



EU - PHILIPPINES  
BUSINESS NETWORK

# DOING BUSINESS IN THE PHILIPPINES





# DOING BUSINESS IN THE PHILIPPINES

IN PARTNERSHIP WITH



A PROJECT BY CO-FUNDED BY



EPBN PARTNER ORGANIZATIONS



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# MESSAGE FROM ECCP PRESIDENT

**Guenter Taus**  
ECCP President



The European Chamber of Commerce of the Philippines (ECCP), in close partnership with the EU-Philippines Business Network, is pleased to present its first ever edition of the Doing Business in the Philippines booklet, a handy guide for those interested in exploring the various business opportunities the country has to offer. We would like to extend our sincerest thanks to Quisumbing Torres for being our content partner for their invaluable support in completing this milestone publication.

Indeed, it is exciting to witness promising events unfold before our very eyes. In 2017, we saw the 2nd round of negotiations of the EU-Philippine Free Trade Agreement, the first full year of the current Administration, steady economic growth, and the Philippines' ASEAN chairmanship. Moreover, we have seen progress in a number of positive reforms such as the Build Build Build program, the comprehensive tax reform, as well as the release of Memorandum Order No. 16, which seeks to reduce restrictions on foreign business activities in the Philippines. Amidst the noise, I remain hopeful that we will continue to see positive developments in the coming year.

The ECCP has long been involved in advocacies that aim to make the Philippines a more competitive destination for local and foreign investments. We relentlessly advocate for the creation of a competitive fiscal incentives regime, the full enforcement of the Philippine Competition Law, the strengthening of the sanctity of contracts, and intellectual property rights (IPR) protection, among many others. The Chamber also maintains a strong business network that holds great potential in translating to tangible business opportunities. Undoubtedly, the ECCP remains committed in promoting the EU-PH economic ties through the facilitation of market access and creation of a level playing field for both local and foreign businesses.

For now, we hope this publication will inspire business around the globe to do business here in the Philippines and serve as the first step into one of the most dynamic and fastest growing countries in ASEAN.

# MESSAGE FROM EU AMBASSADOR

**H.E. Franz Jessen**  
Ambassador / Head of Delegation  
Delegation of the European Union to the Philippines



The EU economy is expected to grow by 2.3% in 2017 - an impressive achievement of a mature economy; it follows years of robust reforms. These ambitious reforms propelled the EU to be the most competitive in the world, with business' and consumers' confidence improving rapidly. Unemployment rate is also expected to average 9.1% this year, its lowest level since 2009. More importantly, EU's trade continues to grow strongly: EU exports to the world grew by 9% in the first three quarters of 2017 while EU imports grew by 8.6% during the same period. This shows that the EU economy is competitive, yet open and it will remain so even in times of economic uncertainties brought about by protectionist stances of other markets. The EU will continue to lead global efforts to promote open trade and investment and this will contribute to the Philippines' development agenda.

The Philippines is at a crossroad, the successful move from a lower to upper middle income country is dependent on choosing the right policy mix. Implementation of sound policies could mean a potential take-off to upper middle income level. The EU wants to contribute and we do: in the first three quarters of 2017, our total trade with the Philippines grew by 18%, with exports increasing by almost 35%. Thanks to the EU GSP+ preferences, the Philippines has a solid trade surplus. Furthermore, the EU is also the largest investor in the Philippines accounting for 29% of all approved foreign investments - supporting more than 500,000 quality jobs in the country.

The EU sees trade and investment as part of the answer to challenges faced in the country in terms of inclusive and pro-poor growth. Indeed, the EU and its industry have a positive agenda that is values-based and comes with and open dialogue to ensure nobody is left behind in strengthening these trade relations.

The publication of this booklet comes at an opportune time as trade and investment is becoming even more important for the EU and the Philippines as drivers of inclusive growth and development. I hope this booklet will increase understanding of our economic relations as well as identify further opportunities to strengthen trade and investment to accelerate economic development in both economies.

# EU-PHILIPPINES BUSINESS NETWORK

The EU-Philippines Business Network (EPBN) is a project co-funded by the European Union that provides a support framework for European companies, particularly SMEs that are interested in exporting to or investing in the Philippines.

