INTERNATIONAL CONSTRUCTION ARBITRATION IN THE PHILIPPINES: THE CURIOUS CASE OF *CHINA CHANG*

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Arbitration has made steady inroads into Philippine law from just two provisions on arbitration in the Civil Code of 1889 to the Alternative Dispute Resolution (ADR) Act of 2004 which brought into force the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL). The acceptance of international arbitration and arbitral rulings makes the country a more viable destination for commercial investment as it assures investors that in case of disputes, they can resort to impartial and efficient resolution via international arbitration. Central to international arbitration's role as an alternative mode of dispute resolution is party autonomy in determining the seat of arbitration. In the China Chang Case, the Supreme Court ruled that despite an agreement between the parties to submit disputes to the International Chamber of Commerce, Executive Order No. 1008 still allowed the parties to submit the dispute to the Construction Industry Arbitration Commission. This ruling disregards party autonomy. If the Philippine legal system is to remain consistent with the principles adopted by the ADR Act of 2004, the Supreme Court must stop citing its ruling in the China Chang Case.

This article will try to describe the arbitration landscape of the Philippines through the calibrated lenses of international commercial arbitration. Particular focus is made on how the laws on arbitration evolved in the Philippines and how the ruling laid down by the Philippine Supreme Court in the case of *China Chang Jiang Energy Corporation* (*Philippines*) *v. Rosal Infrastructure Builders,*[1] in light of the recent decision in *Global Medical Center of Laguna, Inc. v. Ross Systems*

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[1] China Chang Jiang Energy Corporation (Philippines) v. Rosal Infrastructure Builders, G.R. No. 125706, September 30, 1960. This is an unreported case.

International, Inc.,[2] impacts on the future of construction arbitration in the country from the perspective of party autonomy. While I aim for both brevity and clarity in this paper, I apologize in advance if I fall short of such goals.

Origin and Evolution of Arbitration in the Philippines

As with any constantly evolving subject, international commercial arbitration is better understood and appreciated by studying its origins and early forms.

International arbitration may be said to trace its roots to the same stories that tell of ancient peoples' belief in gods. Ancient mythology is replete with tales of disputes between gods being resolved by arbitration. Gary Born's three-volume treatise on International Commercial Arbitration[3] provides a very interesting snapshot of instances which show how arbitration, as a mode of settlement of disputes, far pre-dates the establishment of court systems where disputes are settled through litigation.

> The origins of international arbitration are sometimes traced, if uncertainly, to ancient mythology. Early instances of dispute resolution among the Greek gods, in matters at least arguably international by then-prevailing standards, involved disputes between Poseidon and Helios over the ownership of Corinth (which was reportedly split between them after an arbitration before Briareus, a giant),[4] Athena and Poseidon over possession of Aegina (which was awarded to them in common by Zeus)[5] and Hera and Poseidon over ownership of Argolis (which was awarded entirely to Hera by Inachus, a mythical king of Argos).[6] Egyptian mythology offers similar accounts of divine arbitrations, including

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[2] Global Medical Center of Laguna, Inc. v. Ross Systems International, Inc., G.R. No. 230112, 239119, May 11, 2021.

[3] 1 Gary B. Born, *International Commercial Arbitration,* (3rd ed. 2021).

[4] Jackson Ralston, *International Arbitration, from Athens to Locarno* 153 (1929). *See also* 2 Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome* 129-30 (1911) (examples of Greek gods using arbitration).

[5] *See* Phillipson, 130.

[6] Ralston, 174.

> a dispute between Seth and Osiris, resolved by Thot ("he who decides without being partial").[7]

The evolution of arbitration in the Philippines was traced by the Philippine Supreme Court in the case of *Chung Fu Industries* (*Philippines*) *Inc. v. Court of Appeals*.[8] While there has been a number of significant legal developments in the Philippines after the *Chung Fu* decision, I still assign this case to my students as a required reading because the case provides a helpful discussion of how the laws on arbitration in the Philippines have developed. The first law relating to arbitration which was cited by the Supreme Court in *Chung Fu* was the Civil Code of 1889, which was in force in the Philippines during the Spanish occupation and up to the passage of Republic Act No. 386, the Civil Code of the Philippines, in 1950. The Civil Code of 1889 contained only two provisions on arbitration.[9] These provisions were impliedly repealed with the repeal of the Spanish Law of Civil Procedure.[10] While the Civil Code of the Philippines expressly repealed "those parts and provisions of the Civil Code of 1889 which are in force on the date when this new Civil Code becomes effective",[11] it adopted, with amendments, the two provisions on arbitration of the old code and introduced three new provisions on arbitration. These five provisions are contained in Chapter 2, entitled "Arbitrations", under Title XIV (Compromises and Arbitrations), Book IV (Obligations and Contracts) of the Civil Code of the Philippines.

