

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

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PHILIPPINES

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1. Would your jurisdiction be described as a common law or civil code jurisdiction?

The Philippines is often characterized as a civil law jurisdiction due to the influence of the Spanish legal system. However, numerous Philippine statutes embody American common law principles. A Philippine Supreme Court justice has noted that “there is in the [Philippines] a unique legal system, in which two great streams of the law — the civil, the legacy of Rome to Spain, coming from the West, and the common, the inheritance of the United States from Great Britain, amplified by American written law, coming from the East — have met and blended.” (Gamboa, *An Introduction to Philippine Law* 62 (1939)).

2. What method of adjudication is used?

Adjudication in the Philippines is adversarial.

3. What are the qualifications of the adjudicator?

As provided in Section 7, Article VIII of the 1987 Philippine Constitution, the general requirements for a person to be a member of the judiciary are:

- (a) The person must be a citizen of the Philippines;
- (b) The person must be a member of the Philippine bar; and
- (c) The person must be of proven competence, integrity, probity, and independence.

For one to be a member of the Supreme Court or any lower collegiate court, the requirement of citizenship is further qualified: one must be a *natural-born* citizen of the Philippines. Other additional requirements for membership of the Supreme Court are:

- (a) The member must be at least forty years of age; and
- (b) Must have been, for fifteen years, either a judge of a lower court *or* engaged in the practice of law in the Philippines.

The additional requirements for judges in the Regional Trial Courts and Municipal/Metropolitan Trial Courts are provided in Batas Pambansa Blg. 129. Judges of Regional Trial Courts must be—

- (a) At least 35 years of age; and

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PHILIPPINES

- (b) For at least 10 years, were engaged in the practice of law in the Philippines *or* held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite (Section 26, B.P. 129).

Members of the judiciary are appointed by the President of the Philippines from a list of at least three nominees. As provided in Section 8, Article VIII of the 1987 Philippine Constitution, the recommendation of appointees to the judiciary is the principal function of the Judicial and Bar Council.

4. Are there any procedures available for specialized courts?

The special courts in the Philippines are tribunals that have limited jurisdiction over certain types of cases or controversies. Some specialized courts have authority to promulgate their own rules of procedure.

There are three special courts in the Philippine judicial system: the Sandiganbayan, the Court of Tax Appeals, and the Shari'a Courts (Pangalangan (ed.), 2001).¹

The Sandiganbayan is a special collegiate court with jurisdiction to try and decide criminal cases involving violations of Republic Act No. 1039, "The Anti-Graft and Corrupt Practices Act," Republic Act No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code (Section 1 and 4, P.D. 1606, as amended). As amended by Republic Act No. 7975, the Sandiganbayan Law provides the application of the Rules of Court promulgated by the Supreme Court.

The Court of Tax Appeals is a collegiate court which has appellate jurisdiction over decisions of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Trade and Industry, civil tax cases, criminal tax cases, local tax cases, property taxes, and final collection of taxes. Although it promulgates its own rules of procedure, these rules rely heavily on the Rules of Court.

The Shari'a Courts have jurisdiction over the settlement of issues, controversies, or disputes pertaining to the civil relations between and among Muslim Filipinos. P.D. No. 1083 authorized the creation of the Special Rules of Procedure Governing the Shari'a Courts. While the Special Rules do not substantially differ from the Rules of Court, they additionally provide a list of disallowed motions and pleadings. The Special Rules also contain certain unique features such as the Oath (*Yamin*) (Section 14, Special Rules of Procedure Governing Shari'a Courts), which may be administered upon any of the parties who are Muslims in order to establish a fact, or to affirm any evidence presented. When the *mudda'alai* (defendant) takes the *yamin* due to lack of evidence on the part of the *mudda'i* (plaintiff), the claim against the former shall be dismissed. If the *mudda'alai* refuses to take the *yamin*, the taking thereof by the *mudda'i* may constitute proof to establish the claim and judgment will be rendered in the latter's favor.

Although not technically specialized courts, some Regional Trial Courts have been designated as Family Courts by Republic Act No. 8369, the Family Courts Act of 1997. They have jurisdiction over various cases involving family relations such as adoption, legal support, and annulment of marriage. Special provisional remedies may be obtained from these courts in cases of violence among immediate family members living in the same domicile or household. Such courts also handle such proceedings as declaration of nullity and annulment of marriages, legal separation, and provisional orders.

¹ Dr. Raul C. Pangalangan (Ed.), *The Philippine Judicial System*, Institute of Developing Economies Asian Law Series, Chiba, Japan (2001)

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

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PHILIPPINES

Some Regional Trial Courts have also been constituted as Special Courts for drug cases by Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002” and Cybercrime Courts by Republic Act No. 10175. These courts have exclusive jurisdiction to try and hear cases involving violations of Republic Acts nos. 9165 and 10175, respectively.

