THE 2018 PHILIPPINE INVESTMENT GUIDE

OCAMPO & SURALVO
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I. PHILIPPINE ECONOMY ON A GROWTH TRAJECTORY

The Philippines has enjoyed robust economic growth for the past six years and analysts expect the growth to be sustained in the coming years.

The country's gross domestic product (GDP) grew by 6.7% in 2017[1] and the World Bank projects GDP to grow at an annual rate of 6.7% in both 2018 and 2019 before hitting 6.6% in 2020.[2]

In January 2018, the Philippine Government started implementing the first package of the tax reform initiatives that intends to raise revenue for the Duterte Administration's ambitious PHP8 Trillion "Build-Build-Build" program.

[1] Philippine Statistics Authority data.
[2] The World Bank, *Philippines Economic Update: Investing in the Future (April 2018).*

It is hoped that high GDP growth, rising tax collections and massive investments in infrastructure will allow the country to broaden the middle class and pull millions of Filipinos across the poverty line.

The Bangko Sentral ng Pilipinas (BSP) 2017 review showed foreign direct investments hitting a record high of US$10 Billion in 2017. Increased infrastructure spending in 2018 is expected to attract even stronger foreign investment inflows.

The massive foreign currency remittances of overseas Filipino workers (OFW) also fuel the consumer-driven economy. For the full-year of 2017, OFW remittances reached another record-high of US$28.1 Billion – a 4.3% increase from the 2016 record of US$26.9 Billion.[3]

As of late 2017, the Philippines has received stable and positive credit ratings from Standard & Poor's (BBB), Moody's (Baa2), and Fitch (BBB).[4]

Energy

Investment in the energy and power sector is one of the preferred activities for investment under the Philippines' 2017 Investment Priorities Plan (IPP).[5]

In recent years, the Philippines has seen a steady increase in electricity consumption. Electricity consumption increased from 82,413,213 MWh in 2015 to

90,797,891 MWh in 2016, yielding a 10.2% growth rate up from the 6.7% growth rate recorded from 2014 to 2015.[6]

Total installed capacity grew 14% from 18,765 MW in 2015 to 21,423 MW in 2016. The increase in capacity is attributed to the commercial operation of new power plants in Luzon.[7]

The Philippines has been steadily leaning towards the development and use of renewable energy (RE) such that, in 2016, 24% of power generated came from RE sources.[8] As of 2017, the Philippines is one of the leading countries in RE development in the Southeast Asian region. It is the objective of the Philippines to increase the installed renewable capacity by 20,000 MW by 2040.[9]

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[3] BSP statistics.
[4] Department of Finance website.
[5] Memorandum Order No. 12, February 28, 2017.
[6] Department of Energy, *2016 Philippine Power Situation Report.*
[7] *Ibid.*
[8] *Ibid.*
[9] Department of Energy website

Infrastructure

Infrastructure spending as a share of GDP was at 5.3% in 2017.[10] Under its "Build-Build-Build" Program, the government plans to increase infrastructure spending to 7.4% of GDP by 2022.[11]

With the ramped-up spending on infrastructure projects and the anticipation of upcoming large-scale infrastructure projects, the country was able to see a substantial increase in investments into the construction industry. As of 2017, the government's focus on developing the country's infrastructure has attracted PHP627.4 Billion in investments, or 6.8% higher than the investments in 2016.[12]

Mining

The Philippines is one of the top five mineral-rich countries in the world for gold, nickel, copper and chromite.[13] It has an estimated US$840 Billion worth of untapped mineral wealth and 9 Million hectares of land with high mineral potential.

Based on 2016 figures, the country's gold reserve is estimated at 1.9 Billion metric tons (MT), silver at 1.7 Billion MT, copper at 1.8 Billion MT, iron at 116 Million MT, and nickel at 116.14 Million MT.[14]

The industry is optimistic that 2018 will be a good year for mining due to the Chamber of Mines of the Philippines' adoption of the Towards Sustainable Mining (TSM) initiative, a mining sustainability standard developed by the Mining Association of Canada.[15] The adoption of the TSM is expected to improve the performance levels and outputs of the mining companies in the Philippines.

Business Process Outsourcing (BPOs)

The BPO industry is a major contributor to Philippine economic growth. According to the World Bank, earnings from BPO services in 2017 amounted to US22.1 Billion, reflecting a 9.6% growth year-on-year.[16] Based on the 2022 Roadmap of the IT & Business Process Association of the Philippines (IBPAP), the industry is expected to generate 1.8 Million direct jobs, and US$40 Billion in revenues by 2022.[17]

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[10] Department of Budget and Management data.
[11] Department of Finance website.
[12] Construction Industry Authority of the Philippines website.
[13] The World Bank, *Philippines Economic Update (October 2017).*
[14] Department of Environment and Natural Resources, *Summary of Metallic Minerals Resource/Reserve Inventory of the Philippines: 2016.*
[15] Chamber of Mines of the Philippines website.
[16] The World Bank, *Philippines Economic Update: Investing in the Future (April 2018).*
[17] IBPAP, *Philippine IT-BPM Roadmap 2022.*

Manufacturing

Manufacturing industry is currently one of the best-performing segments not only in the Philippines, but in Southeast Asia as a whole. Compared to other countries however, the Philippines has a distinct advantage for its relatively low-cost yet highly educated labor force.

Government figures show that the manufacturing sector in the Philippines grew by 8.4% in 2017.[18] The World Bank projects that manufacturing activities will remain robust given expected high demand both domestically and externally.[19]

Tourism

In 2016, the tourism sector's contribution to total GDP was at approximately 8.6%, totaling PHP1,243.5 Billion. This is higher by 13.7% compared to the 2015 figure of PHP1,093.4 Billion.

Government data shows total visitors to the country increased by almost 11%, with 6.6 million visitors arriving in 2017 from nearly 6 million in 2016.[20]

Agriculture

The agriculture sector expanded by 3.9% in 2017, contributing 9.3% of the total GDP for the year.[21] The World Bank projects that growth in this sector would be moderate in 2018-2019 compared to its strong showing in 2017. The agricultural sector is one of the crucial employers in the country, accounting for the 22.2% of total employed in July 2017.[22]

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[18] Philippine Statistics Authority (PSA) data.
[19] The World Bank, *Philippines Economic Update: Investing in the Future (April 2018).*
[20] Philippine Statistics Authority (PSA) data.
[21] Philippine Statistics Authority (PSA) data.
[22] Philippine Statistics Authority (PSA) data.

II. FOREIGN INVESTMENTS

Foreign investments are highly encouraged in the Philippines.

A. Policy on Foreign Investments

It is a declared state policy to attract, promote and welcome productive investments in activities which significantly contribute to national industrialization and socioeconomic development, to the extent the foreign investment is allowed by the Constitution and relevant laws.

Within this welcoming investment environment, investors are entitled to various basic rights including: (1) the right to repatriation of investment; (2) the right to remittance of earnings; and (3) freedom from expropriation (except for public use or in the interest of national welfare and defense and upon payment of just compensation).

Republic Act (RA) No. 7042, or the Foreign Investments Act of 1991 (FIA) liberalized the entry of foreign investments in the Philippines by allowing 100% foreign equity ownership in companies engaged in activities that are not under the Foreign Investment Negative List (FINL).

Fiscal and non-fiscal incentives are also provided to encourage foreign investments in the Philippines. The 2017 IPP sets forth the government's preferred activities for investments, which may be registered for investments incentives under the Omnibus Investments Code of 1987. Thus:

TABLE 1. THE 2017 IPP PREFERRED AREAS OF INVESTMENT

I. Preferred List of Activities

1. All Qualified Manufacturing Activities Including Agro-Processing

a. Industrial goods
b. Processing of agricultural and fishery products (including Halal and Kosher food) into:
   (i) Semi-finished/intermediate goods for use as inputs in the production of other goods, or
   (ii) Finished products or consumer goods for final consumption
c. Modular housing components
d. Machinery and equipment, parts and components
* Except for modernization projects, only projects located outside Metro Manila may qualify for registration.

2. Agriculture, Fishery and Forestry

a. Commercial production
b. Production of seeds and seedlings
c. Establishment of nurseries and hatcheries
d. Support services and infrastructures, such as:
   (i) Facilities for drying
   (ii) Cold chain storage
   (iii) Blast freezing
   (iv) Bulk handling and storage
   (v) Harvesting, plowing, and spraying/dusting
   (vi) Packing houses
   (vii) Trading centers
   (viii) Ice plants in Less Developed Areas
   (ix) AAA slaughterhouse
   (x) AAA dressing plant
* Except for modernization projects, only projects located outside Metro Manila may qualify for registration. Modernization projects include those for agricultural support services and infrastructure only.

3. Strategic Services

a. Integrated circuit design
b. Creative industries/knowledge-based services
c. Maintenance, Repair and Overhaul (MRO) of aircraft
d. Charging/refueling stations for alternative energy vehicles
e. Industrial waste treatment
f. Telecommunications
g. State-of-the-art Engineering, Procurement, and Construction

4. Healthcare Services including Drug Rehabilitation Centers
5. Mass Housing
6. Infrastructure and Logistics including LGU-PPPs
7. Innovation Drivers
8. Inclusive Business (IB) Models
9. Environments or Climate Change-Related Projects
10. Energy

II. Export Activities

1. Production and manufacture of export products
2. Services exports
3. Activities in support of exporters

III. Special Laws

1. Industrial tree planting
2. Mining (limited to capital equipment incentive)
3. Publication or printing of books/textbooks
4. Refining, storage, marketing and distribution of petroleum products
5. Rehabilitation, self-development and self-reliance of persons with disability
6. Renewable energy
7. Tourism

IV. Autonomous Region of Muslim Mindanao (“ARMM”) List

The ARMM List covers priority activities that have been identified by the Regional Board of Investments of the ARMM.

A. Export activities
B. Agriculture, agribusiness, aquaculture, and fishery
C. Basic industries
D. Infrastructure and services
E. Industrial service facilities
F. Engineering industries
G. Logistics
H. Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area (BIMP-EAGA) trade and investment enterprises
I. Tourism
J. Health and Education Services and Facilities.
K. Halal Industry
L. Banking, Non-Bank Financial Institutions and Facilities
M. Energy

The Securities and Exchange Commission (SEC) has issued SEC Memorandum Circular No. 08-13, which provides the guidelines on compliance with the Filipino-Foreign ownership requirements by corporations engaged in nationalized and partly nationalized activities. Under the said circular, the SEC mandates that for purposes of determining compliance with the constitutional or statutory Filipino ownership requirement in a corporation, the required percentage shall be applied to both (a) the total number of outstanding shares of stock entitled to vote in the election of directors, and (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.

B. Foreign Equity and Participation

Foreign investment is permissible in all areas of investment except in economic activities where the Philippine Constitution or existing laws prohibit or limit foreign equity to a specific percentage.

1. Foreign Investment Negative List (FINL)

The law governing foreign participation in the economy is the FIA. As a general rule, foreign investors may own up to 100% equity in export and domestic market enterprises, except for areas included in the FINL.

The FINL delineates:

- Areas where foreign equity is prohibited or limited by mandate of the Constitution and specific laws (List A); and
- Areas where foreign ownership is limited for security, defense, health, and moral reasons as well as to protect small and medium-scale enterprises (List B).

List A may be amended any time to reflect changes in the law on foreign equity participation in any specific area of economic activity. Amendments to List B may be not be made more often than once every 2 years. The current FINL, promulgated on 29 May 2015, is set forth in Table 2.

TABLE 2. TENTH FOREIGN INVESTMENT NEGATIVE LIST
[Promulgated under Executive Order No. 184 on 29 May 2015]

LIST A: FOREIGN OWNERSHIP IS LIMITED BY MANDATE OF THE CONSTITUTION AND SPECIFIC LAWS

No Foreign Equity

1. Mass media except recording
2. Practice of professions
    a. Pharmacy
    b. Radiologic and x-ray technology
    c. Criminology
    d. Forestry
    e. Law
3. Retail trade enterprises with paid-up capital of less than US$2,500,000
4. Cooperatives
5. Private security agencies
6. Small-scale mining
7. Utilization of marine resources in archipelagic waters, territorial sea, and exclusive economic zone as well as small-scale utilization of natural resources in rivers, lakes, bays, and lagoons
8. Ownership, operation, and management of cockpits
9. Manufacture, repair, stockpiling, and/or distribution of nuclear weapons
10. Manufacture, repair, stockpiling, and/or distribution of biological, chemical, and radiological weapons and anti-personnel mines
11. Manufacture of firecrackers and other pyrotechnic devices

Up to Twenty Percent (20%) Foreign Equity

12. Private radio communications network

Up to Twenty-Five Percent (25%) Foreign Equity

13. Private recruitment, whether for local or overseas employment
14. Contracts for the construction and repair of locally-funded public works except:
    a. Infrastructure/development projects covered in RA 7718; and
    b. Projects which are foreign funded or assisted and required to undergo international competitive bidding
15. Contracts for the construction of defense-related structures

Up to Thirty Percent (30%) Foreign Equity

16. Advertising

Up to Forty (40%) Foreign Equity

17. Exploration, development, and utilization of natural resources
18. Ownership of private lands
19. Operation of public utilities
20. Educational institutions other than those established by religious groups and mission boards
21. Culture, production, milling, processing, trading, except retailing, of rice and corn and acquiring, by barter, purchase, or otherwise, rice and corn and the by-products thereof
22. Contracts for the supply of materials, goods, and commodities to government-owned or controlled corporation, company, agency, or municipal corporation
23. Facility operator of an infrastructure or a development facility requiring a public utility franchise
24. Operation of deep-sea commercial fishing vessels
25. Adjustment companies
26. Ownership of condominium units

LIST B: FOREIGN OWNERSHIP IS LIMITED FOR REASONS OF SECURITY, DEFENSE, RISK TO HEALTH AND MORALS AND PROTECTION OF SMALL AND MEDIUM-SCALE ENTERPRISE

Up to Forty Percent (40%) Foreign Equity

1. Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance:
   a. Firearms (handguns to shotguns), parts of firearms and ammunition therefore, instruments or implements used or intended to be used in the manufacture of firearms
   b. Gunpowder
   c. Dynamite
   d. Blasting supplies
   e. Certain ingredients used in making explosives
   f. Telescopic sights, sniper scope, and other similar devices
2. Manufacture, repair, storage, and/or distribution of products requiring Department of National Defense (DND) clearance:
   a. Guns and ammunition for warfare
   b. Military ordinance and parts thereof (e.g., torpedoes, depth charges, bombs, grenades, missiles)
   c. Gunnery, bombing, and fire control systems and components
   d. Guided missiles/missile systems and components
   e. Tactical aircraft (fixed and rotary-winged), parts and components thereof
   f. Space vehicles and component system
   g. Combat vessels (air, land, and naval) and auxiliaries
   h. Weapons repair and maintenance equipment
   i. Military communications equipment
   j. Night vision equipment
   k. Stimulated coherent radiation devices, components, and accessories
   l. Armament training devices
   m. Others as may be determined by the Secretary of the DND
3. Manufacture and distribution of dangerous drugs
4. Sauna and steam bathhouses, massage clinics, and other like activities regulated by law because of risks posed to public health and morals
5. All forms of gambling except those covered by investment agreements with PAGCOR
6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US$200,000
7. Domestic market enterprises which involve advanced technology or employ at least fifty (50) direct employees with paid-in equity capital of less than the equivalent of US$100,000

2. Anti-Dummy Law

The Philippine Constitution and laws impose caps on foreign equity ownership in various business activities (See Table 2). The Anti-Dummy Law prohibits and penalizes acts that violate foreign ownership restrictions. Among those prohibited are: allowing the use of one's name or citizenship to evade citizenship requirements for the exercise of a right, franchise or privilege, the simulation of minimum capital stock, and other acts deemed tantamount to the unlawful use, exploitation or enjoyment of a right, franchise, privilege, property or business which has been expressly reserved to Filipino citizens. Under the Anti-Dummy Law, a foreigner cannot be elected to a management position of a domestic corporation engaged in nationalized or partially nationalized activities. They may, however, be elected as members of the Board of Directors of the corporation in proportion to their equity participation (i.e. not more than the allowable foreign participation). Any person who violates the Anti-Dummy Law may be punished by imprisonment for not less than five nor more than fifteen years, and by a fine in an amount not less than five thousand pesos.

