that the Supreme Court, consistent with its previous decisions, continues to fail to make a distinction between the CIAC as a government agency and the arbitral tribunals constituted by the CIAC. While the CIAC itself may be considered a quasi-judicial entity, the same cannot be said of the arbitrators who sit in tribunals constituted by the CIAC, who remain private individuals. The distinction is important because the rule that mandates that factual findings of quasi-judicial bodies

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<sup>4</sup> This principle was also upheld by the Supreme Court in *Malayan Insurance Co., Inc. v. St. Francis Square Realty Corp.*, G.R. Nos. 198916-17, 23 July 2018.



must be accorded respect does not necessarily apply to private individuals sitting as arbitrators in an arbitral tribunal.

## B.2 Partnership Agreements as “commercial” in nature for purposes of arbitration

In *Strickland v. Ernst & Young LLP*,<sup>5</sup> the Supreme Court held that a contract, including the arbitration clause therein, could be subsequently submitted to courts in substantial compliance with the rule on actionable documents. The Supreme Court further clarified what constitutes an international and commercial arbitral dispute.

National Home Mortgage Finance Corporation (NHMFC) and Punongbayan & Araullo (PA), then a member firm of Ernst & Young LLP (EYLLP), entered into a Financial Advisory Services Agreement for the liquidation of NHMFC’s Unified Home Lending Program (UHLP). After a few years, EYLLP severed its relationship with PA, which ultimately resulted in the removal of Dale Strickland, an EYLLP partner, from the UHLP Project. Strickland then filed a complaint against PA, NHMFC, and EYLLP and its Asia Pacific affiliate for equitable compensation for his professional services. EYLLP moved for the case to be referred to arbitration on the basis of the arbitration clause in its Partnership Agreement with Strickland, which contemplated arbitration in the United States.

The trial court denied the motion, finding that the parties’ arbitration agreement was inoperative or incapable of performance in the Philippine jurisdiction. The trial court further found that the dispute could not be categorized as an international commercial dispute since Strickland’s causes of action were based on EYLLP’s alleged tortious conduct in refusing to compensate him for professional services rendered. EYLLP filed a petition for *certiorari* before the Court of Appeals, which ruled in its favor. The Court of Appeals set aside the order of the trial court and directed the referral of the dispute to arbitration in accordance with the parties’ arbitration agreement. The

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<sup>5</sup> G.R. No. 193782, 1 August 2018.

Court of Appeals held that (i) EYLLP substantially complied with the rule on setting forth actionable documents; (ii) its Partnership Agreement with Strickland contained a valid arbitration clause; and (iii) applying the doctrine of processual presumption, the dispute between EYLLP and Strickland falls under the category of international commercial disputes subject to arbitration. Strickland thereafter assailed the Court of Appeals' decision before the Supreme Court by way of a petition for review on *certiorari*, contending in part that EYLLP failed to prove and allege the Partnership Agreement and, thus, failed to prove the existence of an arbitration agreement between the parties.

The Supreme Court denied Strickland's petition. It found that, while EYLLP had only initially quoted excerpts of the Partnership Agreement in its initial pleadings before the trial court, it had substantially complied with the rule on actionable documents when it submitted a full copy of the Partnership Agreement in a subsequent manifestation. The Supreme Court noted that Strickland never technically denied the existence of the Partnership Agreement and the arbitration clause therein. The Supreme Court further affirmed the Court of Appeals' application of the doctrine of processual presumption and held that applying Philippine arbitration law to the dispute yielded the conclusion that the arbitration dispute is international in nature because EYLLP's place of business is in the United States, while the services for which compensation was sought were performed in the Philippines. The Supreme Court further held that the arbitration dispute was commercial in nature since "commercial" covers matters arising from all relationships of a commercial nature, whether contractual or not, including joint ventures and other forms of industrial or business cooperation. Accordingly, "commercial" was broad enough to cover the partnership between Strickland and EYLLP.

This ruling strengthens the legal framework for arbitration in the Philippines. The broad signification assigned by the Supreme Court to



the term “commercial” further reinforces Philippine state policy favoring arbitration.

### B.3 CIAC jurisdiction cannot be diminished by stipulation of the parties

In *Tourism Infrastructure and Enterprise Zone Authority v. Global-V Builders Co.*,<sup>6</sup> the Supreme Court ruled that the jurisdiction conferred by law on the CIAC cannot be subjected to any condition or waived or diminished by stipulation of the parties.