The program is implemented by a consortium of the 8 European chambers in the Philippines, led by the European Chamber of Commerce (ECCP). Other partner chambers include the British, French, German, Italian, Nordic, and Spanish Chambers of Commerce of the Philippines along with the Belgian-Filipino Business Club.



EPBN activities and services include promoting business opportunities in the Philippines in the different EU countries by participating in trade fairs and market briefings.

EPBN also provides local market support services to potential EU investors and exporters, such as market research, business matching, new-to-market and business development support.

EPBN also advocates for and promotes the adaption of relevant sector policies to level the playing field and increase market access opportunities for EU companies. Advocacy forums focusing on relevant industry topics are regularly organized to address issues and promote the constructive discussions between government, relevant agencies, and the different stakeholders. Annually, the EPBN publishes its Business Advocacy Papers covering the various issues and concerns of EU investors across 14 different high-priority business sectors.

Complementing the EPBN Guide on Doing Business in the Philippines, are the Industry Business Primers on these 14 high-priority sectors, which are regularly updated to reflect the different business opportunities in the Philippines for EU companies. These 14 sectors include: agriculture, automotive, consumer goods and retail, energy and renewables, food and beverage, healthcare, human capital, ICT-BPM-KPM, manufacturing, maritime, tax and financial services, tourism, transportation infrastructure, and water and environment.

For a free download of the EPBN Business Primers and Advocacy Papers, visit our website at [www.epbn.ph](http://www.epbn.ph).



# THE PHILIPPINES

The Philippines continues to be Asia's rising star due to its robust macroeconomic expansion in recent years, leaving behind its former label as the region's sick man, according to Moody's Analytics. Indeed, during the last 7 years, the resource-rich island nation has managed to trim its foreign debt and has shown an annual average economic growth rate of 6.3%, one the highest in South-Asia and one of the fastest in the world, remaining in positive expansion even during the global financial crisis.



In the third quarter of 2017, the Gross Domestic Product (**GDP**) of the Philippines grew to 6.9%<sup>1</sup> at USD 304,905 million<sup>2</sup> despite weak external demand and a reduction in agricultural production largely caused by drought.<sup>3</sup> Economic growth was driven by strong domestic consumption, the boom in the Business Process Outsourcing (**BPO**) industry, Overseas Foreign Worker (**OFW**) remittances<sup>4</sup> and the increase in public infrastructure spending. The Philippines ranks as the third largest economy in ASEAN based on GDP, following Indonesia (USD 932,359 million) and Thailand (USD 406,840 million).<sup>5</sup>

Industry registered the fastest growth at 7.5% followed by services with 7.1% growth.<sup>6</sup> Meanwhile, agriculture slowed down by 2.5% from 3.0% growth in the previous year<sup>7</sup>. In 2016, the manufacturing subsector was the largest contributor to the growth, mostly through food manufacturing, which grew by 9.3%. Other industries such as chemicals, rubber products, machinery, transportation equipment, and construction also contributed to industry growth<sup>8</sup>.

While the Philippines' economic growth of the GDP grew by 6.9%,<sup>9</sup> registering the highest growth among ASEAN member states, the Gross National Income (**GNI**) also grew by 6.7% (based on current pesos).<sup>10</sup>

GDP per capita grew by 5.4% in Q3 of 2017. However, the Philippines still remains the second lowest of ASEAN 6 at USD3,020, after Vietnam (USD2,310), compared to USD6,340 in Thailand, USD3,860 in Indonesia, USD9,660 in Malaysia, and USD53,880 in Singapore.

Philippine inflation settled at 3.5% in the last quarter of 2017. According to the Philippine Statistics Agency, the growth of inflation is due to the growth recorded in the heavily-weighted food and non-alcoholic beverages index and the higher prices of housing, utilities, transport, education, and other miscellaneous services. In addition, higher growth observed in alcoholic beverages, tobacco, health, education and restaurant goods and services also contributed to this.



1 Philippine Statistics Authority (16/11/2017). Philippine Economy Grows by 6.9% in the Third Quarter of 2017. Retrieved 04 December 2017 from <http://psa.gov.ph/nap-press-release>

2 Cigaral, I.N. (11/11/2017). In Charts: How the Philippines Fares in Southeast Asia. Retrieved 05 December 2017 from <http://www.philstar.com/headlines/2017/11/11/1757872/charts-how-philippines-fares-southeast-asia>.