Badges of "dummy status" have been identified by the Department of Justice as follows: (1) if the foreign investor provides practically all the funds for the joint investment undertaken by the Filipino businessmen and their foreign partner; (2) if the foreign investors undertake to provide practically all the technological support for the joint venture; or (3) if the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies. In the landmark case of Roy III vs Herbosa (G.R. No. 207246, 2016 and 2017 En Banc), the Supreme Court categorically ruled that in order for a corporation to comply with the nationality restrictions, full Filipino beneficial ownership of 60% of the outstanding capital stock of the corporation, coupled with 60% of the voting rights owned by Filipinos is required.

3. Land Ownership and Lease

Ownership limitation. The Philippine Constitution limits the ownership of lands to Philippine nationals or corporations which are at least 60% Filipino-owned.

Nevertheless, foreigners or foreign-owned corporations are allowed to enter into long-term leases of private lands.

RA No. 7652 (Investors' Lease Act). If the lease of private lands by foreign investors is made under the Investors' Lease Act for the establishment of industrial estates, factories, assembly/processing plants, agro-industrial enterprises, and other similar priority productive endeavors, the lease term may be for a maximum period of 50 years, renewable once for a period of not more than 25 years. The law allows such long-term lease of private lands subject to certain conditions, namely that:

- The leased area shall be used solely for the purpose of the investment upon the mutual agreement of the parties; and

- The leased premises shall comprise such area as may reasonably be required for the purpose of the investment subject, however, to the Comprehensive Agrarian Reform Law and the Local Government Code.

The leasehold right acquired under long-term lease contracts may be sold, transferred, or assigned. However, when the buyer, transferee, or assignee is a foreigner or a foreign-owned enterprise, the conditions and limitations in respect to the use of the leased property as provided for under the law shall continue to apply.

C. Foreign Investment Vehicles

A foreign company wishing to establish a business presence in the Philippines may do so through the following investment vehicles:

- Branch,
- Subsidiary,
- Representative Office,
- Regional/Area Headquarters (RHQ), or
- Regional Operating Headquarters (ROHQ).

In choosing which vehicle to use, the investor must consider the activities to be undertaken by the entity. The conduct of revenue-generating activities would require setting up a branch or a subsidiary. If the foreign company is a multinational intending to provide qualifying services to its affiliates in the Asia Pacific region, it may establish an ROHQ. If the foreign company intends merely to undertake coordination or liaison functions but not income generation, it may establish a representative office or an RHQ.

To establish any of the investment vehicles in the Philippines, a foreign company must apply for registration and secure a license to do business from the SEC.

1. Branch

A branch is an extension of the personality of the foreign enterprise and has no juridical personality separate from its parent. It is the business of the head office that it carries out and from which it derives income from the Philippines as its host country.

If the branch office is considered a domestic market enterprise, the foreign parent must assign a minimum of US$200,000.00 as the capital of the branch.[23] For an export market enterprise, the minimum required capital is PHP5,000.00.

[23] A domestic market enterprise is one which produces goods for sale, renders service, or otherwise engages in any business in the Philippines. The US$200,000 requirement is reduced to US$100,000 for domestic market enterprises whose activities involve advanced technology or which employ at least 50 direct employees. An export enterprise is one wherein a manufacturer, processor, or service (including tourism) enterprise exports 60% or more of its output, or wherein a trader purchases product domestically and exports 60% or more of such purchases.
[FIA Implementing Rules and Regulations].

The SEC fees to secure a license to do business as a branch are:

- Basic filing fee of 1% of the actual inward remittance of the corporation converted into Philippine currency but not less than PHP3,000.00; and

- Legal research fee (LRF) of 1% of the basic filing fee.

2. Subsidiary

Unlike a branch, the subsidiary has juridical personality separate and distinct from its owners. Thus, its shareholders are liable for the debts of the corporation only to the extent of their capital contribution.

If the activities to be undertaken by the subsidiary are not subject to nationality restrictions, then it may be wholly owned by non-Filipinos. Otherwise, it has to be organized with a qualified Philippine partner.

A subsidiary is organized as a domestic corporation, the formation of which is further detailed in Part III (A) below.

The minimum capital requirements are summarized as follows:

- A corporation with more than 40% foreign equity and which is considered a domestic market enterprise has a minimum paid-up capital requirement of US$200,000.00.

  However:

  - that minimum paid-up capital requirement is reduced to US$100,000.00 if its activities involve advanced technology or it employs at least 50 direct employees;

  - if the corporation is an export enterprise, the minimum paid-up capital is PHP5,000.00; and

  - in certain cases, a higher minimum paid-up capital is required by law (e.g., retail trade).

- If the foreign equity of the domestic corporation is less than 40%, it is required to have paid-up capital of at least PHP5,000.00 except in industries where the law requires a higher amount of capital.

Setting up a subsidiary requires payment of the following SEC fees:

- Basic filing fee of ⅕ of 1% of the authorized capital stock or the subscription price of the subscribed capital stock, whichever is higher but not less than PHP2,000.00;

- LRF of 1% of the basic filing fee; and

- Other nominal fees.

3. Representative Office

Like a branch, a representative office has no separate personality and is only an extension of the foreign company it represents. Unlike a branch, however, it does not derive income from the Philippines and is fully subsidized by its head office. The usual activities of a representative office are dissemination of information, promotion of company products, and quality control of products.

In the course of the SEC application for a license to do business in the Philippines, the foreign company must show that it has inwardly remitted at least US$30,000.00 to cover the representative office expenses.

The following SEC fees must be paid for the processing of the license:

- Basic filing fee of ⅒ of 1% of the actual inward remittance of the corporation converted into Philippine currency but not less than PHP2,000.00 is required;
- LRF of 1% of the basic filing fee; and
- Other nominal fees.

4. Regional Headquarters (RHQ)

Multinational companies or foreign companies with business establishments in 2 or more countries have the option of setting up Regional Headquarters in the Philippines.[24]

(a) Regional/Area Headquarters

Multinational companies may establish an RHQ in the Philippines.

The purpose of an RHQ is limited to supervising, superintending, inspecting and/or coordinating all of its subsidiaries, affiliates and branches in the Asia-Pacific region.

An RHQ is licensed by the SEC upon the favorable recommendation of the Board of Investments (BOI).

[24] A multinational that has, or will, simultaneously, set up an RHQ or ROHQ in the Philippines may also establish a regional warehouse or warehouses in an Ecozone after securing a license therefor from the PEZA or from concerned Ecozone authorities. The activities of a regional warehouse shall be limited to serving as a supply depot for the storage, deposit, and safekeeping of its spare parts, components, semi-finished products, and raw materials, including packing, covering, putting up, marking, labeling, and cutting or altering to customer's specification, mounting, and/or packaging into kits or marketable lots thereof; and filling up transactions and sales made by its head offices or parent companies; and serving as a storage or warehouse of goods purchased locally by the home office of the multinational for export abroad. The regional warehouse may not directly engage in trade nor directly solicit business, promote any sale, nor enter into any contract for the sale or disposition of goods in the Philippines.

An RHQ is a mere administrative branch and is not allowed to do business or derive any income from sources within the Philippines. Neither is it allowed to participate in any manner in the management of any subsidiary or branch that it might have in the Philippines.

Since an RHQ is not allowed to earn income from any source within the Philippines, its operations must be fully subsidized by way of inward remittances from its head office. For this purpose, the law requires an inward remittance of not less than US$50,000.00 a year or its equivalent in other acceptable foreign currency.

SEC filing fees are:

- Basic filing of PHP5,000.00 for each application to obtain a RHQ license

- LRF of 1% of the basic filing fee.

(b) Regional Operating Headquarters (ROHQ)

A foreign business entity may also set up an ROHQ in the Philippines to service its own affiliates, subsidiaries, or branches in the Philippines, in the Asia-Pacific region and other foreign markets. Unlike an RHQ, an ROHQ is allowed to derive income by performing qualifying services to its affiliates, branches, or subsidiaries (such as general administration and planning, corporate finance advisory services, and business development).

An ROHQ needs to secure a license from the SEC, upon the favorable recommendation of the BOI. ROHQs of banking and financial institutions are required to secure licenses from the SEC and the BSP.

An ROHQ is prohibited from offering its services to entities other than its affiliates, branches, or subsidiaries, as declared in its SEC registration, nor is it allowed to directly or indirectly solicit or market goods and services whether on behalf of its parent company, branches, affiliates, subsidiaries, or any other company.

The applicant foreign company is required to initially remit at least US$200,000.00 or its equivalent in other acceptable foreign currency, to cover its ROHQ operations in the Philippines.

The SEC filing fees are:

- Basic filing fee is 1% of the actual remittance but not less than 1% of the peso equivalent of US$200,000.00 at the time of remittance; and

- LRF of 1% of the basic filing fee.

5. Foreign Exchange Regulations

For Profit Remittance and Capital Repatriation. In general, there is no need for inward foreign direct investments to be registered with the BSP. Registration is necessary where the foreign exchange to fund the repatriation of the investment or the remittance of profit or dividends is to be sourced from the Philippine banking system. Where the foreign exchange for such repatriation and remittance is to be sourced outside of the Philippine banking system, registration of such inward investment with the BSP is not required.

For Foreign Loan Payments. Foreign loans or borrowings must be registered with the BSP if foreign exchange will be purchased from the Philippine banking system in order to service payments for these loans.

Where the foreign exchange for the loan payments will be sourced outside the banking system (e.g., from foreign exchange dealers or money changers) registration of the foreign loan is not required. Last 22 December 2017, the BSP issued Circular No. 984, dispensing with the prior BSP approval requirement for purely private sector loans (i.e. those without guarantee from/exposure of any public sector entity). The Circular took effect on 15 January 2018.

For Payment of Imports. Authorized Agent Banks (AABs) and their subsidiary/affiliate foreign exchange corporations (AAB-forex corps) may sell foreign exchange to service payments for imports, without need of prior BSP approval (but subject to certain reportorial requirements), under any of the arrangements prescribed by the BSP. These arrangements include letters of credit (L/C), documents against payment (D/P), documents against acceptance (D/A), direct remittance (DR), advance payment, and open account (O/A) arrangements including intercompany netting arrangement among non-bank related parties.

6. Financing and Capital Raising

Philippine banks are generally allowed to lend to residents without need of prior BSP approval, subject only to the credit exposure limits prescribed under the Manual of Regulations for Banks. Peso financing to non-residents may require prior BSP approval for use in projects, or for purposes, that are legitimate and not contrary to laws, regulations, public order, public health, public safety or public policy. In such case, the creditor bank shall submit to the BSP International Operations Department its application for approval of proposed peso financing program to non-residents (Sec. 31.4, Manual of Regulations on Foreign Exchange Transactions). Loans provided may be secured or unsecured. Security may be created through a mortgage over real properties and chattels, a pledge over movable property, or an absolute assignment or assignment by way of security of certain rights and interests in existing contracts or financial assets. Certain formalities are required for the perfection of security. Both mortgages and pledges should appear in a public instrument (i.e. notarized). A pledge requires that possession of the thing pledged must be delivered, actually or constructively, to the pledgee, in order for the same to be perfected. Mortgage Agreement needs to be registered with the Registry of Deeds in order to bind third parties.

Issuance of securities is regulated under the Securities Regulation Code (SRC). The SRC was enacted in 2000 to promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, and minimize insider trading and other devices that create distortions in the free market.

Securities may not be sold or offered for sale or distribution within the Philippines without the same being registered and approved by the SEC. Securities include, among others, shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities, investment contracts, fractional undivided interests in oil, gas or other mineral rights, derivatives, certificates of assignments, certificates of participation, proprietary or non-proprietary membership certificates in corporations.

Certain securities and transactions are exempt from the registration requirement.

Exempt securities include those issued by the Philippine government, by a foreign government with which the Philippines maintains diplomatic relations, or by those whose share or transfer is under the supervision and regulation of other government entities such as, for example, the Insurance Commission, the Housing and Land Use Regulatory Board.

Exempt transactions include private placements (i.e., sale of securities by an issuer to fewer than 20 persons in the Philippines during any twelve-month period), and sale of securities to qualified buyers.[25]

[25] Other Exempt Transactions are judicial sales, foreclosure of a pledge or mortgage, isolated transactions, distribution or payment of stock dividends, sale of unissued shares exclusively to existing shareholders, sale of bonds or notes to a single purchaser, conversion of previously registered convertible securities, subsequent trading in an exchange of previously registered securities, pre-incorporation subscriptions or subscriptions to increase in the corporation's authorized capital stock, exchange of securities by the issuer with its existing security holders exclusively.

Qualified buyers include banks, registered investment houses, insurance companies, pension or retirement plan maintained by the Philippine government or managed by a bank, investment company, or such other person as the SEC may by rule determine. The SRC 2015 Implementing Rules and Regulations (SRC Rules) has further liberalized capital raising by expanding the list of qualified buyers, and easing registration requirements by introducing shelf registration. Under the SRC Rules, an issuer may now register for the issuance of securities in tranches (i.e., for multiple, and future offerings), which allows companies to raise capital without separate registration for each offering, and may use the registration statement approved by the SEC to offer securities for up to 3 years after the effective date of the registration statement.

In the Philippines, the trading platform for fixed income government and corporate securities is operated by the Philippine Dealing and Exchange Corp. (PDEx) while the Philippine Stock Exchange (PSE) operates the secondary market for equity securities. PDEx and PSE are both registered with the SEC as self-regulatory organizations, mandated to make and enforce its own rules, monitor and enforce compliance with securities laws and regulations, and enforce fair and ethical practices in the securities market.

III. SETTING UP OF BUSINESS IN THE PHILIPPINES

The common legal structures available for setting up a business in the Philippines are: (1) corporations; (2) partnerships (general or limited); (3) and sole proprietorships.

A. Business Organizations

1. Corporations

Among these legal structures, the corporation is predominantly used in the Philippines.

A corporation with capital stock divided into shares provides the protection of limited liability for shareholders, allows free transferability of investment units (shares of stock), and centralizes the exercise of management powers, among others.

In general, corporations are governed by *Batas Pambansa Blg.* 68 or the Corporation Code of the Philippines (Corporation Code). There are special laws that govern special types of corporations in areas such as banking or insurance.

The following requirements under the Corporation Code apply in the formation of a stock corporation:

- At incorporation, at least 25% of the authorized capital stock of the corporation must be subscribed and at least 25% of the subscription must be paid-up;

- The corporate name must not be confusing, deceptive, illegal, or identical or similar to an existing business or corporate name;

- The number and qualifications of incorporators are as follows: at least 5 but not more than 15 natural persons, all of legal age and majority being Philippine residents; each incorporator is a subscriber to at least one share of stock;[26]

- The number and qualifications of directors are as follows: at least 5 but not more than 15 directors, each of whom must own at least 1 share in the capital stock; majority must be residents of the Philippines; and

- For corporate officers: The corporation must have a president who must also be a director, a treasurer (required by SEC policy to be a resident), and a secretary who must be a resident and citizen of the Philippines.

A corporation acquires juridical personality upon the issuance of a Certificate of Incorporation by the SEC. Further registration may be required for entities wishing to undertake business activities requiring secondary licenses or permits to operate.

A corporation enjoys the right of succession and its legal existence is not affected by the death, withdrawal, insolvency, or other incapacity of its shareholders. Unless earlier dissolved, it continues to exist for the duration of the term stated in its articles of incorporation (AOI) (up to 50 years, which can be extended by an amendment of the AOI for periods not exceeding 50 years in any single instance).