In addition, special rules of procedure have been promulgated by the Supreme Court to govern specific cases. Thus: (a) environmental cases, including the enforcement of environmental laws and rules such as the Water Code, the Sanitation Code, and the Philippine Mining Act, are governed by A.M. No. 09-6-8-SC, (b) intra-corporate disputes, which include fraud committed by the directors against the corporation, derivative suits, election controversies involving directors, and those involving the inspection of corporate books, are governed by A.M. No. 01-2-04, (c) corporate rehabilitation cases, which involve petitions for liquidation or rehabilitation initiated by debtors or even the stockholders of the corporation, are governed by A.M. No. 12-12-11-SC (the “Financial Rehabilitation Rules of Procedure”), and (d) small claims, or actions for payment of money where the value of the claim does not exceed P200,000.00 are governed by A.M. No. 08-8-7-SC. Notably, regular courts hear and try the foregoing cases using the applicable rules.

5. Is arbitration an option and when? If so, what rules are typically used?

Arbitration, as a mode of dispute resolution is recognized under Republic Act No. 9285 or “The Alternative Dispute Resolution (ADR) Law.” Under the ADR Law, arbitration is a process where one or more arbitrators, appointed in accordance with the agreement of the parties, or rules [], resolve a dispute by rendering an award (Section 3(d), R.A. 9285). It is the reference of the dispute, by mutual consent of the parties, to selected persons for determination and resolution. The decision of the arbitrator will be a substitute for a court judgment.

The various kinds of arbitration are governed by different laws. Domestic arbitration is governed primarily by Republic Act No. 876 (“The Arbitration Law”), while international arbitration is governed by the 1985 Model Law on International Commercial Arbitration (Section 19, R.A. 9285). Construction disputes, on the other hand, are governed by Executive Order No. 1008, “The Construction Industry Arbitration Law.” (Section 34, R.A. 9285)

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes, courts will enforce an arbitration agreement to preclude other forms of litigation. The policy of the State is to actively promote arbitration as a tool for dispute resolution, and to respect the freedom of the parties to make their own arrangements in the resolution of disputes. Thus, when parties have agreed to submit their dispute to arbitration pursuant to an arbitration agreement, then the courts are mandated to refer the parties to arbitration (Section 24, R.A. 9258). Court assistance may, however, be sought prior to or during the arbitration proceedings for, among others, obtaining interim measures of protection (Rule 5, Special ADR Rules), and the taking of evidence (Rule 9, Special ADR Rules).

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

Pursuant to A.M. No. 11-1-6-SC-PHILJA, issued by the Supreme Court, it is mandatory for certain cases to be referred to court-annexed mediation (CAM) during the pre-trial stage of court proceedings. These cases are:

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PHILIPPINES

- (a) All civil cases and the civil liability of criminal cases covered by the Rule on Summary Procedure, including the civil liability for violation of B.P. 22, except those that by law may not be compromised;
- (b) Special proceedings for the settlement of estates;
- (c) All civil and criminal cases filed with a certificate to file action issued by the *barangay* chairman or the settlement council under the Revised Katarungang Pambarangay Law;
- (d) The civil aspect of quasi-offenses under Title XIV of the Revised Penal Code;
- (e) The civil aspect of less grave felonies punishable by correctional penalties not exceeding six years' imprisonment, where the offended party is a private person;
- (f) The civil aspect of fraud, theft, and libel;
- (g) All civil cases and probate proceedings, testate and intestate, brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33(1) of B.P. 129;
- (h) All cases of forcible entry and unlawful detainer brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33(2) of B.P. 129;
- (i) All civil cases involving title to or possession of real property or an interest therein brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33(3) of B.P. 129; and
- (j) All habeas corpus cases decided by the first level courts in the absence of the regional trial court judge, which are brought up on appeal from the special jurisdiction granted to the first level courts under Section 35 of B.P. 129

A form of mandatory mediation is also provided by Presidential Decree No. 1508, "The Katarungang Pambarangay Law" which was later revised and included in the Local Government Code. The law created in every *barangay* a *lupon tagapayapa* ("*lupon*") composed of the *barangay* captain as chairman and 10 to 20 members. The *lupon* exercises administrative supervision over the *pangkat*, the conciliation panel consisting of three members of the *lupon* chosen by agreement of the parties (Section 1, P.D. 1508).

The *lupon* has authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except:

- (a) Where one party is the government, or any subdivision or instrumentality thereof;
- (b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
- (c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five thousand pesos (P5,000.00);
- (d) Offenses where there is no private offended party; and
- (e) Such other classes of disputes which the President may determine in the interest of justice upon recommendation of the Secretary of Justice and the Secretary of Interior and Local Government (Section 2, P.D. 1508).

The *lupon* shall have no authority over disputes—

- (a) Involving parties who actually reside in *barangays* of different cities or municipalities, except where such *barangays* adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*; and
- (b) Involving real property located in different municipalities (Section 3, P.D. 1508).

No complaint, petition, action, or proceeding involving any matter within the authority of the *lupon* can be filed or instituted in court or any government office of adjudication unless there was a confrontation of the parties before the

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PHILIPPINES

lupon chairman or *pangkat* and no conciliation or settlement was reached, as certified by the *lupon* secretary or *pangkat* secretary, or unless the settlement was repudiated. However, the parties are permitted to go directly to court in certain instances:

- (a) Where the accused is under detention;
- (b) Where a person has otherwise been deprived of personal liberty, calling for *habeas corpus* proceedings;
- (c) Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support *pendente lite*; and
- (d) Where the action may otherwise be barred by the Statute of Limitations (Section 6, P.D. 1508).

