



# The Legal 500 Country Comparative Guides

## Philippines: Litigation

This country-specific Q&A provides an overview to litigation laws and regulations that may occur in Philippines.

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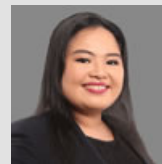
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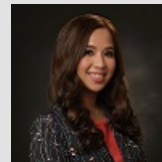
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## **1. What are the main methods of resolving commercial disputes?**

Arbitration is increasingly gaining ground as a mode of resolving commercial disputes, especially those involving multinational companies and cross-border transactions. This trend is due to the increased adoption of arbitration clauses in commercial contracts. Under Philippine law, parties to a contract with an arbitration clause must observe the mediation process stipulated in said clause; failing which, parties must proceed to arbitration.

In the absence of an arbitration agreement, disputes are resolved through litigation. Certain commercial disputes, such as intellectual property cases, intra-corporate disputes, rehabilitation, insolvency, and liquidation are handled by special commercial courts.

## **2. What are the main procedural rules governing commercial litigation?**

If commercial litigation is commenced before the courts, the provisions of the Rules of Court govern.

For commercial arbitration, the provisions of Republic Act No. 876 (Arbitration Law), Republic Act No. 9285 (Alternative Dispute Resolution Act of 2004), and the Special Rules of Court on Alternative Dispute Resolution are observed. The United Nations Commission on International Trade Law (UNCITRAL) Model Law was wholly adopted in the Alternative Dispute Resolution Act of 2004. Any stipulation on the adoption of a specific arbitral institution's rules is respected. In the absence of such stipulation, parties to a commercial arbitration are allowed to set their own procedural rules.

## **3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?**

The Philippine court system has four levels, comprised of municipal or metropolitan trial courts, regional trial courts, the Court of Appeals, and the Supreme Court.

As mentioned above, certain commercial cases, i.e., intellectual property cases, intra-corporate disputes, rehabilitation, insolvency, and liquidation are handled by regional trial courts designated as special commercial courts.

In case the commercial dispute purely involves a monetary claim, the claim should be filed before a municipal or metropolitan trial court if the amount of the claim or personal property involved does not exceed PHP300,000.00 or approximately USD5,945.00 (outside Metro Manila), or PHP400,000.00 or approximately USD7,925.00 (in Metro Manila). If the commercial dispute involves real property, the claim should be filed before a municipal or metropolitan trial court if the assessed value of the property does not exceed PHP20,000.00 or approximately USD396.00 (outside Metro Manila), or PHP50,000.00 or approximately USD990.00 (in Metro Manila).

Should the commercial claim exceed these threshold amounts, the case should be filed before a regional trial court.

In either case, Philippine rules of procedure provide for an appeal process to the Court of Appeals, and ultimately, to the Supreme Court as the final court of appeal.

**4. How long does it typically take from commencing proceedings to get to trial?**

The rules of civil procedure have been amended and took effect on 1 May 2020. The amendments shortened reglementary periods and prohibited the filing of extensions, as a general rule. Many hearings will also be dispensed with, and the parties will just be required to reduce their arguments in writing. All the evidence is required to be attached to initiatory pleadings. Thus, we anticipate that under the new rules of civil procedure, trial may commence three (3) months from the commencement of proceedings.

**5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?**

Generally, court proceedings are open to the public, except when necessary for orderly proceedings, essential to protect privacy or confidentiality, the evidence to be produced is offensive to decency or public morals, or confidentiality of the proceedings is mandated by law or the Supreme Court's rules. A party may also request, when necessary, for closure of portions of the trial.

Court records are considered public records subject to inspection by any person, except in the interest of morality and decency or when there are privacy or confidentiality concerns. A party may request for the issuance of a protective order to maintain confidentiality of court-submitted documents. Courts may also forbid reproduction but allow inspection of the documents within the court premises should the documents contain sensitive and confidential information.

**6. What, if any, are the relevant limitation periods?**

Philippine laws provide for the following relevant prescriptive periods:

Four years from the time the right of action accrues - actions based on negligence or tort

Six years from the time the right of action accrues - actions upon an oral contract and upon a quasi-contract

Eight years from the time possession is lost - actions to recover a movable property, unless the possessor has acquired ownership by prescription for a less period

Ten years from the time the right of action accrues – actions upon a mortgage, upon a written contract, upon an obligation created by law, and upon a judgment

Thirty years from the time the right of action accrues – real actions over immovable property

**7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?**

If the individual litigants reside in the same city or town, prior recourse to barangay conciliation proceedings is required. If the parties have an arbitration agreement, the parties must resolve their dispute through arbitration before seeking judicial relief. If the claim involves deceit or misappropriation, a prior demand is necessary. Further, a party is only considered in default upon non-compliance with a prior demand. Thus, generally, a monetary claim or an action to enforce a contract must be preceded by an extrajudicial demand. Nevertheless, parties are allowed to waive the requirement of prior demand through contract stipulation.