3 ADB (2017). Asian Development Outlook 2017: Transcending the middle-income challenge. P. 245-249. Retrieved: 28/07/2017. <https://www.adb.org/sites/default/files/publication/237761/ado-2017.pdf>.

4 Philippines, Philippine Statistics Agency. (2017). National Quickstat November.

5 Cigaral, I.N. (11/11/2017). In Charts: How the Philippines Fares in Southeast

Asia. Retrieved 05 December 2017 from <http://www.philstar.com/headlines/2017/11/11/1757872/charts-how-philippines-fares-southeast-asia>.

6 Philippine Statistics Authority (16/11/2017). Philippine Economy Grows by 6.9% in the Third Quarter of 2017. Retrieved 04 December 2017 from <http://psa.gov.ph/nap-press-release>

7 Ibid

8 PSA (2016). Gross Value Added in Manufacturing. Retrieved 11/04/2017. <http://psa.gov.ph/nap-press-release/sector/Manufacturing>.

9 Philippines, Philippine Statistics Agency. (2017). National Quickstat November.

10 Ibid

The Philippines' current account surplus was recorded at USD 601 million or 0.2% of GDP in 2016, 92% lower than the USD 73 billion surplus or 2.5% of GDP in 2015. Exports increased only on a small scale while imports rose rapidly, resulting in a merchandise deficit of 11.2% of GDP (2016). However, remittances and strong earnings from services exports, particularly from the BPO and tourism sectors, helped in maintaining the surplus.

On the other hand, the ratio of public debt to GDP declined to 41.7% in the third quarter of 2017, which allowed an increase in public spending. The Q3 fiscal deficit of P58.6 billion decreased from P93.4 billion of the same period last year.

The Big Three credit rating agencies, Standard & Poor's, Fitch and Moody's, reaffirmed the Philippines' sound macroeconomic foundations and its strong external position maintaining the country's 2015 ratings.

2016 April 24	Standard and Poor	BBB STABLE
2016 April 08	Fitch	BBB- POSITIVE
2017 Mar 22	Moody	BAA2 STABLE

With a population of 104.9 million in the third quarter of 2017, a median age of 23.4, and with 89.74% of the population under 54 years old, the Philippines offers a skilled workforce, fluent in English, which is considered as one of the competitive advantages of the Philippines. Despite an educated labor force, unemployment among people between 15 and 24 years old is still high at 5.6%.

However, underemployment in 2017 remained high at 16.3%, a difference of two points from last year's 18%. This reflects the prevalence of informality and precarious jobs. On a positive note, the country has registered more inclusive growth in the last years as the poverty incidence among Filipinos dropped to 21.6% in 2015 from 25.2% in 2012, lifting 1.8 million Filipinos out of poverty.

In terms of international rankings, the Philippines ranked 56th out of 138 countries in the Global Competitiveness Index 2017-2018 edition, published by the World Economic Forum, with a score of 4.35 over 7. Out of the 12 pillars that were assessed in the Index, the Philippines scored highest in the third pillar, macroeconomic environment, with a ranking of 22 and a score of 5.8, which reaffirms the country's sound macroeconomic fundamentals.

On the World Bank Doing Business 2018 Report, the Philippines ranked 113 out of 190 countries with a score of 58.74 over 100. Getting electricity, resolving insolvency, and trading across borders had the highest rankings in the said report.

As for the Corruption Perceptions Index, the Philippines went from 95 out of 168 countries in 2015 to 101 among 176 in 2016.