8. What is the process for pre-hearing fact discovery?

The procedures for Modes of Discovery are laid down in Rules 23 to 29 of the Rules of Court. These include:

- (a) Depositions, which are means by which a testimony of any person is taken before an authorized person, for use in proceedings;
- (b) Interrogatories to parties, which are queries directed to parties in a proceeding which must be answered fully in writing and must be signed and sworn to;
- (c) Request for admission, which is a series of factual averments which must either be denied or accepted by the other party. Any admission obtained shall be for the purpose of the pending action only;
- (d) Production or inspection of documents or things, which seeks to require a party to produce and permit the inspection, copying, or photographing of documents, or to allow entry upon designated land for inspection, measurement, survey or photographs; and
- (e) Physical and mental examination of persons, which seeks the physical or mental examination of a party by a physician if the physical or mental condition of a party is in controversy.

(a) Are there provisions for mandatory document discovery?

Document discovery is always upon motion of a party. As provided in Section 1 of Rule 27 of the Rules of Court: “Upon motion of any party showing good cause therefore, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photocopying, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control; or (b) order any party or permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place, and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just.”

(b) Is there provision for oral examinations of the parties or others?

The rules providing for oral examinations of the parties or others are Rule 23 (Depositions Pending Action) and Rule 24 (Depositions Before Action or Pending Appeal) of the Rules of Court.

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PHILIPPINES

Rule 23 allows parties to obtain depositions of witnesses. This is done by leave of court after jurisdiction has been obtained over the defendant or the property subject of the action. This may be done without such leave if the opposing party has filed an answer to the complaint. Attendance of witnesses may be compelled by subpoena. Depositions may be taken before any judge, notary public, or, if so stipulated in writing, before any person authorized to administer oaths at any time or place.

Rule 24 allows the taking of depositions even before a case is filed in court or pending appeal. The rules governing it are essentially the same as those found in Rule 23 except that for depositions before [an] action, a petition is required to be filed in court.

(c) Are there limits on the length of oral examination?

There is no express provision in the Rules of Court which limits the length of the oral examination of the deponent. However, at any time during the taking of the deposition, on motion or petition of any party or of the deponent, and upon showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the Regional Trial Court of the place where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition (Section 18, Rule 23 of the Rules of Court). Upon motion seasonably made by any party or by the person to be examined and for good cause shown, the court may make any order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression (Section 16, Rule 23 of the Rules of Court).

(d) Are witness statements or summaries to be provided before the hearing?

After the filing of the certified deposition with the court, the officer taking the deposition shall give prompt notice of its filing to all the parties (Sections 20 to 21, Rule 24 of the Rules of Court). Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent (Section 22, Rule 24 of the Rules of Court).

Even if not obtained through discovery, witness statements, in the form of judicial affidavits, are required to be submitted not later than five days before pre-trial or preliminary conference or the scheduled hearing. A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than P 1,000.00 nor more than P 5,000.00 at the discretion of the court. (A.M. No. 12-8-8-SC) The New System for Speedy Court Trial (NSSCT) (A.M. no. 14-03-02-SC), currently being pilot-tested in selected courts, requires the submission of judicial affidavits within thirty (30) days from notice from the court.

9. What is the process for pre-hearing expert disclosure (if any)?

A.M. No. 03-1-09 provides that the number and names of the witnesses (which include expert witnesses, if any), the substance of their testimonies, and the approximate number of hours that will be required by the parties for the presentation of their respective witnesses must be included in the pre-trial brief which shall be submitted to the court at least three (3) days before the pre-trial conference.

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PHILIPPINES

(a) Are expert reports or written summaries required to be exchanged?

When experts are called on to conduct physical and mental examinations of persons, the party causing the examination to be made shall deliver a copy of the findings and conclusions to the party examined, upon request of the latter. After such request and delivery, the party causing the examination to be made may also request that the party examined furnish the former copies of any examination, previously or thereafter made, of the same mental or physical condition (Section 3, Rule 28 of the Rules of Court).

(b) Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?

There is no express provision in the Rules of Court which entitles parties to conduct a pre-hearing oral examination of opposing experts. However, under the NSSCT, an expert witness may, with leave of the court, ask questions to the other party's expert witness.

(c) Are there provisions requiring experts to meet and narrow issues before the hearing?

There is no express provision in the Rules of Court which requires experts to meet and narrow issues before the hearing.

10. Are there other notable discovery rules?

There are none.

11. Is there a prehearing conference (for trial management, settlement or other purposes)/ Who conducts it? How long before the hearing?