A corporation may be dissolved voluntarily by the Board of Directors and shareholders with SEC approval or upon the expiration of its corporate term.

[26] This restriction only applies to the number of incorporators and not to the number of stockholders.

2. Partnerships

Under the Philippine Civil Code, partnerships are created when 2 or more persons, by contract, bind themselves to contribute money, property or industry to a common fund with the intention of dividing the profits among themselves.

Like a corporation, a partnership has juridical personality separate from the people composing it. However, unlike in a corporation where shareholders are only liable to creditors to the extent of their capital contribution, partners may be held to personally answer to creditors for debts of the partnership not sufficiently covered by partnership assets.

Mere agreement of the parties is sufficient to give a partnership juridical personality. It may also be constituted in any form except that:

- A public instrument is necessary where immovable property or real rights are contributed to the partnership; and

- Where the partnership capital is PHP3,000.00 or more, the partnership contract must appear in a public instrument, which must be recorded in the SEC.

3. Sole Proprietorships

Sole proprietorships are businesses owned or managed by a single individual. Control of the business belongs only to the owner who is unrestrained by the formalities and requirements generally required of partnerships and corporations.

This form of business organization however comes with the disadvantage of not having the limited liability protection provided by the company.

Sole proprietorships must be registered with the Department of Trade and Industry (DTI).

B. Incorporation Requirements and Process

Foreign companies intending to do business in the Philippines are required to register with the SEC. Application for company registration or license to do business in the Philippines may now be submitted through the SEC's online Company Registration System (CRS), specifically designed to improve the ease of doing business in the Philippines.

1. Documentary Requirements

The documents required to be submitted to the SEC for purposes of incorporation or registration depend on the corporate vehicle that will be registered.

(a) Wholly-owned Subsidiary

For the incorporation of a wholly-owned Philippine subsidiary, the following documents must be submitted with the SEC:

(i) AOI – this must be duly signed by at least five (5) natural persons, majority of whom must be residents of the Philippines, who will act as incorporators of the corporation;

The AOI must contain the corporate name, the primary and secondary purposes of the corporation, principal place of office, corporate term, name, nationalities, and residences of the incorporators, number of directors, amount of authorized capital stock of the corporation, and the treasurer-in-trust of the corporation.

(ii) By-Laws – this is signed by the incorporators and contains the manner by which the corporation will be governed, including the issuance and transfer of shares, conduct of the stockholders' and directors' meetings, election and replacement of directors, and election of officers.

(iii) Treasurer's Affidavit; and

(iv) FIA Form F-100 - FIA application for corporations with more than forty percent (40%) foreign equity.

(b) <u>Branch Office/Representative Office</u>

Application for a License to Transact Business in the Philippines as a branch or representative office requires submission of the following to the SEC:

(i) FIA Application Form – F-103 for stock branch office, F-104 for stock representative office, or F-108 for non-stock branch/representative office;

(ii) Authenticated copy of the Board Resolution – this pertains to the board resolution of the parent authorizing the establishment of the branch or representative office in the Philippines, designating the Resident Agent to whom summons and other legal processes may be served in behalf of the foreign corporation, and stipulating that in the absence of such Agent or upon cessation of its business in the Philippines, any summons or legal processes may be served to the SEC as if the same is made upon the corporation at its home office;

(iii) Financial Statements (FS) – FS for the immediately preceding year at the time of filing of the application that is audited by an independent Certified Public Accountant (CPA) of the home country, and authenticated before the Philippine consulate/embassy. In case the audited FS is not required in the home country of the parent, an authenticated unaudited FS as of the date not exceeding one (1) year immediately prior to the filing of the application, may be submitted. The same must be accompanied by an authenticated certification signed under oath by an officer of a responsible regulatory institution or by the applicant's legal counsel that the applicant is not required to prepare and submit audited FS, with a citation of the law or regulation on which it is based;

(iv) Compliance with financial ratios – A stock branch office is required to comply with a solvency ratio of 1:1, Liquidity Ratio of 1:1, Debt to Equity Ratio of 3:1. Stock representative office, non-stock branch office, and non-stock representative office need to comply with a solvency ratio of 1:1;

(v) Notarized proof of Inward Remittance such as a bank certificate of inward remittance or credit advances;

(vi) Affidavit of undertaking to change corporate name;

(vii) Resident Agent's acceptance of appointment; and

(viii) Endorsement or clearance from appropriate government agencies, if applicable – for entities that will engage in activities that require endorsement from relevant government authority prior to registration.

(c) Regional Headquarters

Application for a License to Transact Business as RHQ or ROHQ requires the submission of the following documents to the SEC:

(i) Application Form

(ii) Certification from the Philippine Consulate/Embassy or the Philippine Commercial Office or from the equivalent office of the Philippine DTI in the applicant's home country that the applicant foreign firm is an entity engaged in international trade with affiliates, subsidiaries or branch offices in the Asia Pacific Region and other foreign markets;

(iii) Authenticated certification from principal officer of the foreign entity to the effect that the said foreign entity has been authorized by its Board of Directors or governing body to establish its RHQ/ROHQ;

(iv) Affidavit of undertaking to change corporate name;

(v) Endorsement of the BOI; and

(vi) Endorsement/Clearance from appropriate government agencies, if applicable.

2. Registration with the Securities and Exchange Commission

In November 2017, the SEC implemented the CRS, which is the full automation and online pre-processing of applications for the registration of corporations and partnerships, licensing of foreign corporations, amendments of the AOI and other corporate applications requiring SEC approval. In the course of the online evaluation of the application, the SEC requires actual submission of the original signed copies of the AOI and By-Laws, and originals of the documentary requirements supporting the application to the Company Registration and Monitoring Department of the SEC.

Upon the evaluation of the application, the SEC will then release a Certificate of Incorporation for wholly-owned subsidiaries, or a License to Transact Business in the Philippines for branch, representative office, RHQ, or ROHQ.

C. Post-Registration Requirements

After SEC registration, the new business must also register with other government agencies.

Some enterprises by the nature of their operations, are required to secure special clearances, licenses, or permits from other government agencies such as the Department of Health (DOH)-Food and Drugs Administration for food, cosmetics, chemicals and health-related businesses; the Department of Agriculture for certain businesses dealing with fisheries and aquatics; the Department of Labor and Employment (DOLE)-Philippine Overseas Employment Administration for recruitment agencies for overseas placement; the Energy Regulatory Commission (ERC) for power and energy; Philippine Economic Zone Authority (PEZA) for qualified entities who desire to transact its business within any of the country's special economic zones (Ecozones).

In general, the typical post-registration process would involve the following:

1. Tax Registration

Businesses must register with the Bureau of Internal Revenue (BIR) for purposes of national internal revenue tax compliance. Taxpayers must secure a Taxpayer Identification Number (TIN) for use on tax returns and filings. Books of accounts, invoices, and receipts must be registered with the appropriate BIR revenue district office before they are used by the taxpayer.

Under the National Internal Revenue Code (NIRC), all corporations, partnerships, or persons required by law to pay internal revenue taxes, and whose gross annual sales, earnings, receipts or output exceed PHP3,000,000.00 must have their books of account audited and examined yearly by independent CPAs.

2. Local Business Permits and Licenses

Permits and licenses must also be obtained from the Local Government Units (LGU) where the business is located. LGUs levy and collect taxes and other fees from businesses operating within their jurisdiction.

3. Registration under Employee Welfare and Related Laws

As employers, business enterprises must likewise comply with employee-welfare and related laws by undergoing registration with the appropriate government agencies and allowing regular remittance of contributions to the Social Security System (SSS), the Philippine Health Insurance Corporation (PhilHealth), and the Home Development and Mutual Fund (HDMF).

4. Importer Accreditation

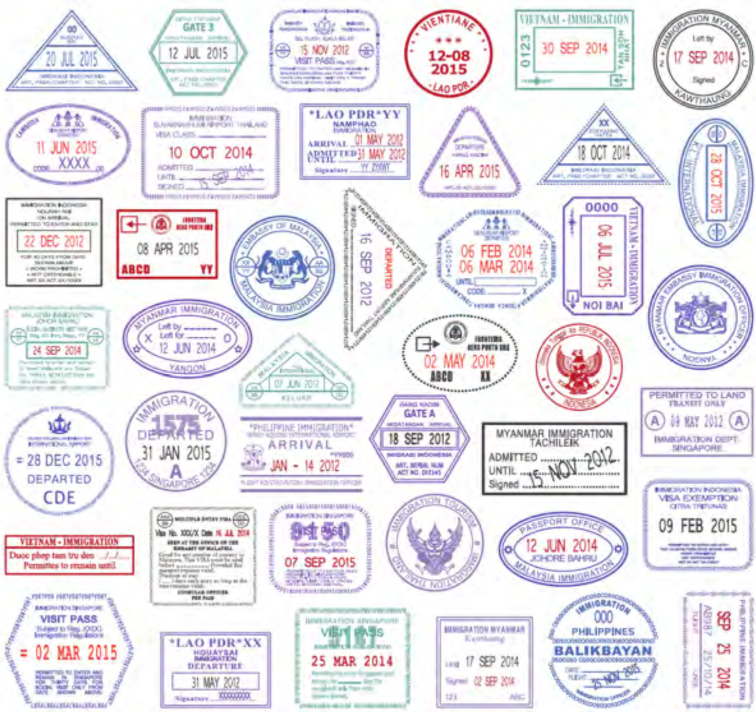
Entities desiring to engage in, or whose operations involves the importation of goods into the Philippines, must secure an accreditation as an Importer from the Bureau of Customs (BOC).

D. Reportorial Requirements

General Information Sheet (GIS). The SEC requires all registered enterprises (including foreign corporations, e.g., branch offices, representative offices, RHQs, or ROHQs) to annually submit a GIS.

The period for filing the GIS is 30 days counted from (1) the date of the annual stockholder's meeting (in case of a domestic corporation); or (2) the anniversary date of the issuance of the certificate of registration/license (in case of a ROHQ, RHQs, or branch and representative office).

Financial Statements (FS). The SEC requires the annual submission of FS, stamped "received" by the BIR. The filing period is within 120 days of the last day of the fiscal year of the corporation.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IV. TAXATION

Taxation in the Philippines is divided between 2 levels of government— the national and the local.

The national government derives tax revenue from 2 main sources: the NIRC recently amended by RA No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) and the Tariff and Customs Code (TCC) as amended by RA No. 10863 or the Customs Modernization and Tariff Act (CMTA). The NIRC imposes income taxes, estate and donor's taxes, value-added tax (VAT), other percentage taxes, excise taxes, documentary stamp taxes (DST), and such other taxes as may be imposed and collected by the BIR. The TCC, administered by the BOC, imposes taxes and duties on exports and imports.

LGUs have the authority, under the Local Government Code, to levy: (1) business taxes for the privilege of engaging in business or occupation; (2) annual *ad valorem* taxes on real property; and (3) transfer taxes covering the sale, donation, barter, or other mode of transfer of real property.

A. Income Tax

The main direct tax levied by the NIRC is the income tax.

1. Corporations

Corporate Income Tax

In general, corporate income tax is imposed as follows:

- Domestic corporations established under the laws of the Philippines [including foreign-owned subsidiaries as discussed under Part II(C)(2) above], are taxed at 30% of net taxable income from worldwide sources.
- Resident foreign corporations [such as a branch, as discussed under Part II(C)(1) above] are taxed only on net income from Philippines sources at the same rate as a domestic corporation (30%).
- Generally, non-resident foreign corporations are taxed at 30% of the gross amount of Philippine-source income such as interests, dividends, rents, royalties, compensation, annuities, and emoluments. This tax is withheld at source.

Passive income (royalties, interest) received by domestic and resident foreign corporations are subject to various specified tax rates. The TRAIN increased the tax rate on the interest income derived by a domestic corporation from a depositary bank under the expanded foreign currency system from 7 ½ % to 15%.

Dividends received by a domestic or resident foreign corporation from a domestic corporation (intercorporate dividends) are not taxable.

Moreover, there are special income tax rates for certain types of entities and income, including the following:

- RHQs are exempt from income tax;
- ROHQs are liable to 10% tax on their net taxable income;
- International carriers doing business in the Philippines are subject to 2.5% final tax on Gross Philippine Billings subject to exemption in cases where the home countries provide a similar tax exemption to Philippine carriers;
- Foreign Currency Deposit Units (FCDUs) and Offshore Banking Units (OBUs) are exempt from all taxes on income from foreign currency transactions with nonresidents, other OBUs, local commercial banks, including branches of foreign banks authorized by the BSP to transact business with OBUs; and
- Interest income of FCDUs and OBUs from foreign currency loans granted to residents other than FCDUs and OBUs are subject only to a final tax of 10%.

Branch Profits Remittance Tax (BPRT)

In general, any profit remitted by a branch to its head office is subject to a 15% BPRT. For this purpose, the law specifically excludes those activities which are registered with the PEZA.

The BPRT is based on the total profits applied or earmarked for remittance without any deduction for the tax component. The 15% BPRT may be reduced further under applicable tax treaties.

Minimum Corporate Income Tax (MCIT)

A minimum income tax of 2% of the gross income as of the end of the taxable year is imposed on a corporation subject to normal income tax (30%) beginning on the 4th taxable year immediately following the year in which such corporation commenced its business operations. The MCIT must be paid if the corporation has zero or negative taxable income or the minimum income tax is greater than the regular corporate income tax liability for the taxable year.

Any excess of the MCIT over the regular income tax as computed is carried forward and credited against the regular income tax for the 3 immediately succeeding taxable years.

There are cases when the imposition of the MCIT may be suspended by the Secretary of Finance, such as where the corporation sustained substantial losses on account of a prolonged labor dispute, force majeure, or legitimate business losses.

Improperly Accumulated Earnings Tax

A 10% tax is imposed on the improperly accumulated earnings of domestic corporations, except in the case of publicly-held corporations, banks, and other non-bank financial intermediaries and insurance companies. The fact that a corporation allows its earnings or profits to accumulate beyond its reasonable needs, is considered definitive of its purpose to avoid tax on stockholders, unless it proves the contrary. However, note that a branch is not considered covered by the rule against improperly accumulated earnings.

2. Individuals

Individual Income Tax

The citizenship and residence of an individual determine how he is taxed for income tax purposes, thus:

- A resident citizen is taxed on compensation, business, and other income derived from all sources;
- Non-resident citizens (including those working and deriving income from abroad such as overseas contract workers and seamen who derive compensation for services rendered abroad as members of a complement of vessels engaged exclusively in international trade) are taxed only on income derived from sources within the Philippines;
- Resident aliens are taxed only on income from sources within the Philippines;

- Nonresident aliens engaged in trade or business in the Philippines are taxed like citizens and resident aliens but only on Philippine-source income; and

- Nonresident aliens not engaged in trade or business are taxed on gross amount of Philippine-source income.

For purposes of determining whether the nonresident alien is engaged in trade or business, the NIRC adopts the 180-day rule such that if he stays in the Philippines for 180 days or less during the calendar year, he is deemed not doing business in the Philippines regardless of whether he actually engages in trade or business in the country. If, however, his stay exceeds 180 days during the calendar year, he will be deemed engaged in trade or business in the Philippines even if, in actuality, he is not so engaged.

Generally, for compensation income earners, the graduated tax rates of 20% to 35% apply to resident citizens, non-resident citizens, resident aliens and non-resident aliens engaged in trade or business between 1 January 2018 to 31 December 2022 (and 15% to 35% thereafter). However, non-resident aliens not engaged in trade or business in the Philippines are subject to the flat income tax rate of 25% on gross income.

TRAIN provides that purely self-employed and professional individuals whose gross sales/receipts and other non-operating income do not exceed the PHP3,000,000.00 threshold are granted the option to be taxed at 8% of gross sales/receipts and other income in excess of PHP250,000.00 in lieu of the graduated rates and percentage tax. Mixed income earners are taxed at graduated rates (i) on their compensation income and (ii) on income from trade or business/profession exceeding the VAT threshold. However, for income from trade or business/profession below the VAT threshold, mixed income earners are given the option to be taxed at 8% of gross sales/receipts and other income in excess of PHP250,000.00.