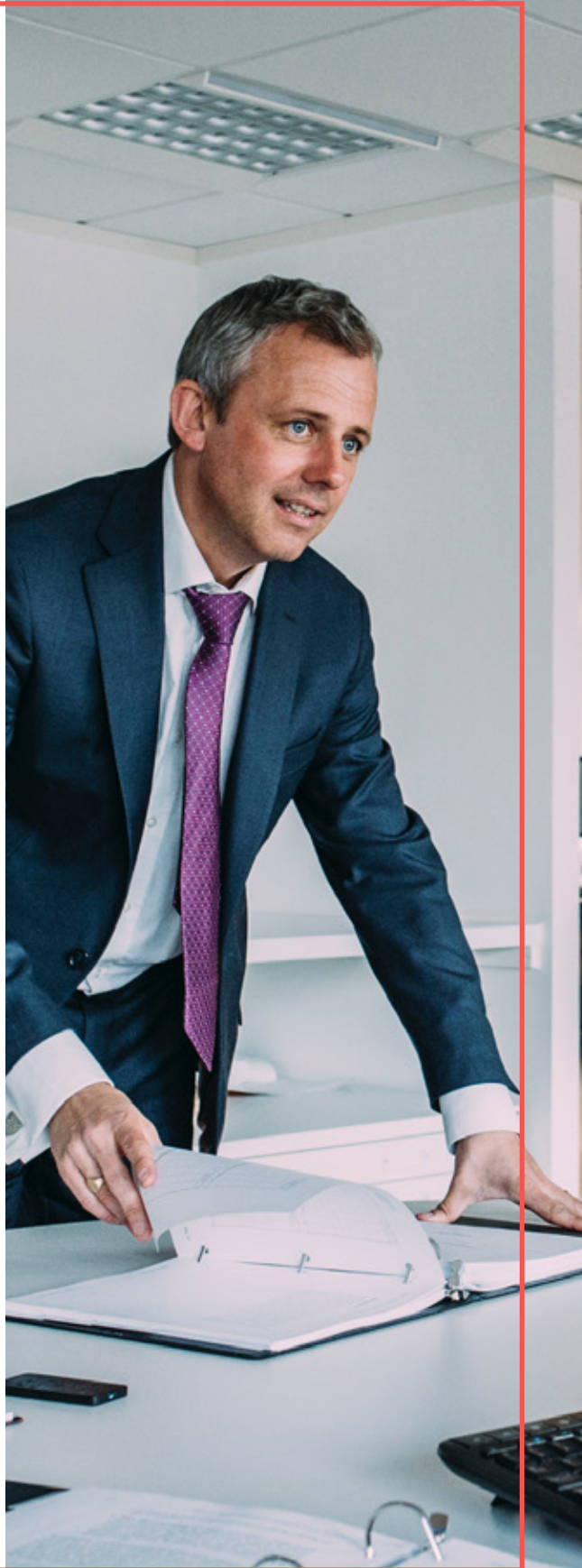


Photo by Chelsea Murphy

# 01

## SUMMARY OF STEPS IN STARTING A BUSINESS

Philippine laws allow foreign investors to engage in business in the Philippines, subject to compliance with applicable laws and regulations. As a rule, foreign investors may invest in any area of activity in the Philippines, except only those activities that are wholly or partially nationalized under the Philippine Constitution and existing laws and regulations. Engaging in business in priority sectors may qualify the business to avail of incentives by registering with incentive giving government agencies. These incentives may include fiscal and non-fiscal incentives.



Generally, starting a business in the Philippines involves the following steps:

1. Identifying the activities that the foreign investor will undertake in the Philippines
2. Determining whether the proposed activities are subject to foreign equity restrictions and special licensing or registration requirements
3. Registering the appropriate corporate vehicle in the Philippines with the Philippine Securities and Exchange Commission (**SEC**), and subject to the applicable foreign equity restrictions, if any, for the proposed activities in the Philippines
4. Complying with the basic and mandatory post-SEC registration requirements with various government agencies, such as the local government unit with jurisdiction over the place of business, the Philippine Bureau of Internal Revenue (**BIR**), and employee-welfare agencies
5. Obtaining the applicable special licensing or registration requirements for the proposed activity in the Philippines.





# 02

## FOREIGN INVESTMENTS IN THE PHILIPPINES

### LEGAL FRAMEWORK

Various Philippine laws govern foreign investments and foreign nationals that engage in business in the Philippines.



### FOREIGN INVESTMENTS ACT

Republic Act No. 7042, as amended, otherwise known as the Foreign Investments Act of 1991 (**FIA**), primarily governs the participation of foreign nationals in economic and commercial activities in the Philippines. The FIA expresses the policy of the Philippine government to attract, promote, and welcome productive investments from foreign individuals, partnerships, corporations, and governments, including their political subdivisions, in activities that significantly contribute to national industrialization and socioeconomic development to the extent that foreign investment is allowed in such activity by the Constitution and relevant laws.