A pretrial conference is mandatory in all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court. It is conducted by a judge and is done after arraignment and within 30 days from the date the court acquires jurisdiction over the person of the accused, unless a special law covering the case provides for a shorter period. (Section 1, Rule 118 of the Rules of Court) The trial proper commences within 30 days from receipt of the pre-trial order. (Section 1, Rule 119 of the Rules of Court)

A pretrial conference is also mandatory in civil cases. It is primarily conducted by the judge who has jurisdiction over the case. However, certain stages of the conference may be referred by the judge to other entities such as the Philippine Mediation Center for mediation or to the Branch Clerk of Court for a preliminary conference to assist the parties in reaching a settlement, to mark the documents or exhibits to be presented by the parties and copies thereof to be attached to the records after comparison and to consider such other matters as may aid in the case's prompt disposition. The schedule of the trial proper depends on the agreement of the parties to the case. (A.M. No. 03-1-09-SC)

The NSSCT implemented in selected courts requires the conduct of preliminary conference. Under said rules, parties that do not settle their disputes during the Judicial Dispute Resolution must submit to the court and disclose to each other known and available evidence including the submission of judicial affidavits, reply judicial affidavits, availment of discovery

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PHILIPPINES

procedures, documentary and object evidence, and proposed Terms of Reference. After the submission and disclosure, the court shall prepare the Terms of Reference of the case. This shall control the scope of the trial. Once all these have been accomplished, the case shall be set for preliminary conference to revise the Terms of Reference, if necessary, to determine issues and order of trial, identify the witnesses and set the dates for reception of evidence on each issue or related issue, and other matters required under the New System for Speedy Trial.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

Yes. During the pretrial conference in a civil case, the court can consider the propriety of rendering judgment on the pleadings, or summary judgment or of dismissing the action should there be a valid ground for it. (Section 2, Rule 18 of the Rules of Court)

Judgment on the pleadings is proper when the answer fails to tender an issue, or otherwise admits the material allegations on the adverse party's pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved. (Section 1, Rule 34 of the Rules of Court)

Similarly, under the NSSCT, the court may render judgment or dismiss the action as a result of the preliminary conference or in the course of the same, when the circumstances so warrant.

A summary judgment may be issued if it is shown that, except as to the amount of damages, there is no genuine issue as to any material facts and the moving party is entitled to judgment as a matter of law. (Section 2, Rule 35 of the Rules of Court)

The action may be dismissed based on the following grounds: (1) That the court has no jurisdiction over the person of the defending party; (2) That the court has no jurisdiction over the subject matter of the claim; (3) That venue is improperly laid; (4) That the plaintiff has no legal capacity to sue; (5) That there is another action pending between the same parties for the same cause; (6) That the cause of action is barred by a prior judgment or by the statute of limitations; (7) That the pleading asserting the claim states no cause of action; (8) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished; (9) That the claim on which the action is founded is enforceable under the provisions of the statute of frauds; and (10) That a condition precedent for filing the claim has not been complied with. (Section 1, Rule 16 of the Rules of Court)

13. Is there a process for obtaining prehearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

During the pre-trial conference, the parties may stipulate on facts and documents to dispense with the need of proving such facts and documents during trial. These stipulations on facts and documents may include the admissibility of expert testimony that may have been previously submitted by either party or which already forms part of the records of the case. Parties may likewise move for the taking of judicial notice of certain facts or circumstances.

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PHILIPPINES

14. What is the standard for admissibility of expert evidence?

Expert evidence is admissible only if: (a) the matter to be testified to is one that requires expertise, and (b) the witness has been qualified as an expert. (*Avelino vs. People*, G.R. No. 181444, July 17, 2013 and Section 49, Rule 130 of the Rules of Court)

Expert opinions are not ordinarily conclusive. They are generally regarded as purely advisory in character. The courts may place whatever weight they choose upon and may reject them, if they find them inconsistent with the facts in the case or otherwise unreasonable. When faced with conflicting expert opinions, courts give more weight and credence to that which is more complete, thorough, and scientific. (*Bacalso vs. Padigos*, G.R. No. 173192, April 18, 2008)

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

No, the Court does not have the power to appoint its own experts. However, the Supreme Court may invite an amicus curiae or a “friend of the court,” referring to experts who have gained mastery over a specific subject through constant exposure and practice and who, through their deep knowledge of a particular matter, may help the Court to further thresh out and give clarity to the issues.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client/legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Yes, the Philippine judicial system protects privileged communication as found under the Rules of Court and other pertinent laws.

Under the Rules of Court, communication between the following persons are accorded protection: (1) a husband and wife, (2) an attorney and his client, (3) a doctor and his patient, (4) a minister or priest and a confessee and (5) communication made to a public officer in official confidence. (Section 24, Rule 130 of the Rules of Court) Testimonial privilege is also protected such that a person may not be compelled to testify against his parents, other direct ascendants, children or other direct descendants except in a criminal case where a descendant’s testimony is indispensable in a crime against that descendant or by one parent against the other. (Section 25, Rule 130 of the Rules of Court and Article 215 of the Family Code)

Other laws recognize the privacy and confidentiality of certain information. These include (a) certain sections of The New Civil Code on privacy, (b) Article 290 of The Revised Penal Code on revelation of secrets, (c) The Philippine AIDS Prevention and Control Act which mandates strict confidentiality in the handling of all medical information of persons with HIV, (d) Magna Carta of Disabled Persons, (e) birth records under the Child and Youth Welfare Code, and relevant provisions of (f) the Electronic Commerce Act, (g) The Data Privacy Act of 2012 and (f) trade secrets (*Air Philippines Corp. v. Pennswell Inc.*, G.R. No. 172835, December 13, 2007).