Non-compliance with pre-action conduct requirements may result in the dismissal of the case. In exceptional cases, a court may proceed with the case despite non-compliance in the interest of justice.

**8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?**

Civil litigation is commenced by the filing of a complaint. If the commercial dispute involves a purely monetary claim, the court, through its own process server, will serve the summons and the complaint to the defendant. The summons will order the defendant to respond to the complaint.

The new rules of civil procedure allow the court to authorise the plaintiff, together with the process server, to serve the summons, in case of failure of service. The new rules also provide that, if the summons is to be served outside the jurisdictional region of the court, the plaintiff shall be authorised to cause the service of summons. Moreover, if summons is improperly served and a lawyer makes a special appearance on behalf of the defendant, such lawyer shall be deputised by the court to serve summons on his or her client.

In cases where title to property is involved, and the defendant is not based in the Philippines or the whereabouts of the defendant are unknown, the summons and the complaint may be served by publication in a newspaper of general circulation. The party who filed the complaint will cause the publication and bear the cost thereof.

The new rules of civil procedure further allow the service of summons and pleadings through methods recognised in international conventions to which the Philippines is a party. Notably,

the Philippines has acceded to the Hague Service Convention. Upon its entry into force on 1 October 2020, Philippine courts may avail of the procedures under the Hague Service Convention in processing the service of court documents on parties living in another state party, such as through diplomatic agents or postal channels.

**9. How does the court determine whether it has jurisdiction over a claim?**

The basis of jurisdiction is the amount of the claim or the nature of the action, as alleged in the complaint.

**10. How does the court determine what law will apply to the claims?**

As a rule, Philippine courts will apply Philippine law. If a party claims that foreign law should be applied, such party must establish the basis for the application of foreign law and prove the contents of the foreign law. In determining whether to apply foreign law, courts take into account various factors, including the stipulation of the parties as to the law that should govern their agreement, the place where the contract was executed, and the place of performance of contractual duties.

**11. In what circumstances, if any, can claims be disposed of without a full trial?**

If the pleadings of the parties are already sufficient to render judgment without the presentation of evidence, such as when there is no genuine factual issue, the court may render a judgment on the pleadings or a summary judgment. A judgment on the pleadings or a summary judgment may be rendered without the need of position papers or memoranda. When the defendant fails to answer within the reglementary period, and upon motion of the plaintiff, the court may render a default judgment granting such relief as the plaintiff's pleading may warrant.

The court may likewise delegate the reception of evidence to a commissioner, who shall then file a report with the court. The commissioner's report may be adopted, modified, or rejected by the court. When the parties stipulate that the commissioner's factual findings shall be conclusive, only questions of law will be heard by the court.

The court may also approve a compromise agreement reached by the parties prior to trial as a result of an amicable settlement from the mediation or judicial dispute resolution conferences.

**12. What, if any, are the main types of interim remedies available?**

Under Philippine rules of procedure, the interim remedies commonly available for commercial disputes are:

1. Preliminary attachment, wherein the court levies on the property or garnishes the debts,

credits, and other receivables of the defendant;

2. Preliminary injunction, wherein the court prevents a party from performing or compels a party to perform a particular act;
3. Receivership, wherein the court orders a receiver to preserve, administer, and/or dispose of the property subject of litigation;]Replevin, wherein the court orders the personal property subject of litigation to be delivered to the party seeking recovery of possession; and
4. Support pendente lite, applicable to family law cases, wherein the court orders a party to pay the applying party an amount of money for support while the case is pending.

**13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?**

All cases require the filing of a complaint (sometimes denominated as a petition), which must already include all the evidence supporting one's claim. The defendant is given a 30-day period to file an answer, which must also already include all of the defendant's evidence. Within 15 days from service of the answer, the plaintiff may file a reply under limited situations only.

At least three (3) days before pre-trial, the parties are required to submit their respective pre-trial briefs, which shall contain the summary of the parties' claims and/or defences, the issues of the case, the parties' evidence, and the summary of witness testimonies.

After trial, the parties may be required to submit memoranda summarising their arguments and evidence, typically within 30 days from notice of the court's order.

**14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?**

Parties have the prerogative to submit the documents they consider necessary to prove their claims or defences. However, a party may request for the production or inspection of documents through a discovery procedure, which may be granted if the court considers the documents requested to be relevant and necessary to the proceedings. The discovery procedure may be refused if the requested documents contain privileged or confidential information.