While arbitration was integrated in the resolution of labor disputes in the Philippines with Commonwealth Act No. 103 which provides for compulsory arbitration of labor disputes as the state policy,[12] arbitration of labor disputes is

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7 Margit Mantica, *Arbitration in Ancient Egypt*, 12 Arb. J. 155, 155 (1957).

8 Chung Fu Industries (Philippines) Inc. v. Court of Appeals, G.R. 96283, February 25, 1992, 206 SCRA 545 (1992). [hereinafter Chung Fu Industries]

9 "Art. 1821. Persons capable of making a compromise may also submit their contentions to a third person for decision. Art. 1821. The provisions of the next preceding chapter with respect to compromises shall also be applicable to arbitrations. With regard to the form of procedure in arbitration and to the extent and effects thereof, the provisions of the Law of Civil Procedure shall be observed." CIVIL CODE (1889), art. 1820-21.

10 Chung Fu Industries, *supra* note 8, at 550, citing Cordoba v. Conde, 2 Phil. Rep. 445 (1903).

11 CIVIL CODE, art. 2270.

12 Chung Fu Industries, *supra* note 8, at 550.

different from and is outside the ambit of Philippine domestic or international commercial arbitration.[13]

In 1953, Republic Act No. 876, otherwise known as the Arbitration Law, was passed. Republic Act No. 876 was meant "to supplement - not to supplant - the New Civil Code on arbitration. It expressly declares that 'the provisions of chapters one and two, Title XIV, Book IV of the Civil Code shall remain in force.'"[14] Republic Act No. 876 was the Philippine law governing both domestic and international arbitration for more than 50 years, until Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (the "ADR Act of 2004"), took effect in 2004.

Prior to the passage of the ADR Act of 2004, however, one of the most important developments in international commercial arbitration took place on June 10, 1958 in New York City, where a United Nations diplomatic conference was held during which the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") was adopted. The New York Convention entered into force on June 7, 1959 and is considered the most successful treaty in private international law, gathering 170 contracting states as of this writing.[15] The Philippines is proud to be one of the original signatories of the New York Convention, which is inarguably the most important treaty to date concerning international commercial arbitration.[16]

On 4 February 1985, President Ferdinand Marcos issued Executive Order No. 1008 ("EO 1008"), the Construction Industry Arbitration Law, to create arbitration machinery in the construction industry of the Philippines in order to implement the State policy of encouraging early and expeditious settlement of disputes in the Philippine construction industry. EO 1008 created the Construction Industry Arbitration Commission (CIAC).

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[13] "This Act shall not apply to controversies and to cases which are subject to the jurisdiction of the Court of Industrial Relations [now the National Labor Relations Commission] or which have been submitted to it as provided by Commonwealth Act Numbered One hundred and three, as amended." Rep. Act No. 876 (1953), § 3. "The provisions of this Act shall not apply to resolution or settlement of the following: (a) labor disputes covered by Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, as amended and its Implementing Rules and Regulations; xxx" Rep. Act. 9285 (2004), § 6.

[14] Chung Fu Industries, *supra* note 8, at 551, citing Umbao v. Yap, 100 Phil. 1008 (1957).

[15] www.newyorkconvention.org.

[16] S. Res. 71, 5th Cong., 4th Sess. (1965). (The UN's records reveal that the Philippines signed the New York Convention on June 10, 1958, and ratified it on July 6, 1967. The New York Convention entered into force under Philippine law on October 4, 1967.)