To encourage foreign investments, Philippine laws expressly recognize various rights of foreign investors in the Philippines, including the right to repatriation of investments, the right to remittance of earnings and freedom from expropriation (except for public use or in the interest of national welfare or defense, and upon payment of just compensation).

### CORPORATION CODE OF THE PHILIPPINES

The Corporation Code of the Philippines (**Corporation Code**) governs the establishment, powers and governance of corporations in the Philippines. It recognizes different classes of corporations, such as stock corporations, non-stock corporations and special corporations.

Among the matters which are covered by the Corporation Code are those relating to incorporation requirements, duties and qualifications of directors and officers, meetings, quorum and voting requirements, rights of stockholders and dissolution.

The Corporation Code also regulates certain aspects of the licensing and reporting requirements of foreign corporations doing business in the Philippines.

### CIVIL CODE OF THE PHILIPPINES

The Civil Code of the Philippines (**Civil Code**) governs the establishment and operations of partnerships in the Philippines, the rights and obligations of partners, governance and dissolution.

Commercial contracts and arrangements of corporations doing business in the Philippines will be subject to the Civil Code provisions on obligations, contracts and damages, and those that apply to special types of contracts such as sales, agency, lease and loan.

### SPECIAL LAWS

Special laws may apply to special types of corporations, such as public companies, corporations with secondary licenses, or those that engage in highly regulated business activities.

## WHAT CONSTITUTES “DOING BUSINESS” IN THE PHILIPPINES

The Corporation Code requires foreign corporations that are “doing business” in the Philippines to obtain the appropriate license for this purpose from the SEC (**SEC License**). To obtain an SEC License, a foreign entity may register the appropriate corporate vehicle in the Philippines. In the alternative, it may incorporate a Philippine corporation and engage in business through such corporation.

The FIA and its implementing rules and regulations of the Foreign Investments Act (**FIA IRR**) provide a non-exclusive enumeration of specific activities that constitutes doing business in the Philippines, as follows:

- A** Soliciting orders, service contracts, opening offices, whether called liaison offices or branches
- B** Appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling 180 days or more
- C** Participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines
- D** Any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization

The above enumeration is not exclusive. According to the Philippine Supreme Court (**Supreme Court**), the true test for doing business is whether the foreign corporation is continuing the body of the business or enterprise for which it was organized and whether there exists a continuity of commercial dealings and arrangements which include acts that are normally incident to, and in the progressive prosecution of, the purpose and object of its organization.

Also, under Philippine jurisprudence, an essential condition to be considered as doing business in the Philippines is the actual performance of specific commercial acts within the Philippine territory because the Philippines does not have jurisdiction over commercial acts performed in foreign territories.

### The following acts shall not constitute “doing business” in the Philippines under the FIA IRR:

- A** Mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and / or the exercise of rights as such investor
- B** Having a nominee director or officer to represent its interest in such corporation
- C** Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative’s or distributor’s own name and account
- D** Publication of a general advertisement through any print or broadcast media
- E** Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines
- F** Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export
- G** Collecting information in the Philippines
- H** Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services

A foreign entity that is found to be “doing business” in the Philippines without an SEC License:

- is denied standing to bring suit before Philippine courts for the enforcement of its rights, but may be sued before Philippine courts for any valid cause of action;  
Based on jurisprudence, the lack of standing to sue may be cured by subsequently obtaining an SEC License.
- may be subject to a fine and/or imprisonment for not less than 30 days but not more than five years, in the discretion of the court. In case of foreign corporations, the penalties are imposed on the directors and officers responsible for the violation.

## FOREIGN EQUITY RESTRICTIONS

### GENERAL RULE

Foreign nationals may engage in any business activity in the Philippines, provided that such activity is not reserved by law to Philippine citizens or to entities that are wholly or partly owned by Philippine citizens.

The FIA provides for the issuance of a Foreign Investment Negative List (**Negative List**) – a list of economic activities where foreign equity is either prohibited or limited to a certain percentage. The Negative List has two component lists: List A and List B. List A contains areas of investment where foreign ownership is limited by mandate of the Philippine Constitution or by specific laws. List B contains areas of investment where foreign ownership is limited for reasons of security, defense, risk to health and morals, or protection of local small- and medium-sized enterprises. Except with respect to activities where restrictions on foreign equity are imposed under the Philippine Constitution or statutes, the president of the Philippines may amend the Negative List. Such amendments may not be made more often than once every two years.