**15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?**

Witnesses are required to reduce their testimonies in affidavit form, which takes the place of direct testimony. Documentary or object evidence must also be identified in and attached to the witnesses' affidavits.

At trial, the witnesses will identify their affidavits in open court and may be cross-examined in open court on any relevant matter. The witnesses may also be subjected to re-direct and re-cross examination in open court.

Parties may request for the deposition of any person, which may be taken before action, pending action, or pending appeal. Depositions may be oral or written. In either case, the other party may cross-examine the deponent on his or her deposition. Generally, depositions may be used against any party who was present or represented at the taking of the deposition or who had notice thereof.

**16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?**

Expert opinion is permitted on a matter requiring special knowledge, skill, experience, training or education, which the expert is shown to possess. Experts may be appointed either by the court or by a party. Experts have the same rights and obligations as ordinary witnesses.

**17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?**

Final and interim decisions can be appealed or challenged before the next higher court. As mentioned, the Philippine court system has four levels: the municipal or metropolitan trial courts, the regional trial courts, the Court of Appeals, and the Supreme Court. The appeal procedure for final and interim decisions follows this hierarchy of courts.

Generally, final decisions or orders may be appealed to the next higher court within 15 days from receipt of the final decision or order. Interim decisions or orders may be the subject of a motion for reconsideration, which should be filed within 15 days from receipt of the interim decision or order. If the motion for reconsideration is denied, a party may assail the interim decision or order before the next higher court within 60 days from receipt of the order denying the motion for reconsideration.

**18. What are the rules governing enforcement of foreign judgments?**

Foreign judgments can be enforced by filing an action for enforcement in a regional trial court. In such action, the party seeking to enforce the foreign judgment must prove: (a) the existence, authenticity, and finality of the foreign judgment; and (b) that the judgment was rendered by a court of competent jurisdiction.

The foreign judgment may be repelled if the adverse party proves that the judgment was rendered without jurisdiction, without proper notice, or through collusion, fraud, mistake, or violation of the rights of the adverse party.

**19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?**

Costs of litigation, in the form of attorney's fees, can be awarded to the prevailing party. However, the amount to be recovered is discretionary upon the court. Further, due to the principle that no premium should be placed on the right to litigate, the prevailing party may not necessarily recover the actual amount spent for litigation.

**20. What, if any, are the collective redress (e.g. class action) mechanisms?**

Philippine rules of procedure provide for a class suit mechanism, the requisites of which are: (1) the subject matter of the 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.

**21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?**

A party may file a third-party complaint against a third person for contribution, indemnity, subrogation or any other relief with respect to the other party's claim. The third party will be impleaded in the proceeding upon approval of the court.

A person who has a legal interest in the matter in litigation may, with leave of court, be allowed to intervene in the action.

At its own initiative, a court may also order that a party be joined as a defendant if the presence of such party is required for the grant of complete relief in a counterclaim or crossclaim.

Upon motion or at the court's initiative, two proceedings involving a common question of law or fact may be consolidated or jointly heard.

**22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?**

There is no prohibition against third parties funding litigation. In fact, third-party funding is generally not relevant in commercial litigation, so long as the party filing the case is a real party in interest, i.e., a party who may benefit or be injured by the judgment in the case.

A third-party funder not a party to the case is not bound by the judgment rendered therein. Thus, in such case, the court cannot render a judgment awarding costs against a third-party



funder.

**23. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?**

The main advantage of litigating international commercial disputes in our jurisdiction is the system of laws and procedures which has due process at its core. The principles underlying Philippine laws and procedures have a mix of Anglo-American and Spanish roots. Thus, Philippine procedural rules are similar, if not identical to, internationally accepted standards of due process and fair play, including notice to the parties, a fair opportunity to be heard, and a strong discovery procedure. In light of the adoption of the recent amendments to the rules of civil procedure, Philippine procedural rules were further harmonised with international standards. The recent amendments are substantially based on litigation best practices of other jurisdictions. The new rules grant courts with additional powers to ensure that all parties are given an opportunity to be heard, including deputisation of parties and counsels to serve summons.

Although there are discernible efforts to streamline the litigation process in the Philippines, such as the adoption of the recent amendments to the rules of civil procedure, the rules on witness statements in the form of affidavits, and prohibitions against extensions of time to file pleadings, considering the importance of due process, there is still a possibility of protracted litigation. As mentioned, Philippine courts will exert every effort to ensure that parties to a case will be fully heard, even if such would entail a relaxation of procedural rules.

**24. What, in your opinion, is the most likely growth area for disputes for the next five years?**

The infrastructure of special commercial courts will most likely grow in the next five (5) years. The Supreme Court is adopting measures to increase the number of special commercial courts. Further, there are continued efforts to provide specialised training to judges, with a view to increased efficiency in handling special commercial cases and more adept decisions on complex commercial issues. We believe that these measures will result in a more streamlined commercial litigation process.