After more than half a century of being the law on domestic and international commercial arbitration, Republic Act No. 876 was finally superseded by the ADR Act of 2004 insofar as international commercial arbitration is concerned. The ADR Act of 2004 was a long-delayed breath of fresh air for Philippine practitioners of arbitration, as it finally brought into force the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June 1985 (the "UNCITRAL Model Law") as the governing law for international commercial arbitration.[17] Unfortunately, instead of repealing the severely outdated provisions of Republic Act No. 876, the ADR Act of 2004 merely demoted it to being the governing law of domestic arbitration, together with select provisions of the ADR Act of 2004 and the UNCITRAL Model Law.[18]

In September 2009, the Philippine Supreme Court, pursuant to its mandate under the ADR Act of 2004, issued A.M. No. 07-11-08-SC, the Special Rules of Court on Alternative Dispute Resolution, ("Special ADR Rules"). The Special ADR Rules is the procedural law that governs, among others, almost all aspects of domestic and international commercial arbitration.[19]

A few months later, on December 4, 2009, the Secretary of Justice complied with its mandate under the ADR Act of 2004 to organize a committee to formulate the implementing rules and regulations of the ADR Act of 2004 with the issuance of DOJ Circular No. 98, the Implementing Rules and Regulations of the ADR Act of 2004.

With the effectivity of the ADR Act of 2004, the Philippines, through the legislative branch, incorporated into its laws the two most important cornerstones of international commercial arbitration: the New York Convention and the UNCITRAL Model Law. This effectively announced to the world that the Philippines is an investor-friendly jurisdiction where both foreign and local investors can be assured that when their investments are threatened by disputes, their disputes can be resolved impartially, efficiently, and competently through international arbitration, if they so choose.

The incorporation of the New York Convention and the UNCITRAL Model Law into the Philippine legal system for resolving cross-border disputes placed the

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[17] Rep. Act 9285 (2004), § 19.
[18] *Id.* § 32-33.
[19] S. Court Rule on ADR, Rule 1.1.

Philippines in the elite circle of global players who have adopted the best practices of international arbitration, at least insofar as its laws are concerned. However, the passage of laws and issuance of regulations and rules of procedure is just one metric by which a country is evaluated by the global community in terms of ease of doing business which makes it an attractive investment destination. Equally important is how these laws and regulations are actually enforced by the judicial branch or system of the state.

The Philippines has three co-equal branches of government: the legislative department, composed of the House of Representatives and the Senate, the executive department, headed by the President, and the judicial department, composed of the various courts at the top of which is the Philippine Supreme Court.[20] The Supreme Court is composed of 15 Justices divided into three divisions of five Justices each. Decisions of the Supreme Court can be rendered either by a division or by the entire Court sitting *en banc*, and a doctrine or principle of law laid down by the Supreme Court in a decision rendered *en banc* or in a division may be modified or reversed only by the Supreme Court sitting *en banc*.[21]

The Philippines is a hybrid jurisdiction of both Civil Law and Common Law. This is the result of over three centuries of Spanish rule followed by half a century of being a territory of the United States of America.[22] Decisions of the Philippine Supreme Court form part of the legal system of the Philippines.[23] Thus, while international commercial arbitration in the Philippines is governed by the laws earlier discussed, decisions of the Philippine Supreme Court significantly impact on the state policies and principles laid down in those laws and regulations. It is thus important to analyze how decisions of the Philippine Supreme Court have affected the practice of international commercial arbitration in the Philippines, and its reputation as a pro-arbitration jurisdiction, particularly in the area of arbitration of construction disputes.

The Peculiar Case of *China Chang Jiang*

The ADR Act of 2004 laid down the State policy of actively promoting party autonomy in the resolution of disputes, which is the freedom of the parties

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[20] CONST. arts. VI, VII, and VIII.

[21] CONST. art. VII, § 4(3).

[22] *In Re* Max Shoop, 41 Phil. 213, (1920).

[23] CIVIL CODE, art. 8.

to a contract to make their own arrangements to resolve their disputes.[24] Respect for party autonomy goes into the core of international commercial arbitration and is central to its global success as an alternative mode of dispute resolution. It is precisely for this reason that the case of *China Chang Jiang* must be revisited and carefully scrutinized.

China Chang Jiang is an unreported case which was issued as an Internal Resolution of the Supreme Court. It was not issued as a decision of the Supreme Court and does not appear in any volume of the Supreme Court Reports Annotated.[25] It entered the mainstream of Philippine jurisprudence after it was cited and its pronouncements reiterated as if it is doctrine in the case of *National Irrigation Administration* (*NIA*) *v. Court of Appeals*[26] and subsequent decisions of the Supreme Court.