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PHILIPPINES

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protection?

If the communication is not specifically protected under the Rules of Court or other laws, an individual can invoke, against the State, Article 3, Section 3 of the 1987 Constitution which provides for the inviolability of the privacy of communication and correspondence except upon lawful order of the court or when public safety or order requires otherwise.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The judge who has jurisdiction over the case determines privilege disputes.

19. Briefly describe the trial process?

(a) Are there opening submissions, in what form and of what length?

None.

(b) and (c) What is the order of presentation of witnesses? Who conducts examination and in what order?

Generally, it is the claimant who must first present evidence, followed by the respondent. The exception is when the respondent asks for a preliminary hearing on affirmative defenses such as prescription and laches, in which case the respondent may be asked to present evidence first.

The order of presentation of witness is as follows:

- (a) Direct examination by the proponent;
- (b) Cross-examination by the opponent;
- (c) Re-direct examination by the proponent;
- (d) Re-cross-examination by the opponent. (Section 4, Rule 132, Rules of Court)

By virtue of the Judicial Affidavit Rule, judicial affidavits of witnesses now take the place of their direct testimony. Thus, once the judicial affidavit is identified by the witness in open court, the cross-examination of the witness shall immediately commence.

The NSSCT provides for a different order of presentation and examination of witnesses. Under said rules, the court may conduct either an alternate trial or a face-to-face trial. However, the parties may, by unanimous agreement, choose to have an alternate trial. An alternate trial is “one where parties take turns in presenting their witnesses with respect to the first factual issue or related issues stated in the order of trial.” The first to present a witness is the party who bears the burden of proving the affirmative of the issue. On the other hand, a face-to-face trial is “one wherein witnesses from the contending sides appear together before the court, sit face-to-face around a table in a non-adversarial environment, and answer questions from the court as well as the parties’ counsel respecting the factual issue under consideration.”

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PHILIPPINES

(d) What is the process for closing submissions?

There are no oral closing submissions in the Philippines. Instead, parties are generally required to submit their respective written memoranda to aid the court in resolving the case. A written memorandum includes a summary of the proceedings, the testimonial, documentary and object evidence presented, and the party's arguments.

Under the NSSCT, courts shall, within ten (10) days from the receipt of the parties' memorandum or draft decision, set the case for oral arguments in case of alternate or regular face-to-face trial of issues. In instances of simple face-to-face trial of issues, the parties shall present their oral arguments after the examination of all the witnesses.

20. Please identify any other notable trial procedures.

Examination of Child Witness (A.M. No. 004-07-SC)

A special procedure is followed in examining a child witness. The court may appoint a guardian ad litem for a child who is a victim, an accused, or is a witness. If the child is unable to understand or respond to the questions asked then the court may also appoint a facilitator through whom questions can be posed to the child.

Reception of Evidence may be delegated to the Clerk of Court

In default or ex parte hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar. The clerk of court shall have no power to rule on objections to any question or to the admission of exhibits. Such objections shall be resolved by the court upon submission of the clerk of court's report and the transcripts.

Judicial Affidavit Rule (A.M. No. 12-8-8-SC)

The Rule applies to actions and proceedings requiring reception of evidence. Under this Rule, the parties shall file with the court and serve on the adverse party judicial affidavits of their witnesses which shall take the place of such witnesses' direct testimonies. The adverse party shall have the right to cross-examine the witness on his judicial affidavit and on the exhibits attached to it.

Trial by Commissioner (Rule 32 of the Rules of Court)

A case may be referred to a commissioner upon written consent of both parties, upon the application of either party or upon the court's motion. The commissioner's report will then be set for hearing. If the parties stipulate that the findings of fact of the commissioner shall be final, only questions of law shall thereafter be considered.

The 2016 Revised Rules of Procedure for Small Claims Cases (A.M. No. 08-8-7-SC)

Cases for payment of money, purely civil in nature where the claim is solely for payment or reimbursement of a sum of money and where the value of the claim does not exceed Two Hundred Thousand Pesos (P200,000.00) exclusive of interest and costs shall be governed by the Revised Rules of Procedure for Small Claims.

Pilot Testing of Rules 22 and 24 of the Revised Rules of Civil Procedure (A.M. No. 14-03-02-SC)

Rules 22 and 24 of the Revised Rules of Civil Procedure are currently being tested in selected first and second level courts in Quezon City, Makati City, Angeles City, Iloilo City, Davao City, and Cebu City. The rules require the mandatory disclosure of evidence, the conduct of the new mode of preliminary conference, face-to-face or alternate trials, and the

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

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PHILIPPINES

rendition of judgment within 90 days in alternate or regular face-to-face trials, or immediately after the examination of all the witnesses in a simple face-to-face trial of issues.