Under TRAIN, the preferential tax treatment covering the gross income from employment of employees of RHQs of multinational companies, ROHQs of multinational companies, OBUs and petroleum service contractors and subcontractors is no longer applicable to such entities registering with the SEC after 1 January, 2018. As originally passed by the legislature, TRAIN also contained a proviso stating that existing entities “presently availing of the preferential tax rates for qualified employees shall continue to be entitled to the preferential tax rate for present and future qualified employees,” which was vetoed by the President. Following the veto, the BIR, through a Tax Advisory dated 31 January 2018 made a pronouncement that all employees of the mentioned entities enjoying preferential treatment prior to 2018 are now subject to the regular income tax rates.

Personal Exemptions

The TRAIN increased personal income tax exemption for individuals deriving purely compensation income and/or self-employed and professionals to PHP250,000.00, but it removed the basic personal exemption and additional exemption for dependents.

Withholding Taxes

The Philippines requires the withholding of income tax on compensation income, on certain income payments made to residents, and on income payments made to non-resident taxpayers. In such cases, the withholding entity acts as an agent of the government for the collection of the tax to ensure its payment.

Withholding taxes are classified as either final or creditable. Under the final withholding tax (FWT) system, the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. The payee is not required to file an income tax return for the particular income. On the other hand, under the Creditable Withholding Tax (CWT) system, income payments made by a Philippine resident to another resident is subject to specific withholding tax rates. The tax withheld may be creditable against the income tax liability of the income recipient. This system is one where the taxes withheld are meant to equal or approximate the total tax due from the recipient for the specific income.

The current CWT rates under the NIRC are not less than 1% but not more than 32%, which shall be credited against the income tax liability of the taxpayer for the taxable year. However, under TRAIN, the CWT shall, beginning 1 January 2019, be between 1% to 15% of the income payment.

3. Application of Tax Treaties

As a general rule, the provisions of the NIRC would apply on the income, gain or profit of any person liable to Philippine income tax.

However, the Philippines is signatory to a number of tax treaties with other States. Under these treaties, specific types of income earned by foreign entities may be exempt from Philippine income taxes or subject to lower preferential treaty rates where applicable.

The Philippines has tax treaties with the following countries:

Australia	Malaysia
Austria	Netherlands
Bahrain	New Zealand
Bangladesh	Nigeria
Belgium	Norway
Brazil	Pakistan
Canada	Poland
China	Qatar
Czech Republic	Romania
Denmark	Russia
Finland	Singapore
France	Spain
Germany	Sweden
Hungary	Switzerland
India	Thailand
Indonesia	Turkey
Israel	United Arab Emirates
Italy	United Kingdom
Japan	United States
Korea	Vietnam
Kuwait	

The BIR simplified tax treaty relief procedures in respect of dividend, interest and royalty income of nonresidents. Under Revenue Memorandum Order (RMO) No. 8-2017, which amends RMO 72-2010, nonresidents need not file a BIR tax treaty relief application to claim preferential tax treatment on dividend, interest and royalty income. Instead, the preferential treaty rates on such income may already be applied and used outright by withholding agents upon submission of prescribed certificates of residence forms, and subject to compliance check and post reporting validation.

4. Thin Capitalization and Transfer Pricing Rules

The Philippines does not have explicit thin capitalization statutes. However, there are restrictions on the allowable deduction for interest expense under the tax arbitrage rule, which reduces a taxpayer's otherwise allowable deduction for interest expense by 33% of the interest income subjected to final tax.

The Philippines' transfer pricing regulations, which took effect on 9 February 2013, apply to both domestic and cross-border related-party transactions.

The regulations are largely based on the arm's length methodologies of the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines.

They explicitly adopt the arm's length pricing methodologies without specific preference for any one method. A 3-step approach in applying the arm's length principle is provided, as follows:

Step 1. Conduct a comparability analysis;

Step 2. Identify the tested party and the appropriate transfer pricing method; and

Step 3. Determine the arm's length results.

Taxpayers are required to keep adequate transfer pricing documentation to show that their transfer prices adhere to the arm's length principle.

Taxpayers engaged in cross-border transactions are given the option of obtaining Advance Pricing Arrangements (APAs), which are agreements entered into by the BIR and the taxpayer to determine in advance the appropriate set of criteria for ascertaining transfer prices of controlled transactions over a period of time.

The regulations state that the BIR shall issue separate guidelines on the application of APAs. While these APA guidelines are yet to be issued, they are accorded top priority by the tax authority.

B. Value-Added Tax (VAT)

The Philippines imposes a VAT on the sale, barter, exchange, or lease of goods and properties, importation of goods and sale or performance of services in the course of trade or business within the Philippines.[27] The standard VAT rate is 12%.

There are transactions (mainly export sales) subject to the VAT zero rate. There are also transactions exempt from VAT (e.g., sale of agricultural and marine food products in their original state, sale of fertilizer, sale of livestock and, under TRAIN, beginning 1 January 2019, the sale of drugs and medicines prescribed for diabetes, high cholesterol and hypertension).

The registration threshold for VAT purposes was increased by TRAIN to PHP3,000,000.00 in gross sales or receipts over a 12-month period.

[27] The terms "goods" or "properties" means all property, real or personal (tangible or intangible). The "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee or consideration.

C. Other Business Taxes

Other internal revenue taxes of interest to investors include:

Excise Tax. [28] The Philippines imposes excise taxes on certain goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, as well as on certain imported goods. Excisable goods include alcohol products, tobacco products, petroleum products, mineral products, motor vehicles, and non-essential goods such as jewelry.

TRAIN increased the excise tax rates on certain products such as cigars/cigarettes and manufactured oils and other fuels. It also amended the excise tax schedule for automobiles.

A new excise tax on sweetened beverages was passed, with beverages using purely caloric sweeteners and purely non-caloric sweeteners or a mixture of both now subject to an excise tax of PHP6.00 per liter, and beverages using purely high fructose corn syrup or in combination with any caloric or non-caloric sweeteners taxed at PHP12.00 per liter. Sweetened beverages using purely coconut sap sugar/purely steviol glycosides as sweeteners are exempt from this tax.

TRAIN likewise imposes a new excise tax on non-essential services namely the performance of invasive cosmetic procedures, surgeries, and body enhancements directed solely towards improving, altering, or enhancing the patient's appearance and which do not meaningfully promote the proper function of the body or prevent or treat illness or disease. The excise tax on such non-essential services is 5% based on gross receipts.

Percentage Tax. Certain persons or entities not subject to VAT, including domestic common carriers of passengers, international carriers on their transport of cargo from the Philippines to another country, and those in the amusement business are subject to percentage tax on gross receipts or gross income. The rates of percentage tax range from 1% to 30%.

Included under percentage taxes are the Stock Transaction Tax (STT) and the Initial Public Offering (IPO) Tax. The STT is imposed on the sale or disposition of shares listed and traded through the PSE other than the sale by a dealer in securities. The STT rate is 6/10 of 1% of the gross selling price or gross value in money of the shares disposed. The IPO tax is imposed on the sale or disposition through an IPO of shares of stock in closely held corporations. [29]

[28] A closely held corporation is any corporation of which at least 50% in value of the outstanding capital stock or at least 50% of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than 20 individuals.

[29] if based on weight or volume capacity or other physical unit of measurement of goods, the excise tax is called a specific tax. Excise taxes based on the selling price or other value of the goods are referred to as ad valorem taxes.

The IPO tax rates, based on the gross selling price or gross value in money of the shares disposed (in accordance with the proportion of shares disposed to the total outstanding shares after the PSE listing), are:

Up to 25%	4%
Over 25% but not over 33 ⅓ %	2%
Over 33 ⅓ %	1%

Documentary Stamp Tax (DST). DST applies to certain documents, agreements, and other instruments evidencing business transactions, acceptances, sales, and transfers of obligations, rights, or property. The liability for the DST falls on the maker, signor, issuer, accepter, or transferor of the document.

TRAIN increased the DST on certain transactions, such as on: (i) original issuance of shares which was increased to PHP2.00 on each PHP200.00 (from the previous PHP1.00 on each PHP200.00) of par value or actual consideration for no-par shares; (ii) sales, agreements to sell, memoranda of sales, deliveries or transfers of shares or certificates of stock, which was increased to PHP1.50 on each PHP200.00 (from the previous PHP0.75 on each PHP200.00) of the par value or 50% of the DST paid upon original issuance of no-par shares; and (iii) original issue of debt instruments, which was increased to PHP1.50 on each PHP200.00 (from the previous PHP1.00 on each PHP200.00) of the issue price.

D. Local Taxes and Real Property Taxes

Provinces, cities, municipalities, and barangays where a business is operating may also impose annual business taxes based on the annual gross sales or receipts of the taxpayer. Real property taxes may also be imposed on land, building, machinery and other improvements owned or used for the business, by the province, city or municipality where the properties are located.

The basic real property taxes are levied at a rate between 1% to 2% of the assessed value of the real property. A local transfer tax is imposed on the sale, donation, barter or other mode of transferring ownership or title of real property. Provinces may impose this tax at a rate not more than 50% of 1% the total consideration involved in the acquisition of the property or of the fair market value in case the monetary consideration involved in the transfer is not substantial, whichever is higher.


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V. INCENTIVES

There are a host of incentives available to foreign investors under Philippine laws, primarily those under Executive Order No. 226 or the Omnibus Investments Code of 1987 and the laws covering Ecozones.

Under the Omnibus Investments Code, an investor may avail of fiscal and non-fiscal incentives by registering with the BOI. The overarching goal of this law is to encourage investments in the enumerated desirable areas of economic activity.

The Philippines likewise has Ecozones or state-created economic enclaves designed to attract investment for the purpose of economic growth and development in the region.

A. BOI- Registered Enterprises

The Omnibus Investments Code provides incentives to enterprises engaged in activities falling under the government's priority or preferred areas of investment as well as those which export a certain minimum percentage of their production. Preferred areas of investment are listed under the IPP, the overall plan prepared by BOI and submitted to the President for approval yearly.

Investors that engage in priority areas of investment under the IPP *(Please refer to IPP Table 1 in II.A above)* may avail of the incentives under the Omnibus Investments Code upon registration with the BOI.

To qualify for registration with the BOI and obtain incentives, investors must meet certain qualifications under the law.

Subject to certain conditions, BOI-registered enterprises may enjoy the following tax and non-tax special incentives:

Fiscal Incentives

- Income Tax Holiday (ITH): generally, 6 years from the start of commercial operations for pioneer firms and 4 years in the case of non-pioneer firms;
- Additional deduction from taxable income of labor expense;
- Exemption from taxes and duties on the importation of breeding stocks and genetic materials;
- Tax credit for taxes and duties on raw materials/supplies used in the manufacture, processing, or production of export products;
- Exemption from wharfage duties and any export tax, duty, impost, and fee; and
- Exemption from local business taxes for 6 years from the start of commercial operations for pioneer firms and 4 years in the case of non-pioneer firms.

Non-Fiscal Incentives

- Simplification of customs procedure;
- Unrestricted use of consigned equipment;
- Employment of foreign nationals in supervisory, technical, or advisory positions for a 5-year period; and
- Access to bonded warehouse/ trading system.

B. Philippine Economic Zone Authority (PEZA) Enterprises

RA No. 7916 created the PEZA to operate, administer, manage, and develop Ecozones.

Businesses registered with the PEZA and located or operating within PEZA Ecozones in compliance with the terms and conditions of their registration are entitled to fiscal and non-fiscal incentives under the law.

These incentives include, in general, the following (some of which are subject to certain conditions):

- ITH of 6 years from start of commercial operations for new registered pioneer firms and 4 years for non-pioneer firms;
- Upon expiration of the ITH, a special tax rate of 5% on gross income in lieu of all national and local taxes;
- Tax and duty-free importation of capital equipment, raw materials, spare parts, supplies, breeding stocks, and genetic materials;
- Tax credit for import substitution;
- Tax credit on domestic capital equipment, breeding stocks, and genetic materials;
- Exemption from wharfage duties and any export tax, duty, impost, and fee;
- For Philippine branches, exemption from BPRT;
- Additional deduction of half of the value of training expenses incurred in developing skilled or unskilled labor or for managerial or other management development programs;
- Exemption from local business taxes for 6 years from the start of commercial operations for pioneer firms and 4 years in the case of non-pioneer firms;
- Simplification of customs procedure;
- Unrestricted use of consigned equipment; and
- Employment of foreign nationals.

C. Subic/Clark and Other Special Economic/Freeport Zones

Incentives are available to investors locating in special economic and free port zones created under special laws.

Two of the most attractive investment locations in the Philippines are the Subic and Clark zones which used to cover areas occupied by United States military reservations.

Subic. Enterprises registered as Subic Special Economic Zone (SSEZ) enterprises are entitled to the 5% special tax on gross income earned, in lieu of national and local taxes. Enterprises registered as Subic Freeport Zone enterprises are entitled to (1) tax and duty-free importation subject to the guidelines issued by the Department of Finance and (2) 5% special tax on gross income earned, in lieu of national and local taxes.

Clark. Registered Clark Freeport Zone enterprises are entitled to the following incentives: (1) tax and duty-free importation of goods and capital equipment under the regulations and (2) 5% special tax on gross income earned, in lieu of national and local taxes.

Other Ecozones. Various special laws created other Ecozones such as the Cagayan Special Economic Zone, the Zamboanga City Special Economic Zone, the Freeport Area of Bataan and the Aurora Special Economic Zone. Tourism Economic Zones were also created under RA No. 9593 or the Tourism Act of 2009. Incentives granted to enterprises located within these Ecozones are similar to those granted to PEZA-registered enterprises.

VI. EMPLOYMENT

The Philippine Constitution affirms the role of labor as a primary social economic force and emphasizes the policy of the State to afford its full protection.

Presidential Decree (PD) No. 442 as amended, or the Philippine Labor Code is the primary legislation governing labor standards and employment in the Philippines. This law underscores the basic State policy to afford protection to labor, promote full employment, ensure equal work opportunities, regulate the relations between workers and employers, and assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

Under the Labor Code's own provisions, all doubts in its implementation and interpretation shall be resolved in favor of labor.

A. Labor Standards

1. Working Hours

In the Philippines, the normal hours of work are 8 hours a day or 48 hours a week. Time-off for meals of at least 60 minutes must be provided by the employer. This meal break is not included in the computation of the normal hours of work.

Overtime Work. Work exceeding the normal work hours (8 hours a day) must be paid an overtime rate. These overtime rates vary depending on when the overtime work is performed: on regular days, holidays, rest days, or during the night shift. The overtime premium on a regular day is equivalent to the regular wage plus at least 25%. If the overtime work is performed on a holiday or rest day, the employees must be paid an additional compensation equal to the rate of the first 8 hours on a holiday or rest day plus at least 30% thereof.

Night Shift Differential. Every employee shall be paid a night shift differential of not less than 10% of his regular wage for each hour of work performed between 10 p.m. and 6 a.m.

Rest day. The employer shall provide each of his employees a rest period of not less than 24 consecutive hours after every 6 consecutive normal work days. Work performed on the rest day shall be paid an additional compensation of at least 30% of the regular wage of the employee.

Holidays and Holiday Pay. National holidays in the Philippines are classified as either regular or special.

On regular holidays, an employee is entitled to receive his regular daily wage without performing work. For work done on such regular holiday, an employee shall be paid an amount twice his regular daily wage. If the employee works on a regular holiday which is also his rest day, he is entitled to additional compensation of at least 30% of his regular holiday wage rate.

Work performed on special non-working holidays must be paid an additional compensation of at least 30% of the regular wage of the employee. When the employee works on such special holiday which also happens to be his scheduled rest day, he is entitled to an additional compensation of at least 50% of his regular daily wage.

