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Philippines prepares to ratify Singapore Convention on Mediation

The signing of statements of support to the Singapore Convention on Mediation (SCM) by 46 countries in August last year ushered in a new era of enforcement of international commercial settlement agreements that resulted from mediation. Through the SCM, settlement agreements reached through mediation may now be enforced internationally like arbitral awards under the 1958 New York Convention.

As one of the original signatories to the SCM, the Philippines, through the Department of Justice, is now in the process of completing all the documentary requirements to ratify the SCM. Once completed, the documents will be submitted to the Office of Treaties and Legal Affairs of the Department of Foreign Affairs (DFA), which will then officially deposit them with the United Nations as an instrument of ratification. The instrument of ratification expresses the consent of the Philippines to be bound by the SCM.

As of February 2020, Singapore and Fiji were the first countries to deposit their instruments of ratification with the United Nations. 

WHAT'S INSIDE

Commission on Audit has no authority to review arbitral awards

By Remy Rose A. Alegre



In a recent ruling, the Supreme Court demonstrated its firm commitment to making the Philippines as a pro-arbitration jurisdiction. It held that the Commission on Audit (COA), in the exercise of its general audit power over money claims against the government, cannot disturb and review final and binding arbitral awards. COA's authority over money claims confirmed in an arbitral award is restricted to determining the source of public funds from which the award may be satisfied pursuant to general auditing laws.

In G.R. No. 238671, *Taisei Shmizu Joint Venture v. Commission on Audit and the Department of Transportation ("Taisei")*, June 2, 2020, a dispute arose between the Department of Transportation (DOTr) and Taisei Shmizu Joint Venture (TSJV) during the construction of the New Iloilo Airport. Since its billings were left unpaid despite project completion and delivery, TSJV initiated arbitration against DOTr to collect its aggregate money claims of P2.3 billion.

In its Final Award, the arbitral tribunal appointed by the Construction Industry Arbitration Commission (CIAC) awarded P223.4 million to TSJV, which was later reduced to P216 million upon DOTr's motion to correct the award. TSJV's initial efforts to satisfy the award through CIAC's writ of execution failed, with DOTr claiming that COA's approval

of the payment was required. Thus, TSJV filed a petition for enforcement and payment of the arbitral award with COA.

Despite the absence of any objection from DOTr, COA allowed the payment of only P104.6 million, less than half of the total award. In doing so, COA reviewed the evidence on record and reversed most of the arbitral tribunal's findings. TSJV's partial motion for reconsideration to pay the remaining amount was denied. On petition for certiorari to the Supreme Court, TSJV argued that COA acted with grave abuse of discretion amounting to excess or lack of jurisdiction in disregarding the final arbitral award rendered in favor of TSJV.

In its decision issued on June 2, 2020, the Supreme Court en banc granted TSJV's petition for certiorari and held that COA gravely abused its discretion when it modified or amended the CIAC's final and executory award. It held that while the COA is clothed with primary jurisdiction over money claims due from or owing to the government, COA cannot disturb the final and executory decisions of courts, tribunals, or other adjudicative bodies.

The Supreme Court distinguished between two types of money claims that may be brought before the COA.

The first type covers liquidated claims and *quantum meruit cases*, which may be originally filed with COA. Liquidated claims refer to those determined or readily determinable from vouchers, invoices, and such other papers within reach of accounting officers [*Euro-Med Laboratories, Phil., Inc. v. Province of Batangas*, 527 Phil. 623, 628 (2006)]. As held in several cases, claims against the government on a quantum meruit basis were likewise declared by the Supreme Court as properly filed or referred to COA [*Metropolitan Manila Development Authority v. DMCI*, 894 SCRA 119 (2019)].

In this first set of cases, COA acts as “adjudicator of money claims for or against the government,” exercising judicial discretion by investigating, weighing evidence, and ultimately resolving whether claims should be allowed or disallowed in whole or in part [see also *Uy v. Commission on Audit*, 328 SCRA 607 (2000)]. COA decisions resulting from this adjudicatory process may be appealed to the Supreme Court on *certiorari* within 30 days from notice (Rule XII, 009 Revised Rules of Procedure of the COA).

The second type of money claims pertains to those arising from a final and executory judgment of a court or arbitral body, which may no longer be reviewed or modified, directly or indirectly, by the Supreme Court, or any branch or department of government, including COA.

On this point, the High Court noted that COA’s original and primary jurisdiction over money claims due from or owing to the government is *not* exclusive. Courts and other tribunals or adjudicative bodies, too, may have concurrent jurisdiction over these matters. Applied to this case, the final and executory arbitral award was validly issued by CIAC in the exercise of its jurisdiction over the construction dispute between TSJV and the DOTr. Being a specific law, Executive Order No. 1008 (“EO 1008”) providing for CIAC’s exclusive jurisdiction prevails over Presidential Decree No. 1445 (Government Auditing Code of the Philippines).

The Supreme Court then emphasized that although COA has constitutional authority to examine, audit, and settle claims against government funds, the latter cannot transgress long standing legal principles and case doctrines. In the words of the Supreme Court, COA is not “a super body over and above the rule of law.”

For one, COA has no appellate review power over the decisions of any other court or tribunal. There is no constitutional or statutory provision giving the COA review powers or the power to modify or set aside a judgment of a court or other tribunal on errors of fact or law. Moreover, COA is devoid of power to

disregard the principle of immutability of final judgments, which precludes the modification of the judgment even if meant to correct perceived errors of law or fact. When a court or tribunal having jurisdiction over an action renders judgment and the same becomes final and executory, *res judicata* sets in.