Guidelines on Submission and Processing of Soft Copies of Supreme Court-Bound Papers pursuant to the Efficient Use of Paper Rule (A.M. No. 10-3-7-SC)

Soft copies of all Supreme Court-bound papers and their annexes must be submitted together with the hard copy thereof by compact disc or within 24 hours from the filing of the hard copy if by email.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence. Preponderance of evidence means evidence which is of greater weight, or more convincing than that which is offered in opposition to it. (*Condes v. Court of Appeals*, G.R. No. 161304, July 27, 2007 and Section 1, Rule 133 of the Rules of Court) However, in the course of the trial, once the plaintiff makes out a prima facie case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's prima facie case. (*Jison v. Court of Appeals*, G.R. No. 124853, February 24, 1998)

In criminal cases, the burden of proof is on the State to establish the guilt of the accused beyond a reasonable doubt, as a consequence of the tenet that he who asserts, not he who denies, must prove, and as a means of respecting the presumption of innocence in favor of the accused. Accordingly, the State has the burden of proof to show: (1) the correct identification of the author of the crime, and (2) the actuality of the commission of the offense with the participation of the accused. (*People v. Wagas*, G.R. No. 157943, September 4, 2013) Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. It must rest on its own merits and must not rely on the weakness of the defense. (*People v. Clara y Buhain*, G.R. No. 195528, July 24, 2013 and Section 2, Rule 133 of the Rules of Court)

22. What kinds of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

The following damages are generally recoverable: actual or compensatory, moral, nominal; temperate or moderate, liquidated, and exemplary or corrective, which is also called punitive (Article 2197 of the Civil Code).

Actual or compensatory damages pertain to "adequate compensation...for such pecuniary loss suffered by the plaintiff as he has duly proved." It includes "not only the value of the loss suffered, but also that of the profits which the plaintiff failed to obtain" (Articles 2199-2200 of the Civil Code).

Moral damages are compensation for "physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury." Unlike actual damages, they do not require proof of pecuniary loss (Articles 2216-2217 of the Civil Code).

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

This document is a resource tool only. The information was compiled in 2014. This survey was updated in 2016. Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

PHILIPPINES

Nominal damages are awarded “in order that a right of the plaintiff, which has been violated...by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him” (Article 2221 of the Civil Code).

Temperate or moderate damages are “more than nominal but less than compensatory damages.” They are recoverable “when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty” (Article 2224 of the Civil Code).

Liquidated damages are “those agreed upon by the parties to a contract, to be paid in case of breach thereof” (Article 2226 of the Civil Code). Liquidated damages shall operate as a substitute for all damages which the parties intended to be substituted thereby. Liquidated damages, however, shall be equitably reduced if found to be iniquitous or unconscionable. In breach of contract cases that are not covered by the liquidated damages clause, the court shall determine the measure of damages.

Exemplary or corrective damages are awarded, “by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages” (Article 2229 of the Civil Code).

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Punitive damages (or exemplary or corrective damages) are available (see Civil Code, Articles 2229-2235). These damages are awarded when the following conditions are met:

- (a) “In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.”
- (b) “In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence. “
- (c) “In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.
- (d) “While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded” (Articles 2230-2232, 2234 of the Civil Code).

There is no range of awards of punitive damages since “the assessment of such damages...is left to the discretion of the court, according to the circumstances of each case” (Article 2216 of the Civil Code) and “its determination depends upon the amount of compensatory damages that may be awarded to the claimant” (*Marchan & Philippine Rabbit Bus vs. Mendoza, et al*, G.R. No. L-24471, January 31, 1969)

However, before the court even considers granting exemplary damages, there must be a showing that the claimant is entitled to moral, temperate, or compensatory damages. (*Tiongco v. Deguma*, G.R. No. 133619, October 26, 1999)

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

This document is a resource tool only. The information was compiled in 2014. This survey was updated in 2016. Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

PHILIPPINES

24. Are there limits for bringing claims? Responding to claims? Please describe.

Yes, there are time limits for bringing claims. For example, actions upon a written contract, those upon an obligation created by law, and those upon a judgment must be brought within ten years from the time the right of action accrues. On the other hand, actions upon an oral contract and those upon a quasi-contract must be commenced within six years. Meanwhile, actions upon an injury to the rights of the plaintiff and those upon a quasi-delict must be instituted within four years. Lastly, actions for forcible entry and detainer and those for defamation must be filed within one year. It is important to remember, however, that these limitations are “without prejudice to those specified in other parts of [the Civil Code], in the Code of Commerce, and in special laws” (Articles 1144-1148 of the Civil Code). Specific prescriptive periods are also applicable to criminal actions, and the periods depend on the nature of the crime involved.

There are also limits for responding to claims. For example, Section 1 of Rule 11 of the Rules of Civil Procedure states: “The defendant shall file his answer to the complaint within fifteen (15) days after service of summons, unless [a] different period is fixed by the court.” Section 3 of Rule 9 of the Rules of Civil Procedure states the consequence for non-compliance with such rule: “If the defendant fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence.”