Global-V Builders Co. (Global-V) entered into a series of Memoranda of Agreement (MOA) with the Philippine Tourism Authority, the predecessor-entity of the Tourism Infrastructure and Enterprise Zone Authority (TIEZA), for various horizontal construction projects. Eventually, Global-V commenced arbitration before the CIAC, seeking payment from TIEZA for unpaid bills in connection with the projects under the MOA. TIEZA refused to enter into arbitration and moved for dismissal, contending that the CIAC had no jurisdiction over the dispute since Global-V failed to allege and show a perfected arbitration agreement (in the MOA or otherwise), and further failed to exhaust available administrative remedies as required under CIAC procedural rules. Global-V countered that provisions of prevailing public procurement law mandate the compulsory submission of disputes arising from public infrastructure construction contracts to CIAC arbitration and that such provisions of law are deemed part of the contracts entered into by the parties. The CIAC constituted the arbitral tribunal, which denied TIEZA’s motion to dismiss, holding that the provisions of prevailing public procurement law are deemed incorporated into the MOA, and finding that such provisions are, in any case, reproduced in the General Conditions of Contract that forms part of the MOA. The arbitral tribunal further found that Global-V need not comply with the requirement to exhaust administrative remedies under CIAC procedural rules since compliance would only cause unreasonable delay. Although TIEZA maintained its

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<sup>6</sup> G.R. No. 219708, 3 October 2018.

jurisdictional objections throughout the arbitration proceedings, the arbitral tribunal eventually issued an award in favor of Global-V.

TIEZA thereafter filed a petition for the review of the arbitral award before the Court of Appeals, once again raising its objection to the jurisdiction of the CIAC and its argument as to Global-V's failure to exhaust administrative remedies. TIEZA contended that the dispute resolution clause of the General Conditions of Contract expressly provided that the perfection of the arbitration agreement was subject to a condition precedent that the parties incorporate the process of arbitration into the contract. Since such condition precedent was not complied with, TIEZA argued that no arbitration agreement had been perfected between the parties. The Court of Appeals ultimately ruled in favor of Global-V and upheld the arbitral award. The Court of Appeals found that the mere presence of an arbitration clause in a construction contract will suffice to vest jurisdiction over all disputes arising therefrom on the CIAC, and a condition in the arbitration clause requiring that the parties incorporate the process of arbitration into the contract would not defeat such jurisdiction. The Court of Appeals further held that a claimant's failure to exhaust administrative remedies would only warrant the suspension of the arbitration and not the dismissal of the claim or the invalidation of the CIAC's jurisdiction. TIEZA then filed a petition for review on *certiorari* before the Supreme Court.

In denying TIEZA's petition, the Supreme Court held that the CIAC acquires jurisdiction over a construction dispute when the parties are bound by an arbitration agreement or subsequently agree to submit the dispute to voluntary arbitration. The arbitration clause in the General Conditions of Contract forming part of the MOA clearly provided that all disputes arising from the implementation of the contracts covered by public procurement laws shall be submitted to arbitration in the Philippines. The existence of such an arbitration clause was deemed an agreement of the parties to submit existing or future controversies to CIAC jurisdiction. The Supreme Court further held that, since the CIAC's jurisdiction is conferred by law, it cannot be subjected to any



condition or waived or diminished by stipulation of the parties. Thus, any condition limiting the CIAC's exercise of jurisdiction, such as the stipulation requiring that the parties incorporate the process of arbitration into the contract, would be unenforceable. In any case, the Supreme Court found that the "process of arbitration" referred to in the arbitration agreement could only refer to the process of arbitration by the CIAC, as provided under CIAC procedural rules. The Supreme Court further affirmed the Court of Appeals' ruling that Global-V need not comply with the rule requiring prior exhaustion of administrative remedies on the exempting ground of unreasonable delay.

In upholding the original and exclusive jurisdiction of the CIAC over construction disputes covered by arbitration agreements, this decision reinforces the Supreme Court's tendency to favor the compulsory arbitration of disputes before specialized tribunals with specific technical expertise. *Tourism Infrastructure and Enterprise Zone Authority* also shows the Supreme Court's inclination to restrict the parties' ability to incorporate mechanisms or conditions in their arbitration agreement to help them resolve disputes expeditiously and avoid arbitration altogether. These effectively undermine the fundamental principle of party autonomy that underlies arbitration in general.