Accordingly, COA’s exercise of discretion in approving or disapproving money claims determined by final judgment was declared by the Supreme Court as merely akin to the power of execution by courts. COA’s authority is thus restricted to determining the source of public funds to answer for the award and ensuring that the funds are not diverted from their legally appropriated purpose. Nothing more.

Another reason that could have also been emphasized in the High Court’s decision was Section 19 of EO 1008 stating that CIAC arbitral awards are final and unappealable save under limited exceptions. This is in keeping with the policy of non-intervention on the substantive merits of arbitral awards adopted by our courts, based on the cornerstone principle of party autonomy underpinning Republic Act No. 9285 (ADR Act of 2004) [*Asset Privatization Trust v. Court of Appeals*, 300 SCRA 579 (1998); *Freuhauf Electronics Phils. Corp. v. TEAM*, 810 SCRA 280 (2016); Special ADR Rules, Rule 19.10].

Taisei, therefore, qualifies the Supreme Court’s pronouncement in *Department of Environment and Natural Resources v. United Planners Consultants, Inc.*, 751 SCRA 389, 409 (2015), where it stated that “the settlement of respondent’s money claim is still subject to the primary jurisdiction of the COA despite finality of the confirmed arbitral award by the RTC pursuant to the Special ADR Rules.” Taken together with Taisei, it is clear that COA’s power and jurisdiction to approve or disapprove a money claim arising from a final arbitral award does not include the authority to review the factual and legal rulings of the arbitral tribunal.

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About the Author

Atty. Remy Rose A. Alegre is an Associate Solicitor at the Office of the Solicitor General (OSG). Before joining the OSG, Atty. Alegre was a senior litigation associate of Castillo Laman Tan Pantaleon & San Jose. She is a trained arbitrator of the Philippine Dispute Resolution Center, Inc. and currently teaches Appropriate Dispute Resolution at the San Sebastian College-Recoletos, College of Law.

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Supreme Court affirms ban on injunction in arbitration of government infrastructure projects

The Philippine Supreme Court recently ruled in G.R. No. 235878, *Busan Universal Rail, Inc. ("BURI") v. Department of Transportation ("DOTr")-Metro Rail Transit 3 (2020)*, that courts have no jurisdiction to grant an application for interim measure of protection to enjoin the Philippine government from terminating their contract, based on Section 3 of Republic Act No. ("RA") 8975 prohibiting the issuance of restraining orders or injunctive reliefs against government infrastructure projects.

In that case, following a negotiated procurement under the Government Procurement Reform Act ("RA 9184"), BURI and DOTr entered into a contract for the DOTr-MRT3 System Maintenance Provider, 43 Light Rail Vehicles (LRVs) General Overhaul, and Total Replacement of the Signaling System Project ("MRT3 Contract"). The project commenced and DOTr paid the initial billings of BURI. However, due to a series of serious incidents, DOTr directed BURI to explain why the MRT3 Contract should not be terminated. BURI replied and requested a mutual consultation with the DOTr but to no avail.


BURI then served a Notice of Arbitration on DOTr. On October 6, 2017, BURI also filed with the Regional Trial Court, Branch 105, Quezon City ("trial court") a Petition for Issuance of Interim Measures of Protection with Prayer for the Issuance of a Temporary Order of Protection ("IMP Petition") under the Special ADR Rules to maintain the status quo and enjoin DOTr from terminating the MRT3 Contract. The trial court denied the IMP Petition and BURI's motion for reconsideration, citing Section 3 of RA 8975.

BURI challenged the trial court's ruling directly before the Supreme Court, arguing that the Alternative Dispute Resolution Act of 2004 ("RA 9285") gave the trial court authority to issue interim measures of protection in disputes that are proper for arbitration by virtue of RA 9184.

In its Decision rendered on February 26, 2020, the Second Division of the Supreme Court held that Section 3 of RA 8975 prohibiting the issuance of temporary restraining orders and preliminary injunctions against national government projects applies in all cases, disputes, or controversies instituted by a

private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders.

On the application of RA 9285 vis-à-vis RA 8975, the Supreme Court cited its earlier ruling in G.R. No. 176657, *Department of Foreign Affairs et al. v. Hon. Judge. Falcon et al. (2010)*, where it declared that RA 9285, a general statute, must give way to RA 8975, a special law governing national government projects. As discussed in that case, there is public interest behind denying preliminary injunctive relief to those who seek to contest the government's termination of a contract, that is, to ensure that the government's provision of vital public goods and services remain unhampered. Thus, the Supreme Court found as proper the trial court's dismissal of the IMP Petition.

BURI sought to be exempted from the prohibition under RA 8975 by arguing that the matter was of extreme urgency involving a constitutional issue. In rejecting this argument, the Supreme Court ruled that the relationship between DOTr and BURI was primarily contractual and their dispute involved the adjudication of contractual rights. 

MEMBER SPOTLIGHT

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Atty. Krisben Buot is an Associate of the law firm of J.P. Garcia & Associates, where he specializes in litigation and alternative dispute resolution (ADR).

He studied management accounting at the University of San Carlos in Cebu City, where he was a consistent Dean's Lister until he graduated in 2010. He then pursued law and graduated from the same university four years later in 2014. While in law school, he interned at the International Justice Mission and the Children's Rights Bureau in Cebu.

After passing the Philippine Bar in 2015, he joined his present firm. Aside from his litigation and ADR work, he also handles contract review and drafting and corporate housekeeping.

Atty. Buot is a member of the Philippine Institute of Arbitrators, the Hong Kong International Arbitration Center, and the Asian International Arbitration Center.



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