### TENTH NEGATIVE LIST OF FIA

Under the Tenth Negative List, which is the current Negative List, the following activities, among others, are limited to Philippine citizens or corporations or associations that are wholly-owned by Philippine citizens:

- A. Mass media
- B. Practice of certain professions
- C. Retail trade enterprises with a paid-up capital of less than USD2.5 million.

On the other hand, the following activities, among others, are subject to foreign equity restrictions:

- A. Private radio communications network (up to 20% foreign equity)
- B. Private recruitment companies, whether for local or overseas employment (up to 25% foreign equity)
- C. Advertising (up to 30% foreign equity)
- D. Exploration, development and utilization of natural resources (up to 40% foreign equity)
- E. Ownership of private lands (up to 40% foreign equity)
- F. Operation of public utilities (up to 40% foreign equity)
- G. Educational institutions other than those established by religious groups and mission boards (up to 40% foreign equity)
- H. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporations, companies, agencies or municipal corporations (up to 40% foreign equity)
- I. Acting as facility operator of an infrastructure or a development facility requiring a public utility franchise (up to 40% foreign equity)
- J. Ownership of condominium units where the common areas of the condominium project are co-owned by owners of the separate units or owned by a corporation (up to 40% foreign equity)

The Tenth Negative List includes a general category of domestic market enterprises with a paid-in equity capital of less than the equivalent of USD200,000, among the activities that are subject to a 40% foreign equity limit. A domestic market enterprise is an enterprise that produces goods for sale or renders services to the domestic market entirely or, if exporting a portion of its output, fails to consistently export at least 60% thereof. This is in contrast to an export enterprise, which is a manufacturer, processor or service (including tourism) enterprise that exports 60% or more of its output, or a trader that purchases products domestically and exports 60% or more of such purchases.

Conversely, a foreign national or wholly foreign-owned corporations may engage in a domestic market enterprise in the Philippines, provided that the following conditions are complied with:

- A. It invests in a domestic market enterprise or an export enterprise that is engaged in an activity that is not on the Negative List.
- B. The domestic market enterprise must have a paid-in capital of the peso equivalent of at least USD200,000. The capitalization requirements of a domestic market enterprise may be reduced to the peso equivalent of USD100,000: (i) if its activity involves advanced technology as determined and certified by the Department of Science and

Technology, or (ii) if it employs at least 50 direct employees as certified by the appropriate regional office of the Department of Labor and Employment (**DOLE**).

The foreign equity restrictions on domestic market enterprises that do not meet the relevant paid-up capital requirement as discussed above do not apply to export enterprises.

Please refer to Schedule A for the Executive Order No. 184 - Tenth Regular Foreign Investment Negative List

Aside from the Negative List, the rules of the Philippine Contractors Accreditation Board (**PCAB**) provide that persons who will engage in construction activities in the Philippines are also required to obtain a license from the PCAB, and as a general rule, the regular license is reserved for and issued only to Filipino sole proprietorships or partnerships/corporations with at least 60% Filipino equity participation.

### COMPLIANCE WITH FOREIGN EQUITY RESTRICTIONS

In recent decisions of the Supreme Court, it has held that when the Constitution and the law speak of capital, generally, it refers to the number shares entitled to vote in the election of directors, or what we call “voting shares,” as the voting rights translate to control over the corporation. In addition, the Supreme Court clarified that Philippine citizens and Philippine nationals must also exercise full beneficial ownership, and not merely legal title, over the required Philippine portion of the capital.

In line with the above decisions, the SEC has issued SEC Memorandum Circular No. 8, Series of 2013 (**2013 SEC MC**), which applies the required percentage of Filipino ownership in partially nationalized activities 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.

The SEC Guidelines apply to all corporations engaged in activities specifically reserved, wholly or partly, to Philippine nationals by existing laws, and direct all corporate secretaries to monitor and observe compliance with the provisions on ownership requirements provided in existing laws.