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

“In order that a court may validly try and decide a case, it must have jurisdiction over the subject-matter and jurisdiction over the persons of the parties” (*El Banco Espanol Filipino vs. Palanca*, 37 Phil. 921). Jurisdiction over the subject-matter, “the power to hear and determine cases of the general class to which the proceedings in question belong... is conferred by the sovereign authority which organizes the court and defines its powers” (*El Banco Espanol Filipino vs. Palanca*, 37 Phil. 921). It is “determined by law, not by the consent or agreement of the parties or by estoppel” (*Binay vs. Sandiganbayan*, G.R. Nos. 120681-83, October 01, 1999). On the other hand, jurisdiction over the persons of the parties is “acquired by their voluntary appearance in court and their submission to its authority, or by the coercive power of legal process exerted over their persons,” (*El Banco Espanol Filipino vs. Palanca*, 37 Phil. 921), i.e. “after a strict compliance with the rules on the proper service of summons” (*Pascual vs. Pascual*, G.R. No. 171916, December 04, 2009).

Generally, because jurisdiction is “determined by law and not by the consent or agreement of the parties,” (*Binay vs. Sandiganbayan*, supra) a defendant cannot request that a court decline jurisdiction on the basis that there is a more convenient forum.

An exception to this is the rule on *forum non conveniens*, a doctrine in private international law. The application of this rule however is still subject to the sound discretion of the court upon the concurrence of three requisites. In the case of *Bank of America NT & SA v. CA* (448 Phil. 181), the Court explains: “Under this doctrine, a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most ‘convenient’ or available forum and the parties are not precluded from seeking remedies elsewhere. Whether a suit should be entertained or dismissed on the basis of said doctrine depends largely upon the facts of the particular case and is addressed to the sound discretion of the trial court.” The Court

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

This document is a resource tool only. The information was compiled in 2014. This survey was updated in 2016. Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

PHILIPPINES

then reiterated its ruling in *Communication Materials and Design, Inc. vs. CA*, wherein it held that: “[a] Philippine Court may assume jurisdiction over the case if it chooses to do so; provided, that the following requisites are met: (1) that the Philippine Court is one to which the parties may conveniently resort to; (2) that the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and, (3) that the Philippine Court has or is likely to have power to enforce its decision.”

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

Yes, there are procedures for a defendant to bring other potentially responsible parties into the proceeding. Section 5 of Rule 5 of the Rules of Civil Procedure states: “The defendant may also file a cross-claim or a third-party complaint in accordance with sections 7 and 12 of Rule 6.” Section 7 of Rule 6 defines cross-claim as “any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.” On the other hand, Section 12 of the said Rule defines third-party complaint as “a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.”

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays cost system)

The award of attorney’s fees is the exception, not the general rule (*Ballesteros v. Abion*, G.R. No. 143361, February 9, 2006). Attorney’s fees are not awarded every time a party prevails in a suit. Nor should an adverse decision ipso facto justify an award of attorney’s fees to the winning party. The policy of the Court is that no premium should be placed on the right to litigate (*NPC vs. Heirs of Macabangkit Sangkay*, G.R. No. 165828, August 24, 2011). Article 2208 of the Civil Code enumerates the instances when the attorney’s fees may be awarded as an item of damages. In cases other than those mentioned in the said provision, there has to be a written agreement between the parties in order for legal costs to be recoverable.

The amount of attorney’s fees is actually discretionary upon the Court so long as it passes the test of reasonableness (*Japan Airlines vs. Simangan*, G.R. No. 170141, April 22, 2008) This means that such an award should have factual, legal, and equitable basis, not founded on pure speculation and conjecture. Further, the court should state the reason for the award of attorney’s fees in the body of the decision (*Alcatel Philippines, Inc vs.I.M. Bongar & Co., Inc.*, G.R. No. 182946, October 5, 2011).

28. Are contingency fees allowed?

Yes. Section 24, Rule 138 of the Rules of Court provides that an attorney shall be entitled to recover from his client no more than a reasonable compensation for his services. In the case of *Rayos vs. Hernandez* (G.R. No. 169079 February 12, 2007), the Supreme Court affirmed the validity of a contingent fee arrangement provided that it is laid down in an express contract.

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

This document is a resource tool only. The information was compiled in 2014. This survey was updated in 2016. Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

PHILIPPINES

Its validity also depends, in large measure, upon the reasonableness of the amount fixed as contingent fee under the circumstances of the case. Nevertheless, when it is shown that a contract for a contingent fee was obtained by undue influence exercised by the attorney upon his client or by any fraud or imposition, or that the compensation is clearly excessive, the Court must, and will protect the aggrieved party (*Malonso vs. Principe*, A.C. No. 6289 December 16, 2004)

29. Is third party funding of claims permitted? Under what circumstances?

No, third party funding of claims is not allowed in the Philippines.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Class suits are allowed. Section 12, Rule 3 of the Rules of Court provides: “When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest. “

“The requisites of a class suit are: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned.” (*Banda v. Ermita*, G.R. No. 166620, April 20, 2010)