There is also a trend toward the development of judicial expertise and further specialisation of courts. For instance, the Supreme Court recently approved a rule designating certain courts as admiralty courts, which are specifically tasked to handle admiralty, shipping, and maritime cases. We anticipate further adoption of similar measures for other commercial cases.

The Philippines has also recently signed the Singapore Mediation Convention, which facilitates the enforcement of settlements of commercial disputes resulting from mediation between states parties.

The Philippine International Center for Conflict Resolution [PICCR], a new arbitral institution, was recently launched to promote arbitration and other forms of alternative dispute resolution throughout the country. The PICCR's partnership with the Integrated Bar of the Philippines [IBP] extends the availability of alternative dispute resolution outside Metro Manila.

Other arbitral institutions in the Philippines, such as the Philippine Dispute Resolution Center, Inc. [PDRCI] and the Construction Industry Arbitration Commission [CIAC], continue to develop their rules to reflect the latest innovations in international arbitration practice. For instance, the PDRCI recently incorporated an emergency arbitration procedure, wherein a party can request for the appointment of an emergency arbitrator to provide interim relief prior to the constitution of the arbitral tribunal. Prior to the introduction of emergency arbitration, a party seeking interim relief had to resort to court proceedings. Further, the jurisdiction of the CIAC over construction disputes has been made so comprehensive such that, as long as the parties submit to voluntary arbitration, the parties may submit their dispute to the CIAC, regardless of the forum stipulated in the arbitration agreement. The CIAC also amended its rules to address delays in its procedure, including the automatic acceptance of an arbitrator's appointment upon failure to communicate acceptance or refusal and the grant of motion for execution pending appeal when no bond to stay execution is filed. There are also associations, such as the Philippine Institute of Arbitrators, solely focused on promoting arbitration.

Arbitration has also been promoted through legislation. For instance, the recently enacted Revised Corporation Code allows the inclusion of arbitration agreements in a corporation's articles of incorporation and by-laws, which inclusion effectively permits intra-corporate disputes to be arbitrated, instead of being litigated in special commercial courts.

With these developments, we believe that international commercial arbitration will continue to gain ground in the Philippines.

**25. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?**

There has been an increasing awareness and usage of electronic evidence in commercial transactions and court proceedings. Electronic evidence is considered as the functional equivalent of a paper-based document. Electronic signatures are also considered as the functional equivalent of signatures on a written document. Further, audio, video, and ephemeral evidence, such as text messages and chatroom sessions, are admissible in evidence. The aforementioned rules apply to all courts in the country.

Moreover, certain courts in the Philippines have been designated as electronic courts or eCourts. They have automated hearing systems, where hearings are captured real-time and court orders are served to parties minutes after adjournment. They also have special case management systems, which highlight pending incidents and the corresponding deliverables

and deadlines.

The Supreme Court has also adopted digital reforms, giving litigants the option to electronically file and serve their submissions. Under the new rules of civil procedure, filing and service of pleadings and other court submissions may now be made through electronic means. Substituted service of summons may also now be effected through electronic mail.

Additionally, the Supreme Court's interim rules during the COVID-19 pandemic formalised hearings through videoconferencing and electronic service of court notices. Considering that these electronic measures are already in place, they are likely to be utilised even after the quarantine is lifted.

**26. How have the courts in your jurisdiction dealt with the COVID-19 pandemic and have you seen particular types of disputes arise as a result of the pandemic?**

Court operations in high-risk areas have been suspended, except for urgent matters, those necessary to expedite the proceedings for civil and criminal actions, and exceptional cases. Urgent matters include actions relating to COVID-19 measures imposed by the government. Courts in low-risk areas have been allowed to operate and hear cases with a limited staff while observing strict health protocols.

To adapt to the mobility restrictions, the Supreme Court launched an infrastructure where pleadings and other court papers may be electronically filed. Thus, while courts within high-risk areas are physically closed and court personnel work from home, litigants may still file pleadings through official email addresses and may contact the courts through hotlines. The Supreme Court also granted blanket extensions for all court filings.

All courts have been provided cloud-based software to serve as digital platform for raffling cases and conducting hearings through videoconferencing in civil and criminal cases. This has enabled courts to act on matters using digital platforms, allowing some court processes to be served on parties digitally. Courts have also been encouraged to conduct its sessions through videoconferencing.

Considering the effect of the COVID-19 pandemic on commerce and the economy, we anticipate an increase in financial rehabilitation and insolvency cases as businesses try to cushion the economic impact of the crisis and a surge of contractual disputes relating to default or non-performance of obligations due to force majeure.