## Philippine national

Shares of stock that are owned by a Philippine national are general considered as Filipino-owned

The FIA defines a "Philippine national" as:

- A. a citizen of the Philippines
- B. a domestic partnership or association wholly owned by citizens of the Philippines
- C. a corporation organized under the laws of the Philippines, of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines
- D. a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code, of which 100% of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or
- E. a trustee of funds for pension or other employee retirement or separation benefits where the trustee is a Philippine national and at least 60% of the fund will accrue to the benefit of Philippine nationals.

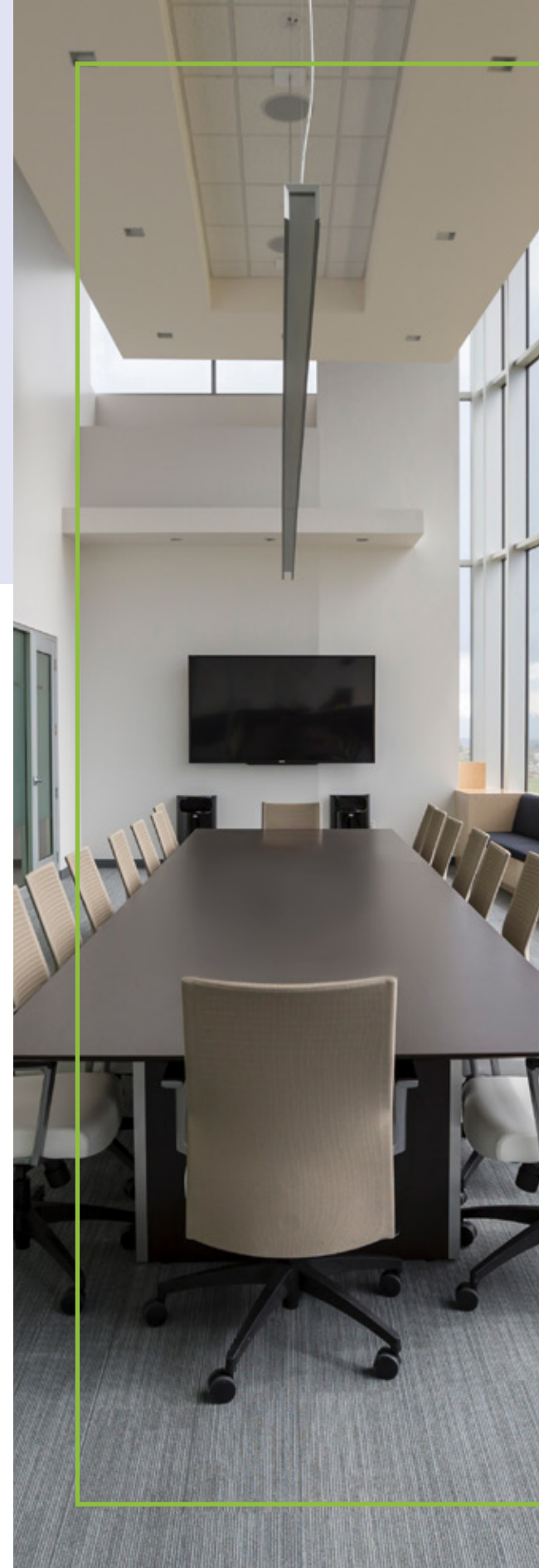
Where a corporation and its non-Filipino stockholders own stocks in an enterprise registered with the SEC, at least 60% of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least 60% of the members of the Board of Directors must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national.

## ANTI-DUMMY LAW

The Philippines has an Anti-Dummy Law, which imposes criminal and civil penalties on persons violating foreign equity limitations.

Under the Anti-Dummy Law, a person who has, in his or her name or under his or her control a right, franchise, privilege, property or business, the exercise or enjoyment of which is expressly reserved by law to Philippine citizens or to corporations or associations where at least 60% of the capital is owned by such citizens, is prohibited from: (a) permitting or allowing the use, exploitation or enjoyment of such right, franchise, privilege, property or business by a person, corporation or association not possessing the qualifications prescribed by law; or (b) in any manner permitting or allowing any person not so qualified to intervene in the management, operation, administration or control of such right, franchise, privilege, property or business, whether as an officer, employee or laborer, with or without remuneration (except technical personnel whose employment may be specifically authorized by the Secretary of Justice).

However, foreign nationals may serve as members of the board or governing body of corporations engaged in partially nationalized activities in a number proportionate to their actual and allowable equity in the company.