Based on the unqualified wording of Section 12, Rule 3, the rule on class suits may be applied to all types of claims as long as the requisites are fulfilled.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Yes, claims can be commenced by a consumers’ association or other representative organization. Section 3, Rule 3 of the Rules of Court provides: “Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.” The Court has held, for example, that “the aforementioned provision authorizes a union to file a ‘representative suit’ for the benefit of its members in the interest of avoiding an otherwise cumbersome procedure of joining all union members in the complaint, even if they number by the hundreds” (*Liana’s Supermarket vs. NLRC & NLU*, G.R. No. 111014, May 31, 1996). There could also be representative suits by stockholders or members of a corporation for wrongful or fraudulent acts of directors or other persons: “Where the wrong is done to a group of stockholders, as where preferred stockholders’ rights are violated, a class or representative suit will be proper for the protection of all stockholders belonging to the same group.” (*Cua, Jr. et al vs. Tan et al*, G.R. No. 181455-56, December 04, 2009). The case of *Polomolok Water District vs. Polomolok General*

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

This document is a resource tool only. The information was compiled in 2014. This survey was updated in 2016. Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

PHILIPPINES

Consumers Association, which was decided in favor of the association, (G.R. NO. 162124, October 18, 2007) was a claim filed by a consumers' association.

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

On average, it takes about four months from filing of the complaint to get to trial. Non-appearance of the parties and unavailability of the judge may also cause additional delay.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

Yes, an appeal is available "from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable." "No appeal may be taken from an interlocutory order" (Section 1, Rule 4 of the Rules of Court). However, an interlocutory/procedural order may be assailed via a special civil action for certiorari under Rule 65 provided that the judge "has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law."

Depending on the mode of appeal, the appeal may be heard by a Regional Trial Court judge, the Court of Appeals, or the Supreme Court.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

No. While electronic evidence may be presented, specially-equipped hearing rooms that cater specifically to electronic trials are not currently available.

However, there are certain instances when the rules allow the taking of depositions through video recordings and live-link testimony. The Rule on Examination of a Child Witness (A.M. No. 004-07-SC provides that testimony of a child witness may be taken through any of these methods if the child's guardian ad litem is convinced that the decision of a prosecutor or counsel not to use these methods of taking testimony will cause the child serious emotional trauma.

The examination of a witness may also be done electronically under the Rules on Electronic Evidence (A.M. No. 01-7-01-SC) upon consent of the court and upon determining that there is a necessity for such presentation. The court will prescribe the terms and conditions as may be necessary under the circumstance, including the protection of the rights of the parties and witnesses concerned.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

Graphics, computer animation, power point and the like may be used in trials and oral hearings for appeals.

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

This document is a resource tool only. The information was compiled in 2014. This survey was updated in 2016. Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

PHILIPPINES

If such graphics, computer animation, power point and similar presentations are intended to be offered as evidence, then they must be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof. (Section 1, Rule 11, The Rules on Electronic Evidence)

36. Will the lawyer at the trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

Yes, the lawyer at the trial will be the same as the one responsible for pre-trial procedures. There is no solicitor/barrister distinction in the Philippines.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

Liability among tortfeasors is joint and several. Article 2194 of the Civil Code of the Philippines states: "The responsibility of two or more persons who are liable for quasi-delict is solidary."

The Philippines adheres to the rule of comparative negligence. Thus, a plaintiff's negligence merely mitigates recovery of damages and reduces the liability of the defendant in proportion to his fault; it does not bar recovery. Article 2179 of the Civil Code states that if the plaintiff's negligence "was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded." Also, in Article 2214: "In quasi-delicts, the contributory negligence of the plaintiff shall reduce the damages that he may recover." Finally, Article 1762 provides: "The contributory negligence of the passenger does not bar recovery of damages for his death or injuries, if the proximate cause thereof is the negligence of the common carrier, but the amount of damages shall be equitably reduced. "

The court has discretion as to the extent of the mitigation of the defendant's liability. The Philippine Supreme Court has sustained in various cases mitigation ranging from 20% to 50%.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

The Philippines is not a Contracting State to the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* as of this writing.

(See the Updated List of Contracting States at http://www.hcch.net/index_en.php?act=conventions.status&cid=17 (Accessed May 19, 2016).)

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

This document is a resource tool only. The information was compiled in 2014. This survey was updated in 2016. Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

PHILIPPINES

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No. A foreign court or judge may issue a written request, addressed to the Philippine Regional Trial Court having jurisdiction over the place where the relevant documents may be kept, stating:

- (a) the title and description of the proceedings involved;
- (b) the identity of the parties to such proceedings;
- (c) a request that the Philippine court cause such witnesses and documents as are therein identified or described (or as the parties or either of them may name, describe or point out to the court) to be produced at an appropriate deposition-taking before the local court or some person authorized by it; and
- (d) a request that the depositions taken and copies of the documents produced be thereafter transmitted under cover duly closed and sealed to the requesting court.

The foreign court's request may be coursed through the Philippine Foreign Service for transmission to the local court.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

None.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

None.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

Yes. There are efforts to revise the Rules of Civil Procedure. The first draft of the Revised Rules was released in 2013. Some changes sought to be implemented include the imposition of mandatory ADR and the introduction of simultaneous examination of witnesses/face-to-face trials. Currently, Rules 22 and 24 of the said rules, which include the conduct of face-to-face trials are being pilot tested in selected courts.