China Chang Jiang involved a dispute arising from a contract for the rehabilitation of a hydroelectric power plant in Itogon, Benguet in northern Philippines. Petitioner China Chang Jiang engaged respondent Rosal Infrastructure Builders as subcontractor. Their contract provides for disputes arising from the contract to be resolved by arbitration under the aegis of the International Chamber of Commerce (ICC). When a dispute arose between the parties, respondent Rosal filed a complaint for arbitration before the CIAC instead of the ICC. Petitioner China Chang filed its answer with compulsory counterclaim and raised the issue of CIAC's lack of jurisdiction to resolve the dispute since the arbitration agreement specifically provided for ICC arbitration. The tribunal constituted under the rules of the CIAC ruled that China Chang's jurisdictional objection is a special defense which can be included as part of the issues in the Terms of Reference. China Chang appealed the CIAC's ruling to the Court of Appeals, which dismissed the petition. China Chang appealed that decision of the Court of Appeals to the Supreme Court.

The Supreme Court, in denying China Chang's petition, ruled as follows:

> What the law merely requires for a particular construction contract to fall within the jurisdiction of CIAC is for the parties to

[24] Rep. Act 9285 (2004) § 2.

[25] This is a Philippine lawyer's "encyclopedia" containing a compilation of decisions of the Philippine Supreme Court.

[26] National Irrigation Administration (NIA) v. Court of Appeals, G.R. No. 129169, November 17, 1999, 318 SCRA 255 (1999).

> agree to submit the same to voluntary arbitration. Unlike in the original version of Section 1, as applied in the Tesco case, the law does not mention that the parties should agree to submit disputes arising from their agreement specifically to the CIAC for the latter to acquire jurisdiction over such disputes. Rather, it is plain and clear that *as long as the parties agree to submit to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specifically choose another forum, the parties will not be precluded from electing to submit their dispute before the CIAC because this right has been vested upon each party by law, i.e., E.O. No. 1008.* xxx
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> Now that Section 1, Article III, as amended, is submitted to test in the present petition, we rule to uphold its validity with full certainty. *However, this should not be understood to mean that the parties may no longer stipulate to submit their disputes to a different forum or arbitral body. Parties may continue to stipulate as regards their preferred forum in case of voluntary arbitration, but in so doing, they may not divest the CIAC of jurisdiction as provided by law.* Under the elementary principle on the law on contracts that laws obtaining in a jurisdiction form part of all agreements, when the law provides that the Board acquires jurisdiction when the parties to the contract agree to submit the same to voluntary arbitration, the law in effect, automatically gives the parties an alternative forum before whom they may submit their disputes. That alternative forum is the CIAC. This, to the mind of the Court, is the real spirit of E.O. No. 1008, as implemented by Section 1, Article III of the CIAC Rules. (Emphasis supplied)

To better appreciate the nuanced consequences of the above-quoted ruling in *China Chang Jiang*, it is helpful to familiarize oneself with the relevant provisions of EO 1008, which the China Chang Jiang resolution interprets.

Section 4 of EO 1008 states that the CIAC "shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises

before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration. xxx"

Section 6 of EO 1008 enumerates the functions of the CIAC as follows:

> 1) To formulate and adopt an arbitration program for the construction industry;
> 2) To enunciate policies and prescribe rules and procedures for construction arbitration;
> 3) To supervise the arbitration program, and exercise such authority related thereto as regards the appointment, replacement or challenging of arbitrators; and
> 4) To direct its officers and employees to perform such functions as may be assigned to them from time to time.

Section 11 provides that the CIAC "shall have a Secretariat to be headed by an Executive Director who shall be responsible for receiving requests for arbitration and other pleadings, for notifying the parties thereto; and, for fixing and receiving filing fees, deposits, costs of arbitration, administrative charges, and fees. It shall be the duty of the Executive Director to notify the parties of the awards made by the arbitrators. xxx"

Section 12 grants the CIAC the authority to appoint the Executive Director, the consultants, the arbitrators, as well as personnel and staff, while Section 13 empowers the CIAC "to determine and collect fees, deposits, costs of arbitration, as well as administrative and other charges as may be necessary in the performance of its functions and responsibilities."