TABLE 3. OFFICIAL PHILIPPINE HOLIDAYS 2018

New Year's Day	Regular holiday	January 1
Chinese New Year	Special non-working day	Moveable date
EDSA Revolution Anniversary	Special non-working day	February 25
Maundy Thursday	Regular holiday	Moveable date
Good Friday	Regular holiday	Moveable date
Black Saturday	Special non-working day	Moveable date
Araw ng Kagitingan	Regular holiday	April 9
Labor Day	Regular holiday	May 1
Independence Day	Regular holiday	June 12
Ninoy Aquino Day	Special non-working day	August 21
National Heroes Day	Regular holiday	Moveable date
All Saint's Day	Special non-working day	November 1
Additional Special Non-Working Day	Special non-working day	November 2
Bonifacio Day	Regular holiday	November 30
Additional Special Non-Working Day	Special non-working day	December 24
Christmas Day	Regular holiday	December 25
Rizal Day	Regular holiday	December 30
Last Day of the Year	Special non-working day	December 31
Eid'l Fitr	Regular holiday	Moveable date
Eidul Adha	Regular holiday	Moveable date

2. Wages

The Philippines has a Wage Rationalization Act setting forth the mechanism and standards for wage determination in order to ensure a decent standard of living for the workers and their families.

Under the Wage Rationalization Act, minimum wage rates for agricultural and non-agricultural employees are prescribed by the Regional Tripartite Wages and Productivity Boards for each region. Among other relevant factors these Boards consider in prescribing these minimum wage rates are as follows:

a. The demand for living wages;

b. Wage adjustment vis-à-vis the consumer price index;

c. The cost of living and changes or increases therein;

d. The needs of workers and their families;

e. The need to induce industries to invest in the countryside;

f. Improvements in standards of living;

g. The prevailing wage levels;

h. Fair return of the capital invested and capacity to pay of employers;

i. Effects on employment generation and family income; and

j. The equitable distribution of income and wealth along the imperatives of economic and social development.

A summary of the current daily minimum wage rates per region as of April 2018 is provided in Table 4:

TABLE 4. CURRENT DAILY MINIMUM WAGE RATES PER REGION

REGION	DATE OF EFFECTIVITY	NON-AGRICULTURE IN PESOS	AGRICULTURE (IN ₱)	
			PLANTATION	NON-PLANTATION
NCR	05 October 2017	475.00-512.00	475.00	475.00
CAR	05 June 2017	270.00 - 300.00	270.00 - 300.00	270.00 - 300.00
I	25 January 2018	256.00 - 310.00	265.00	256.00
II	25 September 2017	340.00	320.00	320.00
III	01 May 2017	329.00 - 380.00	314.00 - 350.00	302.00 - 334.00
IV-A	28 April 2018	317.00 - 400.00	303.00 - 372.00	303.00 - 352.00
IV-B	24 September 2017	259.00 - 300.00	259.00 - 300.00	259.00 - 300.00
V	02 June 2017	280.00 - 290.00	280.00 - 290.00	280.00 - 290.00
VI	16 March 2017	271.50 - 323.50	281.50	271.50
VII	10 March 2017	308.00 - 366.00	288.00 - 348.00	288.00 - 348.00
VIII	12 February 2017	285.00	251.00	245.00
IX	01 October 2016	296.00	283.00	283.00
X	16 July 2017	316.00 - 338.00	304.00 - 326.00	304.00 - 326.00
XI	16 December 2016	340.00	335.00	335.00
XII	11 May 2018	311.00	290.00	290.00
CARAGA	08 December 2017	300.00	300.00	300.00
ARMM	01 March 2016	265.00	255.00	255.00

Wages must be paid at least once every 2 weeks or twice a month at intervals not exceeding 16 days.

13th Month Pay. Under PD No. 851 (as modified by Memorandum Order No. 28), all employers must grant a 13th month pay to all their rank-and-file employees. The payment of the 13th month pay must be made not later than December 24 of every year.

The 13th month pay shall not be less than 1/12 of the total basic salary of an employee within a calendar year.

Service Incentive Leave (SIL). As a general rule, every employee who has rendered at least 1 year of service is entitled to SIL of 5 days with pay.

Maternity Leave. Female employees are entitled to maternity benefits in the Philippines. A female SSS member who has paid at least 3 monthly contributions in the 12-month period immediately preceding the semester of her childbirth or miscarriage shall be paid a daily maternity benefit. The maternity benefit shall be equivalent to 100% of the pregnant employee's average daily salary credit for 60 days, or 78 days in case of caesarian delivery.

Entitlement to the maternity benefits shall be subject to the following conditions:

- The employee must have given the required notification to the SSS through her employer;

- The employer must have paid at least 3 monthly contributions to the SSS within the twelve-month period immediately before the date of the delivery or miscarriage;

- The full payment shall be advanced by the employer within 30 days from the filing of the maternity leave application; and

- The maternity benefits shall be paid only for the first 4 deliveries or miscarriages.

Special leave under RA No. 9710 or the Magna Carta of Women. A woman employee having rendered continuous aggregate employment service of at least 6 months for the last 12 months shall be entitled to a special leave benefit of 2 months with full pay based on her gross monthly compensation following surgery caused by gynecological disorders.

Leave under RA No. 9262 or the Anti-Violence Against Women and their Children Act. In addition to other paid leaves, women who have been victims of violence shall be entitled to a leave of up to 10 days with full pay, consisting of basic salary and mandatory allowances.

Parental leave for single parents under RA No. 8972 or the Solo Parents' Welfare Act of 2000. A solo parent who has rendered at least 1 year of service is given fully paid leave privileges of an additional 7 working days every year.

Paternity Leave. Married male employees in the private sector, regardless of their employment status (e.g., probationary, regular, contractual, project basis) are allowed to avail of paternity leave after the wife's delivery. The paternity leave benefit is given for 7 calendar days, with full pay, for the first 4 deliveries of the employee's lawful wife with whom he is cohabiting.

3. Health and Safety Rules for Certain Workers

Employment of Night Workers under RA No. 10151

A night worker is any employed person whose work covers the period from 10 p.m. to 6 a.m. the following morning, provided the worker works for not less than 7 consecutive hours.

At their request, night workers shall have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work:

a. Before taking up an assignment as a night worker;

b. At regular intervals during such an assignment; and

c. If they experience health problems during such an assignment.

With the exception of a finding of unfitness for night work, the findings of such assessments shall be confidential and shall not be used to their detriment, subject however to applicable company policies.

Night workers who are certified by competent physicians as unfit to render night work due to health reasons shall be transferred to a job for which they are fit to work. The transfer of the employee must be to a similar or equivalent position and in good faith. If such transfer is not practicable or the workers are unable to render night work for a continuous period of at least 6 months, they shall be granted the same company benefits as other workers who are unable to work due to illness. A night worker certified as temporarily unfit for night work for a period of less than 6 months shall be given the same protection against dismissal or notice of dismissal as other workers who are prevented from working for health reasons.

Occupational safety and health measures for workers who have to spend long hours sitting

All employers and/or establishments are directed to institute appropriate measures to address the risks to safety and health of workers who spend long hours sitting at work. These measures shall include:

- Provide regular five-minute breaks every two hours from sitting;
- Encourage workers to reduce sedentary work by interrupting sitting time and substitute it with standing and walking;
- Ensure that the workstation is designed appropriately for the type of work;
- Change work systems;
- Redesign work tasks, if possible, to enable greater variability in movement of posture;
- Organize health promotion activities that will allow workers to do more physical activities after work;
- Conduct awareness raising on the health effects of prolonged sitting and sedentary work; and
- Conduct medical surveillance among workers who are at risk of getting deleterious health effects of prolonged sitting and sedentary work.

Occupational safety and health measures for workers who have to stand

All employers and/or establishments shall institute appropriate control measures to address the risks to safety and health of workers while standing at work or frequently walking. These measures shall include:

- Implement rest periods or cut the time spent on standing or walking;
- Install appropriate flooring or mats that will mitigate the impact of frequent walking and prevent fatigue;
- Provide tables or work surfaces with adjustable heights to allow workers to alternately sit and stand while performing their tasks;
- Provide readily accessible seats to be used during rest periods or even during work hours, provided the employees can perform their duties in this position without detriment to efficiency; and
- Implement the use of footwear which is practical and comfortable.

4. Separation from Employment

Security of tenure. The right to security of tenure is Constitutionally enshrined. Therefore, in cases of regular employment, an employer may not terminate the services of an employee except for a just cause or when authorized by the law and after observance of procedural due process.

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The entitlement to separation pay shall depend on the reason or ground for termination.

Just causes of termination. An employer may terminate an employment for any of the following causes:

- Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- Gross and habitual neglect by the employee of his duties;
- Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- Other analogous causes.

No separation pay is due to the employee separated due to just causes.

Authorized causes of termination. The employer may also terminate the employment of any employee due to the following:

- Installation of labor-saving devices;
- Redundancy;
- Retrenchment to prevent losses; or
- Closing or cessation of operation of the establishment or undertaking.

In case of termination due to the installation of labor-saving devices or redundancy, separation pay is equivalent to at least his 1-month pay or to at least 1-month pay for every year of service, whichever is higher. In retrenchment to prevent losses and closures or cessation of operations, the separation pay is 1-month pay or at least ½-month pay for every year of service, whichever is higher.

In case of termination due to closure or cessation of business operation not due to serious business losses, separation pay is equivalent to 1-month pay or at least one-half (½) month pay for every year of service, whichever is higher. Where closure is due to serious business losses or financial reverses, no separation pay is required.

Disease as ground for termination. An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees. Severance pay of at least 1-month salary or ½-month salary for every year of service, whichever is greater, must be paid.

Procedural Due Process. In a termination for just cause, due process involves the 2-notice rule:

- A notice of intent to dismiss specifying the ground for termination, and giving said employee reasonable opportunity within which to explain his or her side;
- Ample opportunity for the employee to respond to the charge, present evidence, or rebut the evidence presented against him or her; and
- A notice of dismissal indicating that upon due consideration of all the circumstances, grounds have been established to justify termination.

In a termination for an authorized cause, due process means a written notice of dismissal to the employee specifying the grounds at least 30 days before the date of termination. A copy of the notice shall also be furnished to the Regional Office of the DOLE where the employer is located.

Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

If there is no retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee, upon reaching the age of 60 years or more (but not beyond 65 years which is the compulsory retirement age), and having served at least 5 years in the said establishment, may retire and be entitled to retirement pay equivalent to at least ½-month salary for every year of service.

Exempted from the payment of retirement benefits are retail, service, and agricultural establishments or operations employing not more than 10 employees or workers.

B. Labor Relations

Right to self-organization and collective bargaining. Under Philippine law, employees have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining.

C. Social Welfare Legislation

Other welfare legislations include the Social Security Law, Employees' Compensation and State Insurance Fund, HDMF, and National Health Insurance Act.

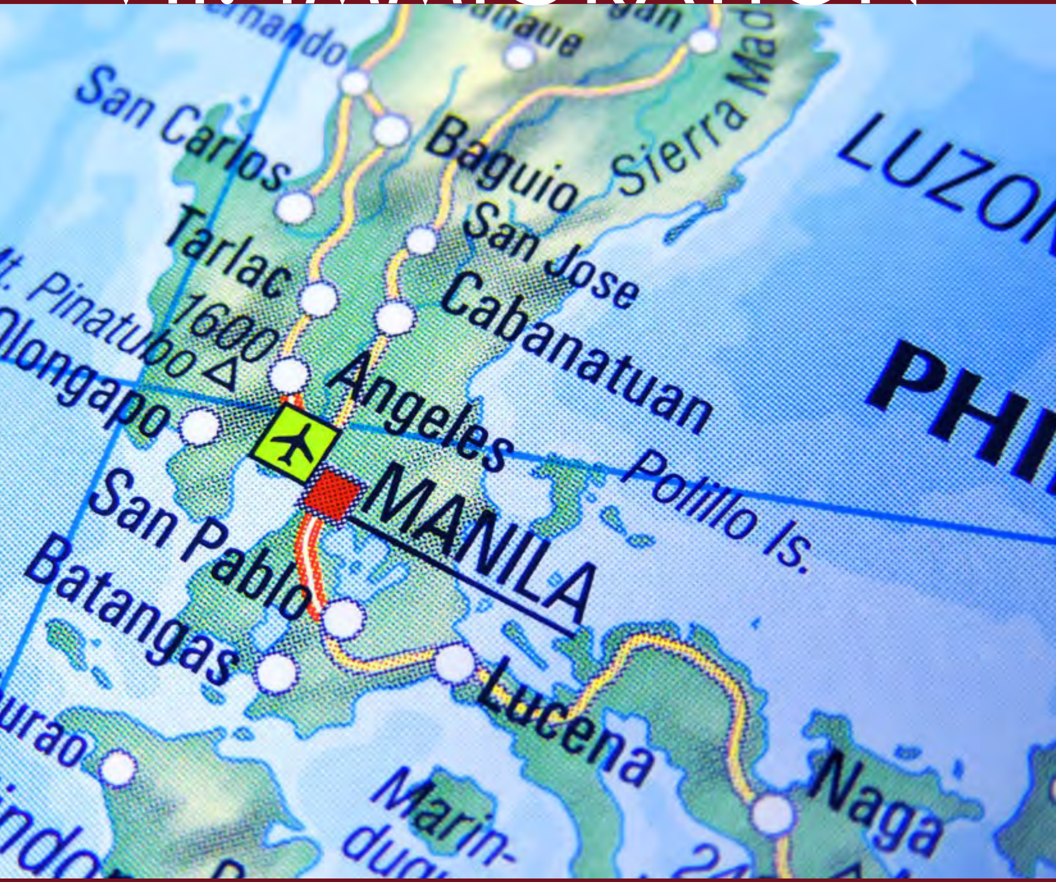
Social Security System (SSS). The SSS is meant to promote social justice and provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden. Membership in the SSS is compulsory for all private employees. Contribution to the SSS is deducted from the monthly salary of the employees. The employer also contributes to the SSS on behalf of his employees.

Employees' Compensation and State Insurance Fund (ECSIF). The ECSIF is a government fund designed to provide compensation to public and private sector employees or their dependents in the event of work-related sickness, injury, disability, or death. Membership is mandatory for all employees.

Home Development Mutual Fund (HDMF). The HDMF is a mutual provident savings system for private and government employees and other earning groups, supported by matching mandatory contributions of their respective employers with housing as the primary investment. Coverage in the HDMF is mandatory for all employees covered by the SSS and the Government Service Insurance System (GSIS).

National Health Insurance Program (NHIP). The NHIP is the compulsory health insurance program of the government which shall provide universal health insurance coverage and ensure affordable, acceptable, available, and accessible health care services for all citizens of the Philippines. NHIP coverage is compulsory for all citizens of the Philippines.

VII. IMMIGRATION



Non-immigrants or temporary visitors fall into either of two categories: unrestricted nationals or restricted nationals.

A. Entry into the Philippines

Unrestricted nationals are from countries with visa-free privileges, which include the following:

1. Andorra
2. Angola
3. Antigua and Barbuda
4. Argentina
5. Australia
6. Austria
7. Bahamas
8. Bahrain
9. Barbados
10. Belgium
11. Belize
12. Benin
13. Bhutan
14. Bolivia
15. Botswana
16. Brazil*
17. Brunei
18. Bulgaria
19. Burkina Faso
20. Burundi
21. Cambodia
22. Cameroon
23. Canada
24. Cape Verde
25. Central African Republic
26. Chad
27. Chile
28. Colombia
29. Comoros
30. Congo
31. Congo, Democratic Republic
32. Costa Rica
33. Cote d' Ivoire
34. Croatia
35. Cyprus
36. Czech Republic
37. Denmark
38. Djibouti
39. Dominica
40. Dominican Republic
41. Ecuador
42. El Salvador
43. Equatorial Guinea
44. Eritrea
45. Estonia
46. Ethiopia
47. Fiji
48. Finland
49. France
50. Gabon
51. Gambia
52. Germany
53. Ghana
54. Greece
55. Grenada
56. Guatemala
57. Guinea
58. Guinea·Bissau
59. Guyana
60. Haiti
61. Honduras
62. Hungary
63. Iceland
64. Indonesia
65. Ireland
66. Israel*
67. Italy
68. Jamaica
69. Japan
70. Kazakhstan
71. Kenya
72. Kiribati
73. Korea (ROK)
74. Kuwait
75. Kyrgyzstan
76. Laos
77. Latvia
78. Lesotho
79. Liberia
80. Liechtenstein
81. Lithuania
82. Luxembourg
83. Madagascar
84. Malawi
85. Malaysia
86. Maldives
87. Mali
88. Malta
89. Marshall Islands
90. Mauritania
91. Mauritius
92. Mexico
93. Micronesia
94. Monaco
95. Mongolia
96. Morocco
97. Mozambique
98. Myanmar
99. Namibia
100. Nepal
101. Netherlands
102. New Zealand
103. Nicaragua
104. Niger
105. Norway
106. Oman
107. Palau
108. Panama
109. Papua New Guinea
110. Paraguay
111. Peru
112. Poland
113. Portugal
114. Qatar
115. Romania
116. Russia
117. Rwanda
118. St. Kitts and Nevis
119. Saint Lucia
120. St. Vincent and the Grenadines
121. Samoa
122. San Marino
123. Sao Tome and Principe
124. Saudi Arabia
125. Senegal
126. Seychelles
127. Singapore
128. Slovak Republic
129. Slovenia
130. Solomon Islands
131. South Africa

132. Spain	142. Tunisia	150. Uruguay
133. Suriname	143. Turkey	151. Uzbekistan
134. Swaziland	144. Turkmenistan	152. Vanuatu
135. Sweden	145. Tuvalu	153. Vatican
136. Switzerland	146. Uganda	154. Venezuela
137. Tajikistan	147. United Arab Emirates	155. Vietnam
138. Tanzania	148. United Kingdom of Great Britain and Northern Ireland	156. Zambia
139. Thailand		157. Zimbabwe
140. Togo		* Given 59 days stay based on existing agreements.
141. Trinidad and Tobago	149. United States of America	

Unrestricted nationals may enter the Philippines under a visa waiver of 30 days, extendible for another 29 days. In general, an unrestricted foreign national must, upon entry, present a passport with validity of not less than 6 months beyond the period of stay as well as a valid return ticket. However, the following passport holders are allowed to enter the Philippines without a visa for a stay not exceeding 14 or 7 days:

a. 14 days
- Hong Kong Special Administrative (SAR) passports; and
- Macau SAR passports.

b. 7 days
- Macau-Portuguese passport; and
- Hong Kong British passports.

Restricted nationals are nationals of countries required to obtain a temporary visitor's visa (under Section 9(a) of the Philippine Immigration Act) from a Philippine Consulate in their home country or place of legal residence prior to entering the Philippines. They are typically granted visas for an initial stay of 59 days.

The 9(a) visa is granted for business, pleasure, or health purposes. Business purposes in this case refers to commercial, industrial, or professional purposes such as attending international conferences or attending business meetings in the Philippines. In general, temporary visitors may convert their immigration status in-country, from temporary visitor or tourist to another visa category.

B. Work Permits

Alien Employment Permit (AEP). An employer wishing to hire a non-resident foreign national is required to secure an AEP from the DOLE. The DOLE issues the AEP after it determines that there is no person in the Philippines able, willing, and competent at the time of application to perform the services for which the alien is desired. The AEP is usually valid for a minimum period of 1 year from its issuance, unless the employment contract, or other modes of engagement provides otherwise, which in no case shall exceed 3 years. The AEP is not an exclusive authority for a foreign national to work in the Philippines. It is just one of the requirements for the issuance of 9g visa to legally engage in gainful employment in the country.

Special Work Permit [9(a) Visa]. A foreign national who shall engage in gainful employment for 3 to 6 months may apply for a Special Work Permit. The important characteristic of the Special Work Permit is that it is not a visa authorizing stay in the Philippines, which means that the foreign national must, during the period covered by Special Work Permit, continue to update or extend his existing Special Work Permit to ensure the validity of his stay in the Philippines.

Special Temporary Permit (STP). The STP is a privilege granted to a foreign professional to practice in the Philippines for a limited period of time. The permit can be secured from the Professional Regulation Commission (PRC).

C. Work / Investor Visas

Pre-arranged Employment Visa [9(g) Visa]. Foreign nationals who seek to engage in a lawful occupation in the Philippines, whether for wages or salary or other forms of compensation, must obtain a Section 9(g) visa from the Bureau of Immigration (BI) through the Philippine-based company which hired him. The foreigner's spouse and unmarried children below 21 years old may apply for the same visa.

An AEP from the DOLE (as discussed above) is required to process this visa and, hence this must be procured prior to the visa process. The AEP application must show that no person can be found in the Philippines competent and willing to perform the job for which the foreign national is to be hired and that his admission to the country would be beneficial to the public interest.

Treaty Trader or Treaty Investor Visa [9(d) Visa]. Under Section 9(d) of the Philippine Immigration Act, a foreign investor is entitled to enter the Philippines as a treaty trader if he is a national of a country with which the Philippines has a treaty of commerce and navigation. The foreign investor in this case is entering the country solely to carry on substantial trade principally between the Philippines and the foreign state of which he is a national and solely to develop and direct the operations of an enterprise in which he shall invest a substantial amount of capital. Under current rules, "substantial trade" refers to a non-nationalized business in which an investment of at least US$120,000.00 has been made.

The Philippines has existing treaties of commerce and navigation only with the United States, Japan, and Germany; thus, it is to their nationals that this visa may be granted. The foreigner's spouse and unmarried children below 21 years old may apply for the same visa.

D. Other Special Non-Immigrant Visas

Special Non-immigrant Visa under Sec. 47(a)(2) of the Philippine Immigration Act. For public interest or policy considerations, a special non-immigrant visa may be issued upon approval of the Secretary of Justice on public interest or public policy considerations. Foreign nationals employed by enterprises registered with the PEZA

and BOI may apply for this type of visa. Examples of industries invested with public interest are companies engaged in oil exploration, power generation, and infrastructure.

Visa for Foreign Personnel of RHQs, ROHQs, and Regional Warehouses. A multiple entry special visa, valid for a period of 3 years may be applied for by foreign personnel of RHQs and ROHQs of multinational companies, their respective spouses, and unmarried children under 21 years of age, if accompanying them or if following to join them after their admission into the Philippines as non-immigrant.

Visa for Executives of OBUs. A multiple-entry special visa, valid for a period of 1 year may be issued to any foreign personnel assigned by any foreign bank to work in its OBUs in the Philippines, their spouses, and unmarried children under 21 years of age.

Visa for Foreign Investor or Personnel in Ecozones. An investor within the SSEZ whose continuing investment shall not be less than US$250,000.00, his/her spouse, and dependent children under 21 years old, shall be granted permanent resident status within the SSEZ. Foreign executives or other foreign nationals possessing 31 highly technical skills which no Filipino within the zone possesses, as certified by the DOLE, may be granted this visa. This visa is renewable every 2 years.

The *Special Clark Investor's Visa (SCIV)* and *Special Clark Working Visa (SCWV)* are visas that may be issued to foreigners who shall perform line functions or assume jobs and responsibilities necessary to operate the business of a registered enterprise in the Clark Special Economic Zone (CSEZ). The SCIV has an indefinite period of validity. It is subject to the grantee's continuing investment within the CSEZ in an amount equivalent to not less than US$250,000.00. Holders of the SCIV have multiple-entry privilege and exemption from Exit Clearance Certificate, Re-entry Permit and Special Return Certificate. The SCWV has a maximum validity of 2 years (renewable).

Investor and work visas are also available to foreigners in the Cagayan Economic Zone and Aurora Special Economic Zone subject to qualification in terms of investment and skill or work to be performed.

Special Visa for Employment Generation (SVEG). The SVEG is a special visa issued to a qualified non-immigrant foreigner who shall actually employ at least 10 Filipinos in a lawful and sustainable enterprise, trade, or industry. Qualified foreigners who are granted the SVEG shall be considered special non-immigrants with multiple entry privileges and conditional extended stay, without need of prior departure from the Philippines.

E. Special Resident Visas

Special Investors' Resident Visa (SIRV). Certain investors may qualify for the SIRV issued under the Omnibus Investments Code. An investor qualifying for an SIRV is given the privilege of residing in the Philippines as long as the investments and the required qualifications exist. To qualify for the SIRV, investors must remit at least US$75,000.00 into the country and invest in viable economic activities.

Special Resident Retiree's Visa (SRRV). SRRV is given to foreign nationals, not excluded under the Immigration Act of 1940, intending to make the Philippines a retirement place. It entitles the holder to multiple-entry privileges with the right to stay permanently/indefinitely in the Philippines.

VIII. INTELLECTUAL PROPERTY

Investors may rely on an established legal framework for Intellectual property (IP) rights protection in the Philippines.

IP laws that were promulgated or administered in the country during Spanish colonial times and the American occupation influenced the IP legal framework that emerged after the Philippines gained political independence in 1946.

In 1947, the Philippines passed two laws protecting patents and trademarks. Over the years, additional laws were passed and regulations promulgated. The state policy to protect and secure IP was later on enshrined in the 1973 and the 1987 Constitutions.

In 1995, the Philippines ratified the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) and, in doing so, committed to the Agreement on Trade-Related Intellectual Property Rights (TRIPs).

To comply with TRIPs obligations, the Philippines in 1997 enacted RA No. 8293 or the IP Code of the Philippines. All the legal issuances on IP rights protection in the Philippines were codified into this law which took effect on 1 January 1998.

The IP Code stresses the importance of an effective IP system to, among others, attract foreign investments. It created the Intellectual Property Office (IPO) which administers and implements the state policies on IP, with functions ranging from registration to administrative adjudication.

The IP Code upholds the principles of reciprocity and reverse reciprocity of foreign laws.

The IP Code was amended most recently by RA No. 10372 which created a Bureau of Copyright and other Related Rights to resolve copyright disputes and provide copyright and related rights services.

The Philippines is a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the Paris Convention for the Protection of Industrial Property.

Following the Philippines' accession in 2012 to the Madrid Agreement Concerning the International Registration of Marks, international registration of marks may thereafter be done in this territory. The Madrid System is a centralized system for registering and managing marks worldwide through the filing of one application, in one language, and paying one set of fees to protect a mark in the territories of members.

IX. ENVIRONMENT

The Philippines has in place an Environmental Impact Statement (EIS) System to determine whether proposed investment projects or undertakings will cause significant negative environmental impact.

Under the EIS System, no person, partnership, or corporation may undertake or operate Environmentally Critical Projects (ECP) or projects in Environmentally Critical Areas (ECAs) without first securing an Environmental Compliance Certificate (ECC) from the DENR.

An ECP is defined under the rules as a project or program that has high potential for significant negative environmental impact. An ECA is an area delineated as environmentally sensitive such that significant environmental impacts are expected if certain types of proposed projects or programs are located, developed, or implemented in it.

Project proponents are required to conduct an Environmental Impact Assessment (EIA) to evaluate and predict the likely impacts of a project on the environment during construction, commissioning, operation, and abandonment. It also includes designing appropriate preventive, mitigating, and enhancement measures addressing these consequences to protect the environment and the community's welfare.

The ECC that needs to be secured prior to the commencement of the project certifies that (1) based on the representations of the proponent, the proposed project or undertaking will not cause significant negative environmental impact and (2) the proponent has complied with all the requirements of the EIS System and has committed to implement its approved Environmental Management Plan. The ECC contains specific measures and conditions that the project proponent has to undertake before and during the operation of a project, and, in some cases, during the project's abandonment phase to mitigate identified environmental impacts.

X. SPECIAL SECTORS AND ISSUES

A. Power Industry

The Electric Power Industry Reform Act (EPIRA) in 2001 brought about major changes to the Philippine power industry. The EPIRA provided the framework for the restructuring of the electric power industry, including the privatization of assets owned by the National Power Corporation (NAPOCOR), a government-owned and controlled corporation.

1. Electric Power Industry

Overview of the Electric Power Industry

Regulation of the electric power industry resides in the ERC while matters of policy are handled by the DOE. One of the mandates of the ERC is to promote true market competition and prevent harmful monopoly and market power abuse. The electric power industry is divided into 4 sectors: generation, transmission, distribution, and supply.

Generation sector. The generation sector is imbued with public interest and shall remain competitive and open. However, the generation sector is not considered a public utility and is not required to secure a legislative franchise.

The EPIRA provides limits on concentration of ownership, operation, or control of installed generating capacity. No company, related group or Independent Power Producer Administrator (IPPA), singly or in combination, can own, operate, or control more than 30% of the installed generating capacity of a grid and/or 25% of the national installed generating capacity. Related group includes a person's business interests, including its subsidiaries, affiliates, directors, or officers or any of their relatives by consanguinity, or affinity, legitimate or common law, within the 4th civil degree.

Transmission sector. All the transmission lines and assets related to transmission operations are owned by the National Transmission Corporation (TRANSCO), a government-owned and controlled corporation. The transmission facilities and operation of the grid are being undertaken by a concessionaire, the National Grid Corporation of the Philippines (NGCP). In December 2008, the NGCP was granted a legislative franchise to operate, maintain, and manage the transmission system for a period of 50 years.

Distribution sector. The distribution sector is classified as a common carrier and requires a national franchise.

Supply sector. The supply sector is a business affected with public interest. All suppliers to the contestable market shall secure a license from the ERC.

Energy Investment Coordinating Council

In order to streamline the energy regulatory process and further encourage potential investors to invest in energy, President Rodrigo Duterte signed Executive Order No. 30 which establishes the Energy Investment Coordination Council (EICC). The EICC was established to spearhead and coordinate the Philippine Government's efforts to harmonize, integrate and streamline the regulatory processes, requirements, and forms relevant to the development of energy investments in the Philippines. Among the EICC's directives is to simplify the approval process and harmonize the relevant rules and regulations of the different government agencies involved in obtaining permits and regulatory approvals. The EICC is also responsible for finding ways to expedite the development and implementation of Energy Projects of National Significance (EPNS).

EPNS are major energy projects involving power generation, transmission and/or ancillary services including those required to maintain grid stability and security. EPNS possess the following attributes:

- significant capital investment of at least PHP3.5 Billion;

- significant contribution to the country's economic development;
- significant consequential economic impact;
- significant potential contribution to the country's balance of payments;
- significant impact on the environment;
- complex technical processes and engineering designs; and/or
- significant infrastructure requirements

Electricity Market

Another major change introduced by the EPIRA is the creation of the Wholesale Electricity Spot Market (WESM). The WESM provides the platform for the competitive trading of electricity. The commercial operation of the WESM began on 26 June 2006. The Philippine Electricity Market Corporation (PEMC) runs the operations of the WESM. The PEMC was constituted as the Autonomous Group Market Operator (AGMO) to undertake the preparatory work and initial operation of the WESM.

The EPIRA mandates that not later than 1 year after the implementation of the WESM, the AGMO shall transfer its functions, assets, and liabilities to the Independent Market Operator (IMO). The EPIRA's Implementing Rules and Regulations specifies that the IMO shall be financially and technically capable, with proven experience and expertise of not less than 2 years as a leading IMO of similar or larger size electricity market.

As of 31 March 2018, the transfer from the AGMO to the IMO has not yet transpired.

2. Renewable Energy

Renewable Energy (RE) is included in the 2017 IPP.

In 2008, the legislature passed the RA No. 9513 or the Renewable Energy Act of 2008 with its Implementing Rules and Regulations being promulgated in 2009. In 2017, as part of the Philippine Government's policy to improve the ease of doing business in the country, the DOE prescribed new guidelines for the processing of applications for RE service/operating contracts. These new guidelines substantially reduce the time it takes to obtain the necessary permits to engage in RE activities.