And finally, Section 14, which is perhaps the most important provision for purposes of this discussion, provides that "a sole arbitrator or three arbitrators may settle a dispute. Where the parties agree that the dispute shall be settled by a sole arbitrator, they may, by agreement, nominate him from the list of arbitrators accredited by the CIAC for appointment and confirmation. If the parties fail to agree as to the arbitrator, the CIAC taking into consideration the complexities and intricacies of the dispute/s, has the option to appoint a single arbitrator or an Arbitral Tribunal. If the CIAC decides to appoint an Arbitral Tribunal, each party may nominate one (1) arbitrator from the list of arbitrators accredited by the CIAC

for appointment and for confirmation. The third arbitrator who is acceptable to both parties confirmed in writing shall be appointed by the CIAC and shall preside over the Tribunal. Arbitration (sic) shall be men of distinction in whom the business sector and the government can have confidence. They shall not be permanently employed with the CIAC. Instead, they shall render services only when called to arbitrate. For each dispute they settle, they shall be given fees."

Based on the foregoing provisions of EO 1008, particularly Section 6, it would appear that the CIAC was created essentially to serve as an arbitral institution to administer arbitrations relating to disputes arising from construction projects in the Philippines, no different from other arbitration institutions like the International Chamber of Commerce, the Hong Kong International Arbitration Centre, the Singapore International Arbitration Centre, and the Philippine Dispute Resolution Centre, Inc., among others. The use of the words "original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines," when construed together with the other provisions of EO 1008, would appear to be descriptive of the types of disputes the CIAC can administer as an arbitral institution, not what disputes it can resolve. After all, jurisdiction is "a court's power to decide a case or issue a decree," [27] and under EO 1008, the power to decide the case to settle the dispute is given to the sole arbitrator or tribunal, not the CIAC.

In the actual practice of CIAC construction arbitration, and even in the implementation of EO 1008 by the CIAC itself, the CIAC does not function like a court or quasi-judicial body that resolves cases filed before it. Instead, the CIAC merely helps administer the cases filed with the CIAC Secretariat. It is the sole arbitrator or the arbitral tribunal appointed in accordance with the CIAC rules or the agreement of the parties who actually resolves the disputes between the parties by issuing an award.

One serious consequence arising from the China Chang Jiang ruling is the disregard for party autonomy in the parties' choice of the place or seat of arbitration. In the world of international commercial arbitration, the choice of the arbitral seat has significant implications and consequences. Thus, when parties specify a seat of arbitration in their arbitration agreement, such choice is a deliberate and conscious one, especially since it is generally accepted that only the national courts of the arbitral seat can set aside an arbitral award. As one respected

[27] Black's Law Dictionary (10th ed. 2014).

international arbitration author puts it, "The traditional view has been that there must exist a *lex arbitri*, that is, a unique law which globally governs an arbitration and by the standards of which the validity of the arbitral proceedings and the ensuing award are evaluated."[28]

This is true in the Philippines[29] where the UNCITRAL Model Law is the governing law in international commercial arbitration. However, under the *China Chang Jiang* resolution, even if the parties to an arbitration agreement expressly stipulated in their arbitration agreement that the place or seat of arbitration is Singapore, the arbitral seat is effectively changed to the Philippines because the arbitral award issued by the tribunal constituted under the CIAC rules can be reversed and set aside by the Philippine Supreme Court, and in certain exceptional instances, by the Court of Appeals.[30] Under the ADR Act of 2004 and the present laws and regulations in the Philippines (*China Chang Jiang* was issued prior to the effectivity of the ADR Act of 2004 and the Special ADR Rules), any arbitral award issued by an arbitral tribunal in arbitration with a seat in Singapore could be set aside or vacated only by the courts of Singapore, regardless of whether the tribunal was constituted under CIAC or ICC rules. Thus, with due respect to the Supreme Court, it may be argued that any continued adherence or reliance by the Court on the China Chang Jiang ruling after the effectivity of ADR Act of 2004 and the Special ADR Rules (which was approved and issued by the Supreme Court *en banc*) risks offending the ADR Act of 2004, the UNCITRAL Model Law, and the Court's own rules.

Another significant consequence of the *China Chang Jiang* doctrine is its potential breach of the Philippines' obligation under the New York Convention. Under Article II of the New York Convention, the Philippines, which includes its judicial branch, has the obligation to respect and recognize an arbitration agreement.[31] Where the parties to an arbitration agreement have specified an

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[28] 2 Gary B. Born, *International Commercial Arbitration* (3rd ed. 2021), 1657, citing Georgios Petrochilos, *Procedural Law in International Arbitration* 20 (2004).

[29] *See* Article 6 and 34(2) of the UNICTRAL Model Law in relation to Rule 12 of the Special Rules of Court on Alternative Dispute Resolution.

[30] Global Medical Center of Laguna, Inc. v. Ross Systems International, Inc., G.R. No. 230112, 239119, May 11, 2021.

[31] "Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning

arbitral seat outside of the Philippines and an arbitral institution other than CIAC, a state-sanctioned commencement of arbitration before the CIAC is a breach of the Philippines' treaty obligation under the New York Convention. More importantly, such a situation undermines the enforceability of the arbitral award issued in such an arbitration and risks its refusal of recognition and enforcement under Article V (1) (d) of the New York Convention.[32]

As a matter of fact, in one case decided by the Supreme Court of South Korea, an arbitration award rendered by an arbitral tribunal appointed in accordance with the rules of procedure of the CIAC was refused enforcement under the New York Convention. In that case, again similar to the facts of *China Chang Jiang*, the parties expressly provided in their arbitration agreement for arbitration before the ICC. The Supreme Court of South Korea concluded that an arbitral tribunal appointed in accordance with the CIAC Rules violated the parties' agreement on the composition of the arbitral tribunal and refused the enforcement of the award.[33]

The Global Medical Center case, decided by the Supreme Court *en banc,* revisited and revised the procedure for appeal of awards of arbitral tribunals constituted under the rules of the CIAC by reinstating the direct recourse to the Supreme Court on pure questions of law. Moreover, courts are explicitly exhorted to exercise restraint when reviewing an arbitral award "(f)or more than preserving the expediency and convenience, this restrained attitude against challenging arbitral awards on their merits most importantly respects party autonomy, which is the essence of arbitration." This bodes well for further updating of the current state of jurisprudence with respect to its treatment of CIAC arbitration.

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a subject matter capable of settlement by arbitration." Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. 2, June 10, 1958.

[32] "(1) Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that: xxx (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; xxx." *Id* art. 5 (1)(d).

[33] Haemin Lee, 2013, Case Law on UNCITRAL Texts Case No. 1294, Abstract of Republic of Korea Supreme Court 2011Da41352, 19 August 2011, last accessed at www.uncitral.org on Sept. 15, 2022.

A Final Note

The strong international commercial arbitration framework in the Philippines that was created by the passage of the ADR Act of 2004 and the Special ADR Rules issued by the Philippine Supreme Court makes the Philippines a very attractive jurisdiction for the arbitration of disputes arising from cross-border transactions. The promulgation by the Philippine Supreme Court of its landmark decision in *Mabuhay Holdings Corporation v. Sembcorp Logistics Limited*[34] adopting a restrictive approach to public policy as a ground for refusal of recognition or setting aside of a foreign arbitral award further galvanizes the country's reputation as a pro-arbitration venue where foreign arbitral awards will generally be recognized and enforced.

The ruling laid down in *China Chang Jiang* ought not to be further cited and treated as doctrine as it runs against the grain of the pro-arbitration decisions of the Philippine Supreme Court on international commercial arbitration after the effectivity of the ADR Act of 2004 and the Special ADR Rules. Unless the China Chang Jiang case is revisited and reexamined in light of the present Philippine laws and procedure on arbitration, foreign and local investors may hesitate to invest in the Philippines, especially for big-ticket construction projects, on account of what may be seen as the country's parochial stance in the area of construction arbitration. Consistently upholding basic principles of *pacta sunt servanda* in international law and party autonomy in international arbitration will go a long way in attracting foreign investors to the Philippines.

While it may appear purely serendipitous that the last case I cite is entitled *Mabuhay Holdings v. Sembcorp Logistics Limited*, conveniently shortened by local legal circles to "Mabuhay" (which in English means "long live!"), it is admittedly deliberate to provide a poignant ending to this article regarding the future of not just construction arbitration but international arbitration in general in the Philippines:

> On a final note, We implore the lower courts to apply the ADR Act and the Special ADR Rules accordingly. Arbitration, as a mode of alternative dispute resolution, is undeniably one of the viable

[34] Mabuhay Holdings Corporation v. Sembcorp Logistics Limited, G.R. No. 212734, December 5, 2018, 888 SCRA 364.

solutions to the longstanding problem of clogged court dockets. International arbitration, as the preferred mode of dispute resolution for foreign companies, would also attract foreign investors to do business in the country that would ultimately boost Our economy. In this light, We uphold the policies of the State favoring arbitration and enforcement of arbitral awards, and have due regard to the said policies in the interpretation of Our arbitration laws.