Government share. The government's share on existing and new RE development projects shall be equal to 1% of the gross income of RE resource developers resulting from the sale of RE produced and such other income incidental to and arising from the RE generation, transmission, and sale of electric power. For indigenous geothermal energy, the government's share shall be at 1.5% of gross income.

Incentives for RE projects and activities. Developers of RE facilities, including hybrid systems, in proportion to and to the extent of the RE component for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

1. *ITH for the first 7 years of its commercial operations.* The duly registered RE developer shall be exempt from income taxes levied by the national government.

2. *Duty-free importation.* There shall be duty-free importation within the first 10 years upon the issuance of a certification of an RE developer of RE machinery, equipment, and materials that will be directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy. The DOE certification must be obtained before the importation of such machinery, equipment, materials, and parts are made.

3. *Special realty tax rates on equipment and machinery.* Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a registered RE Developer actually and exclusively used for RE facilities shall not exceed 1.5% of their original cost less accumulated normal depreciation or net book value.

4. *Net operating loss carry-over (NOLCO).* The NOLCO of the RE Developer during the first 3 years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next 7 consecutive taxable years immediately following the year of such loss.

5. *Corporate tax rate of 10% on net taxable income.* After 7 years of ITH, RE Developers shall pay a corporate tax of 10%. The RE Developer shall pass on the savings to the end-users in the form of lower power rates.

6. *Accelerated depreciation.* If, and only if, an RE project fails to receive an ITH before full operation, it may apply for accelerated depreciation in its tax books and be taxed based on such.

7. *Zero percent VAT rate.* The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent VAT. All RE Developers shall be entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction, and installation of its plant facilities. This shall also apply to the whole process of exploring and developing RE sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

8. *Cash incentive of RE developers for missionary electrification.* An RE developer, established after the effectivity of the RE Law, shall be entitled to a cash generation-based incentive per kilowatt hour rate generated, equivalent to 50% of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification;

9. *Tax exemption of carbon credits.* All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes;

10. *Tax credit on domestic capital equipment and services.* A tax credit equivalent to 100% of the value of the VAT and custom duties that would have been paid on the RE machinery, equipment, materials, and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer. Prior approval by the DOE must be obtained by the local manufacturer. The acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract.

B. Infrastructure/Public-Private Partnerships (PPPs)

PPPs in the Philippines may be undertaken either through a build-operate-transfer (BOT) scheme or a joint venture (JV) arrangement (JVA). BOT projects are governed by RA No. 6957, as amended by RA No. 7718,[30] which is otherwise known as the "BOT Law".

[30] An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for other purposes.

Its implementing rules and regulations (BOT Law IRR) provide the details on the implementation of PPPs, including the approval and procurement process.

JV projects may be undertaken under the 2013 “Revised Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities” (NEDA-JV Guidelines) with government-owned and/or government-controlled corporations, government corporate entities, government instrumentalities with corporate powers, government financial institutions, and state universities and colleges which are expressly authorized by law or their respective charters to enter into JVAs. While the NEDA-JV Guidelines expressly excludes LGUs from its coverage, LGUs are not prevented from entering into JVAs with any private entity for its local infrastructure project. JV with LGUs is allowed under the Local Government Code, and by its local PPP Code, if any.

1. BOT Law

PPPs under the BOT Law may be undertaken by any national government agency, government-owned and controlled corporation, or any LGU, on a wide variety of infrastructure and development projects, which include but are not limited to roads and transportation (highways, railways, mass transit facilities, port infrastructure, airports, and other transport facilities), energy and power (power generation, transmission, sub-transmission, distribution, and related facilities), social infrastructure (education and health infrastructure, markets, slaughterhouses, warehouses and post-harvest facilities, public fishports and fish ponds, government buildings, and housing projects), communications (telecommunications, backbone network, terrestrial and satellite facilities, information technology and data base infrastructure), real estate (land reclamation, dredging, industrial and tourism estates or townships, terrestrial and coastal/marine nature parks), and water and sanitation (irrigation, water supply, sewerage, drainage, environmental and solid waste management facilities, climate change mitigation and adaptation infrastructure).

There is a broad range of PPP contractual arrangements allowed under the BOT Law. While the BOT Law enumerates several contractual schemes, other forms of contractual arrangements not expressly set out in the BOT Law and the BOT Law IRR may also be permitted provided the same is approved by the President of the Philippines. The PPP contractual schemes expressly listed under the BOT Law IRR are as follows:

CONTRACTUAL ARRANGEMENT	ROLE OF PRIVATE PARTNER	ROLE OF THE GOVERNMENT
Build-transfer	Financing and construction of a project. Turns over project after completion to the implementing agency.	Acquires ownership of the project after construction. Pays private project proponent on an agreed schedule its total investment on the project plus a reasonable rate of return.
Build-lease-transfer	Financing and construction of project. Turns over project after completion to the implementing agency on a lease arrangement for a fixed term after which ownership of the facility is automatically transferred to the implementing agency.	Pays private project proponent by way of rental fees. Acquires ownership of the project at the end of the lease period.
Build-operate-transfer	Financing and construction of a project and the operation and maintenance thereof for a fixed term which shall not exceed 50 years. Turns over project at the end of the fixed term to the implementing agency. Collects tolls, fees, rentals and charges from facility users to recover its investment.	Regulates activities of the private project proponent as operator of the project. Acquires ownership of the project at the end of the fixed term.
Build-own-operate	Financing and construction of project and the operation and maintenance thereof in perpetuity. Collects tolls, fees, rentals and charges from facility users to recover its investment. May assign operation and maintenance of the project to a facility operator.	
Build-transfer-operate	Financing and construction of project on a turnkey basis and turns over project after satisfactory commissioning to the implementing agency. Operates and maintains the project after commissioning.	Acquires ownership of the project after commissioning.
Contract-add-operate	Adds to an existing infrastructure project which it is renting from the implementing agency and operates the expanded project over an agreed franchise period.	Collects rental payment on agreed terms. Regains control of the project at the end of the lease term.
Develop-operate-transfer	Right to develop adjoining property of a new infrastructure project to be built. Turns over project at the end of the cooperation period to the implementing agency.	Regains control of the project at the end of the cooperation period.
Rehabilitate-operate-transfer	Refurbishes, operates and maintains project for an agreed franchise period. Turns over project at the end of the agreed franchise period to the implementing agency.	Acquires ownership of the project at the end of the agreed franchise period.
Rehabilitate-own-operate	Refurbishes and operates the project with no time limitation imposed on ownership. As long as the private project proponent is not in violation of its franchise, it can continue to operate the project in perpetuity.	Turns over project to private project proponent.

The BOT Law and BOT Law IRR are further supplemented by PPP Governing Board Policies and Directives, which further clarify government policies in terms of implementing the PPP program, with the goal to standardizing government internal process on evaluation and approval of PPP projects, PPP structure, and implementation of PPP contracts.

There are two modes of procurement for PPPs undertaken under the BOT arrangements-- (1) the solicited proposal route, or the (2) unsolicited proposal route. Solicited projects originate from the government and are part of the priority projects of the Government implementing agency concerned. Unsolicited projects are submitted by a private proponent and the government is allowed to accept them, provided the following conditions are met: (a) the project involves a new concept or technology and/or not part of the list of priority projects of the government, (b) no direct government guarantee, subsidy or equity is required, and (c) the government has invited by publication, for 3 consecutive weeks, in a newspaper or general circulation, comparative or competitive proposals and no other proposal is received for a period of 60 working days. The private proponent is provided a right to match in the event that another proponent submits a lower price proposal.

2. JV Arrangements

The NEDA JV Guidelines. The NEDA JV Guidelines define a JV as "an arrangement whereby a private sector entity or a group of private sector entities on one hand, and a Government Entity or a group of Government Entities on the other hand, contribute money/capital, services, assets (including equipment, land, IP or anything of value), or a combination of any or all of the foregoing to undertake an investment activity."

The guidelines apply to all government-owned and/or government-controlled corporations, government corporate entities, government instrumentalities with corporate powers, government financial institutions, and state universities and colleges which are expressly authorized by law or their respective charters to enter into JVA. JV activities of LGUs, transactions of government financial institutions in the ordinary course of business as part of their normal and ordinary banking, financial or portfolio management operations and transactions of government corporate entities in the exercise of their primary mandate to dispose government assets or properties are not covered by the NEDA JV Guidelines.

The infrastructure and development projects that may be subject to a JV with the government include, but are not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, commercial/real estates, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging and other infrastructure and development projects authorized by the government.

The JV may be a contractual JV or a corporate JV, provided that in case a JV company will be incorporated as a stock corporation, the government may own up to 50% of the outstanding capital stock of the JV company. It is required that the JV contract and/or the incorporation documents of the JV company must provide for: (1) clearly defined business objectives; (2) specified degree of participation and the management roles of each party in the JV activity; (3) defined contribution of capital and ownership rights to property; (4) specified division of the profits, risks and losses; (5) identified dispute mechanism to avoid management impasses that may produce deadlock or litigation; (6) specified termination/ liquidation of the JV Company and indicate buy-out provisions; (7) specified confidentiality terms; and (8) stipulated indemnification mechanisms.

The NEDA JV Guidelines differentiates projects undertaken under the BOT Law from JV projects, such that ownership of the asset/business or project under the BOT Law remains with the government (with the exception of projects with a build-own-operate contractual arrangement), while in a JVA, the private sector may be allowed to own the project in its entirety, after the government divests itself of any interest in the JV.

For JVA, a JV partner may be selected by the Government either through (1) competitive selection, or (2) negotiated JV selection. Competitive Selection pertains to the procurement by the Government of a JV partner based on transparent criteria, and open to participation by any interested and qualified private entity. Negotiated JV pertains to a JV proposal originating from a private proponent, or originating from the government but the latter has failed to identify an eligible private partner for a desired activity after subjecting the project to at least 2 rounds of competitive selection process.[31]

Local Government Code and Local PPP Codes. Section 18 of RA No. 7160, otherwise known as the Local Government Code, empowers LGUs to create their own sources of revenue, and to acquire, lease, develop, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise of their governmental or proprietary powers and functions. LGUs are given the power to enter into contracts on their own, provided it has the prior authorization of the local legislative council (*sanggunian*) concerned, and are given full autonomy in the exercise of their proprietary functions, and in the management of their economic enterprise.[32]

[31] Sec. 5.10, NEDA JV Guidelines.
[32] Sec. 22, The Local Government Code.

Thus, while LGUs are not covered by the NEDA JV Guidelines, they may enter into JVA with private entities, provided the same is approved by the local legislative council. The LGUs provide for the specific rules on implementing a JV project through the enactment of its local PPP Code. Local PPP Codes provide for the requirements for approval and the procurement process for JVA with the private sector.

C. Mining

Mineral resources are owned by the State. Consequently, the exploration, development, utilization, and processing of mineral resources are under State control and supervision. These activities may be undertaken by the State on its own, or it can enter into (1) mineral agreements with qualified persons or (2) a financial or technical assistance agreement (FTAA).

1. Mineral Agreements

For purposes of entering into a mineral agreement with the government, a qualified person can be:

i. any citizen of the Philippines with the capacity to contract; or

ii. a corporation, partnership, association, or cooperative organized or authorized to undertake mining activities and with 60% of its capital owned by Filipino citizens.

Mineral agreements give the qualified person the exclusive right to conduct mining operations and extract all mineral resources found in the contract area. These agreements may be a Mineral Production Sharing Agreement (MPSA), co-production agreement (CA), or a JVA. These agreements are given a term not exceeding 25 years from their respective dates of execution, and renewable for another term not exceeding 25 years under the same terms and conditions unless such changes have been mutually agreed upon by the parties. Mineral exploration can be undertaken by a qualified person either under the terms of an exploration permit only or as part of the exploration period under the terms of a mineral agreement. The exploration permit is valid for two years (renewable under certain conditions) within which, its holder must determine the commercial viability of the project.

The State is entitled to a government share which varies depending on the mineral agreement utilized between the State and the contractor:

i. In an MPSA, government share consists of the 4% excise tax on mineral products.

ii. In CAs and JVAs, the government share is negotiated between the parties and shall consider some factors such as capital expenditure, risks, and contribution of the project to the economy.

If the development and utilization activities are undertaken in mineral reservations, the holder must also pay to the DENR-Mines and Geosciences Bureau (DENR-MGB) a royalty of 5% of the market value of the gross output of mineral products extracted or produced from the mineral reservation. If mining operations are done in ancestral lands, royalty of not less than 1% of gross output must also be paid to the indigenous cultural community.

2. FTAA

In cases of large-scale mining operations, any Filipino citizen or corporation or any foreign-owned corporation can enter into an FTAA directly with the State. The FTAA has a term not exceeding 25 years and is renewable for another 25 years. A minimum investment of US$50 Million is required for the infrastructure and development of the contract area (maximum allowable contract area is 1,000 meridional blocks onshore, and 4,000 meridional blocks offshore). The FTAA contractor has the option to convert it into a mineral agreement at any time during the term of the FTAA if the contractor has determined that the project is not economically viable as a large-scale mining operation. The mineral agreement shall only be for the remainder of the term of the FTAA. If the qualified person which converts its contract from an FTAA to a mineral agreement is a foreign-owned corporation, it must reduce its equity to 40% to comply with nationality requirements.

For FTAAs, government share consists of corporate income tax, royalty fees and excise tax, among others, after the FTAA contractor has recouped its pre-operating, exploration and development expenses. The period of recovery is reckoned from the date of commencement of commercial operation up to a period not exceeding 5 years or at the date when the aggregate of the net cash flows from the mining operation is equal to the aggregate of its pre-operating expenses, whichever is earlier. After the recovery period, the total government share is increased to 50% of net mining revenue. Similar to the mineral agreements, the FTAA contractor must pay to the DENR-MGB a 5% royalty for the mining activities undertaken in a mineral reservation and a 1% royalty paid to the indigenous cultural community for mining operations conducted in ancestral lands.

For purposes of entering into an FTAA, a foreign-owned corporation is also qualified to apply for an exploration permit, valid for two years, but extendible to 4 or 6 years.

Auxiliary Rights of Mining Investors

Qualified persons who conduct mining operations are guaranteed auxiliary rights needed to undertake the operations. These include water rights, right to possess explosives, and easement rights. Mining operations are also entitled to the fiscal and on-fiscal incentives offered under the Omnibus Investments Code, provided the requirements for registration have been complied with.

Additionally, qualified persons who invest in mining operations are guaranteed the following:

a. repatriation of investments,

b. remittance of earnings in the currency originally used,

c. freedom from expropriation of properties of the enterprise (except in instances where expropriation is made for public use or defense) or those represented by investments or loans, and

d. freedom from requisition of investment.

D. Banking

The Philippine banking industry is regulated by RA No. 8791 or the General Banking Law of 2000. The operations and activities of banks are subject to the supervision of the BSP. The BSP also provides policy direction in the areas of money, banking, and credit.

The powers and functions of the BSP are exercised by the Monetary Board, composed of 7 members who are all appointees of the Philippine President. Each member of the Monetary Board serves for a term of 6 years, subject to only 1 reappointment. The chairperson of the Monetary Board is the Governor of the BSP.

Under the law, banks are classified into:

a. Universal banks;

b. Commercial banks;

c. Thrift banks, composed of: (1) savings and mortgage banks, (2) stock savings and loan associations, and (3) private development banks, as defined in the Thrift Banks Act;

d. Rural banks, as defined in the Rural Banks Act;

e. Cooperative banks, as defined in the Cooperative Code;

f. Islamic banks as defined in RA No. 6848, otherwise known as the Charter of Al Amanah Islamic Investment Bank of the Philippines; and

g. Other classifications of banks as determined by the Monetary Board of the BSP.

Foreign Banks in the Philippines

Section 2 of RA No. 7721, as amended by RA No. 10641, provides that the Monetary Board may authorize foreign banks to operate in the Philippine banking system through any one of the following modes of entry:

1. By acquiring, purchasing or owning up to 100% of the voting stock of an existing stock;

2. By investing in up to 100% of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; and

3. By establishing branches with full banking authority.

Capital Requirements for Foreign Banks

1. *Locally incorporated subsidiaries.* The minimum capital shall be equal to that prescribed by the Monetary Board for domestic banks of the same category.

2. *Branches of foreign banks.* Foreign banks shall permanently assign capital of an amount not less than the minimum capital required for domestic banks of the same category, which amount shall be inwardly remitted and converted into Philippine currency.

In approving the entry of foreign banks, the Monetary Board shall:

1. Ensure geographic representation and complementation;

2. Consider strategic trade and investment relationships between the Philippines and the country of incorporation of the foreign bank;

3. Study the demonstrated capacity, global reputation for financial innovations, and stability in a competitive environment of the applicant;

4. See to it that reciprocity rights are enjoyed by Philippine banks in the applicant's country; and

5. Consider willingness to fully share their technology.

In addition to the foregoing criteria, the Monetary Board shall ensure that:

1. Only established, reputable and financially sound foreign banks shall be allowed entry.

2. The foreign bank applicant must be widely-owned and publicly listed in its country of origin, unless the foreign bank applicant is owned and controlled by the government of its country of origin;

3. Measures are adopted to ensure that the control of at least 60% of the resources or assets of the entire banking system is held by domestic banks which are majority owned by Filipinos.

XI. PHILIPPINE COMPETITION POLICY

2015 saw the enactment of RA No. 10667 otherwise known as the Philippine Competition Act (PCA). Its Implementing Rules and Regulations were approved on 31 May 2016.

The PCA prohibits anti-competitive agreements, abuse of dominant position and merger or acquisition agreements that substantially prevent, restrict, or lessen competition in the relevant market. The law also created the Philippine Competition Commission (PCC), an independent quasi-judicial body tasked with enforcement and implementation of the PCA and its implementing rules and regulations.

The Philippines was the last of the five founding members of the ASEAN to pass an integrated, comprehensive competition statute although, prior to that, it did have competition policy set forth in provisions of specific laws and regulations. The Philippine Constitution disallows unfair competition and combinations in restraint of trade and mandates the regulation or prohibition of monopolies when the public interest requires. The Revised Penal Code punishes combinations in restraint of trade and unlawful monopolizations. Other statutes prohibit the manipulation of prices that restrict competition, for instance in the trade of medicines, as well as in the downstream oil industry. Unfair practices and anti-competitive acts are proscribed under the EPIRA and the Consumer Act.

The PCA prohibits anti-competitive agreements, abuse of dominant position and merger or acquisition agreements that substantially prevent, restrict, or lessen competition in the relevant market. The law also created the Philippine Competition Commission (PCC), an independent quasi-judicial body tasked with enforcement and implementation of the PCA and its implementing rules and regulations.

Anti-Competitive Agreements

Agreements between or among competitors that restrict competition as to price or fix prices at an auction are *per se* prohibited under the PCA.

Agreements between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition, particularly by: (1) controlling production or investment; or (2) dividing or sharing the market, are also prohibited.

Abuse of Dominant Position

The law prohibits entities from abusing their dominant position in their relevant markets by conduct that would substantially prevent, restrict, or lessen competition, including:

- Selling goods or services below cost with the object of driving competition out of the relevant market;

- Imposing barriers to entry or committing acts that prevent competition from growing within the market in an anti-competitive manner except as a result of superior product, process, business acumen, or legal rights;

- Making a transaction subject to acceptance by the other parties of other obligations which by their nature or by commercial usage have no connection with the transaction;

- Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services;

- Imposing restrictions on the lease or contract for sale or trade of goods or services, concerning where, to whom, or in what forms goods or services may be sold or traded;

- Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;

- Directly or indirectly imposing unfairly low purchase prices for the goods or services of marginalized producers and providers;

- Directly or indirectly imposing unfair purchase or selling prices on competitors, customers, suppliers, or consumers; and

- Limiting production, markets, or technical development to the prejudice of consumers except as a result of superior product, process, business acumen, or legal rights.

Mergers and Acquisitions

The PCC is empowered to review mergers, acquisitions, and JVs based on factors it deems relevant.

Parties to a merger or acquisition that meets the thresholds provided under the PCA and its Implementing Rules and Regulations are required to notify the PCC within 30 days from signing of definitive agreements relating to the merger or acquisition but prior to any acts of consummation. The current notification thresholds are PHP5 Billion for the size of the party and PHP2 Billion for the size of the transaction.

Before the expiration of the 30-day (Phase 1) review period, the PCC may request for reasonably necessary and directly relevant information from the parties, which request has the effect of extending the period (during which the agreement may not be consummated) for an additional 60 days (Phase 2). The total period for review shall not exceed 90 days from notification.

When the periods have expired and no decision has been promulgated for whatever reason, the merger or acquisition shall be deemed approved and the parties may implement or consummate it.

Where notification is required, parties are prohibited from consummating their agreement until the lapse of the PCC's review period or the PCC makes a decision that the agreement is not anti-competitive. An agreement consummated in violation of this compulsory notification requirement shall be considered void and shall subject the parties to a basic fine of 3% of the value of transaction. The basic fine may be increased or decreased, depending upon the gravity and duration of the violation. In no case, however, that the fine adjustments exceed 5% nor be less than 1% of the value of the transaction.

In the case of banks, trust companies, insurance companies, public utilities, educational institutions, and other corporations governed by special laws, a favorable or no-objection ruling by the Commission shall not be construed as dispensing of the Corporation Code requirement for a favorable recommendation by the appropriate government agency.

Merger or acquisition agreements that substantially prevent, restrict, or lessen competition in the relevant market or in the market for goods and services, are prohibited under the PCA. There are exceptions to these prohibited mergers where the parties establish either of the following:

- The concentration has brought about or is likely to bring about gains in efficiency greater than the effects of any limitation on competition; or

- A party to the merger or acquisition is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement.

Enforcement and Penalties

The PCC shall exercise broad powers and functions including:

- Conducting inquiry, investigating, hearing, and deciding violations of the PCA and other competition laws;

- Reviewing proposed mergers and acquisitions;

- Monitoring and undertaking consultation with stakeholders and agencies to understand market behavior;

- Conducting administrative proceedings, imposing sanctions, fines, and penalties for noncompliance;

- Issuing *subpoena duces tecum* and *subpoena ad testificandum*;

- Issuing advisory opinions and guidelines on competition matters for effective enforcement of the PCA; and

- Monitoring compliance by the person or entity concerned with the cease and desist order or consent judgment.

The PCC may impose the following administrative fines on any entity found to have violated the provisions of the PCA on anti-competitive agreements, abuse of dominant position, compulsory notification, and prohibited mergers and acquisitions:

- First offense: a fine of up to PHP100 Million; and

- Second offense: a fine of not less than PHP100 Million pesos but not more than PHP250 Million.

Moreover, criminal penalties are imposed where an entity enters into any anti-competitive agreement. Each and every violation is punished by imprisonment from 2 to 7 years and a fine of not less than PHP50 Million but not more than PHP250 Million. The penalty of imprisonment shall be imposed on the responsible officers and directors of the entity.

XII. DATA PRIVACY

The Philippines passed RA No. 10173 or the Data Privacy Act (DPA) in 2012, "to protect the fundamental human right of privacy of communication while ensuring free flow of information to promote innovation and growth."

The DPA applies to the processing of all types of personal information and to any natural and juridical person involved in personal information processing including personal information controllers and processors who, although not found or established in the Philippines, use equipment located in the Philippines or maintain an office, branch or agency in the Philippines, or process the personal information of a Philippine citizen or resident. The DPA does provide that it does not apply to personal information originally collected from residents of foreign jurisdictions which is being processed in the Philippines.

The DPA treats certain personal information – namely, those about an individual's race, ethnic origin, marital status, age, color, religious, philosophical or political affiliations, health, education, genetic or sexual life, any proceeding for any offense committed or alleged to have been committed by an individual and the disposal of or the sentence of the court in such proceedings, and specific personal information issued by government agencies peculiar to an individual (e.g. social security numbers, health records, licenses, tax returns) - as sensitive personal information. The processing of sensitive personal information is prohibited except in certain cases, such as where the data subject has given his consent specific to the purpose prior to the processing.

The DPA provides for the general data privacy principles of transparency, legitimate purpose and proportionality and lists the rights of data subjects to (i) be informed of personal information processing (ii) reasonable access (iii) correction (iv) suspend, withdraw or order the blocking, removal or destruction of his personal information (v) be indemnified for damages due to inaccurate, incomplete, outdated, false, unlawfully obtained or unauthorized use of personal information; and (v) data portability. The DPA requires personal information controllers to implement reasonable and appropriate organizational, physical and technical measures intended for the protection of personal information against accidental or unlawful destruction, alteration and disclosure, as well as against any other unlawful processing.

The DPA sets forth the specific penalties for violations of its provisions which include fines from PHP100,000.00 up to PHP5 Million, and imprisonment ranging from 6 months to 7 years.

The DPA created the National Privacy Commission (NPC), the regulatory agency that administers and implements data privacy law and regulations. The NPC, promulgated the DPA Implementing Rules and Regulations (DPA IRR) on 24 August 2016. A number of advisories and circulars to implement the DPA have also since been issued by the NPC.

Under data privacy rules, personal information controllers must notify the NPC and affected data subjects within 72 hours upon knowledge of, or when there is reasonable belief of the occurrence of a personal data breach.

The DPA IRR gave personal information controllers and personal information processors 1 year from the DPA IRR effectivity to register their data processing systems and automated processing operations with the NPC. The rules require a personal information controller or personal information processor to register its data processing systems with the NPC if it has at least 250 employees, or if, having less than 250 employees, the processing it carries out (1) is likely to pose a risk to the rights and freedoms of data subjects, (2) the processing is not occasional, or (3) the processing includes the sensitive personal information of at least 1,000 individuals. The initial registration process with the NPC was implemented in two phases: Phase I involved the appointment of data protection officers and Phase II covered the registration of data processing systems. The deadline for Phase I registration was 9 September 2017 and Phase II registration was 8 March 2018.

ABOUT
OCAMPO & SURALVO LAW OFFICES

Ocampo & Suralvo Law Offices (OS Law) is a Philippine corporate, commercial and tax law firm.

OS Law assists its clients with their corporate, commercial and tax needs across a spectrum of business concerns including general corporate and commercial matters, company establishment and registration, contract negotiation and drafting, mergers and acquisitions, joint ventures, corporate restructuring and foreign direct investments.

OS Law is also driven to provide Philippine businesses with solutions that will enable them to thrive in the global economy. Through its collaboration with DFDL, an international law firm focused on Asia's emerging economies, it provides its clients with access to the tax and legal expertise of 12 offices in eight countries.

The firm proudly serves as the gateway for Philippine businesses seeking legal and tax advice to support their regional expansion in ASEAN.

PARTNERS OF OS LAW

JUDE OCAMPO

Jude is a Philippine attorney specializing in mergers and acquisitions, corporate law and tax. Jude has assisted a number of global and ASEAN multinationals in multi-jurisdictional reorganizations and has advised many clients on complex mergers and acquisitions.

He holds a Master of Laws degree from Harvard University where he received the Ayala Scholarship Grant, the Lopez Scholarship Grant and the Landon H. Gammon Fellowship for Academic Excellence. He also earned a Master of Business Administration degree (Finance and Supply Chain Management) from UNC Chapel Hill's Kenan-Flagler Business School where he was a UNC Kenan-Flagler Fellow. He is a graduate of and a former professorial lecturer on tax law and constitutional law at the University of the Philippines College of Law.

A corporate and tax lawyer with almost two decades of experience in the Philippines and abroad, Jude held senior director or partner positions in several Big 4 firms in the Philippines (KPMG), Central Asia (Deloitte) and in Europe (E&Y) He was, until 2015, a regional tax director and deputy head of regional tax of DFDL, an international law firm focusing on high-growth Asian markets.

He also served in the Philippine government. From 2004 to 2005, he was Assistant Secretary for Legal Affairs of the Republic's Trade and Industry Department and Finance Department.

He writes on competition law for Lexis Nexis and tax law for IBFD. He also contributes to the Linklaters global data privacy protection guide. He is recognized by Asialaw Profiles as Leading Lawyer on M&A, Corporate and Tax.

MA. CRISTINA SURALVO

Tina obtained her Bachelor of Laws degree from the University of the Philippines graduating with a Dean's Award for Academic Excellence.

She was admitted to the Philippine bar in 2001, placing 10th in the bar examinations.

She worked as a junior associate of De Borja Medialdea Bello Guevarra and Gerodias law firm and later on as a tax lawyer at Sycip Gorres Velayo & Co. (Ernst & Young in Manila), the largest professional services firm in the country. Tina honed her expertise in corporate, commercial and tax law, advising and assisting domestic and foreign clients at various stages of their business existence and on a range of legal and tax issues. She has handled company registration and compliance involving various agencies such as the Securities and Exchange Commission, Bureau of Internal Revenue, Philippine Economic Zone Authority and local government units. She has assisted clients in drafting, reviewing and negotiating various contracts and agreements and in the performance of due diligence reviews prior to acquisitions.

Tina also gained substantial experience as a legal officer with the Prosecution and Enforcement Department, Market Regulatory Office of the Philippine Stock Exchange.

She brings nearly a decade of valuable regulatory experience with the power industry, working for many years overseeing the compliance of trading participants as Deputy Enforcement and Compliance Officer of the Philippine Electricity Market Corporation, which operates and governs the Wholesale Electricity Spot Market.

KAREN OCAMPO

Karen obtained her Bachelor of Laws degree from the University of the Philippines. She was admitted to the Philippine bar in 2001. She has extensive experience in corporate commercial and tax law, having worked as an associate at top law firm Castillo Laman Tan Pantaleon & San Jose, and as a tax lawyer at Sycip Gorres Velayo & Co. (Ernst & Young in Manila), the largest professional services firm in the country.

In respect of corporate and commercial matters, she has handled corporate registrations, mergers and acquisitions and corporate reorganizations for domestic and multinational clients. She has assisted clients in drafting, reviewing and negotiating various contracts and agreements and in the performance of due diligence reviews prior to acquisitions.

Karen's particular and distinctive strength lies in taxation and her experience in this sphere is wide-ranging, from tax planning and advisory to tax controversy and advocacy.

Her competence in business and tax law is strengthened by a truly international experience in the tax and legal departments of Big 4 accounting firms abroad. She was a senior manager at Deloitte Kazakhstan's Tax and Legal Department, providing investment counseling, corporate tax advice and international structuring assistance to domestic and multinational clients in various industries, particularly in the energy and resources space. She was also a tax executive at Ernst & Young Cambodia advising mostly inbound investors in a wide range of industries in respect of their corporate and transaction tax concerns, including mergers and acquisitions and cross-border structuring.

CHRISTINE ANTONIO

Christine obtained her Bachelor of Laws degree from the University of the Philippines where she was awarded the Dean's Medal for Academic Excellence. She holds a Master of Corporate Law degree from the University of Cambridge graduating with First Class Honors. She was admitted to the Philippine Bar in 2007.

She possesses extensive experience in the Public Private Partnership (PPP) sector, having worked as the head of the Project Development Service Department of the Public-Private Partnership Center of the Philippines. She likewise worked as a Foreign Consulting Attorney for Kelvin Chia Yangon Ltd., where she was seconded as General Manager of the Legal Department of the Joint Operations/ PPP between Myanmar Posts and Telecommunications and KDDI/Sumitomo Corporation. She also previously worked for the Department of Finance Privatization and Management Office as Deputy Privatization Officer For Legal, and as an Associate at Castillo Laman Tan Pantaleon & San Jose Law Offices, one of the largest law firms in the Philippines.

Ocampo & Suralvo is the DFDL collaborating law firm in the Philippines.

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