# 03

## PRIVATE COMPANY INVESTMENTS



## TYPES OF CORPORATE VEHICLES

### DOMESTIC CORPORATION

An investor may establish a domestic corporation, which is a corporation that is incorporated under Philippine laws.

Assuming that the proposed activity is not subject to any foreign equity limitation, a foreign investor wholly-own the domestic corporation.

If the proposed activity is subject to foreign equity restrictions, the domestic corporation must comply with the required Filipino ownership in such corporation.

### FOREIGN CORPORATION

A foreign investor may also engage in business in the Philippines, which is not subject to foreign equity restrictions, by registering different types of vehicles in the Philippines.

#### Branch Office

A foreign investor may register a branch office to engage in activities that are not subject to foreign equity restrictions. A branch office is not considered as a separate entity from the foreign corporation that registered the same, but merely an extension of the legal personality of such foreign corporation. The scope of activities of the branch office in the Philippines must be covered by the scope of authorized activities of the foreign corporation that registered the branch office.

#### Representative Office

A representative office may be established to deal directly with the clients of its head office who are in the Philippines, and to undertake information dissemination and promotion of the company's products as well as quality control only. A representative office may not derive income in the Philippines and is fully subsidized by its head office.

A representative office must have an initial inward remittance of USD30,000 to fund its operations.

#### Regional or Area Headquarters (RHQ)

A multinational company engaged in international trade may establish a regional or area headquarters (RHQ) in the Philippines to act as an administrative branch of the multinational company and to serve principally as a supervision, communications and coordination center for its subsidiaries, branches or affiliates in the Asia Pacific Region and other foreign markets.

The RHQ may not earn or derive income in the Philippines. It may not participate, in any manner, in managing any subsidiary or branch office it may have in the Philippines; neither may it solicit or market goods or services, whether on behalf of its parent company or its branches, affiliates, subsidiaries or any other company.

Its expenses must be financed by the head office or parent company from external sources in an acceptable

foreign currency. To fund its operations in the Philippines, its head office or parent company must initially remit into the Philippines at least USD50,000 and thereafter, USD50,000 annually.

#### Regional Operating Headquarters (ROHQ)

A multinational company may establish a regional operating headquarters (ROHQ) in the Philippines to service its own affiliates, subsidiaries or branches in the Philippines or in the Asia Pacific Region and other foreign markets.

An ROHQ is allowed to derive income in the Philippines by performing any of the following qualifying services:

- i. General administration and planning
- ii. Business planning and coordination
- iii. Sourcing/procurement of raw materials and components
- iv. Corporate finance advisory services
- v. Marketing control and sales promotion
- vi. Training and personnel management
- vii. Logistics services
- viii. Research and development services and product development
- ix. Technical support and maintenance
- x. Data processing and communication
- xi. Business development

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

An ROHQ must initially remit into the Philippines at least USD200,000.

#### Regional Warehouses

A multinational company organized and existing under any laws other than those of the Philippines, which is engaged in international trade and supplies spare parts, components, semi-finished products and raw materials to its distributors or markets in the Asia Pacific area and other foreign areas, and which has established or will simultaneously establish a RHQ or ROHQ in the Philippines, may also establish a regional warehouse or warehouses in special economic zones (Ecozones) in the Philippines.

The activities of the regional warehouse shall be limited to:

- i. 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
- ii. 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.

## REGULATORY APPROVALS AND REGISTRATIONS

The incorporation of a domestic corporation must be approved by the SEC.

A foreign corporation that will engage in business in the Philippines through any of the corporate vehicles discussed above must register such corporate vehicle with the SEC.

After incorporation of a domestic corporation, and registration of a foreign corporation, with the SEC, the corporation must comply with certain basic registration and licensing requirements with various government agencies. These post-registration requirements include obtaining a local business permit from the local government unit in the principal place of business of the corporation, and certain registrations and licenses from the BIR, and employee-welfare agencies.

In addition to the basic post-registration requirements, certain businesses in highly regulated industries may be subject to special licensing or registration requirements with the government agency having jurisdiction over such industry.

## CORPORATE STRUCTURE: GOVERNANCE, CORPORATE OFFICERS, STOCKHOLDERS

### Domestic Corporations

The Corporation Code provides for the corporate governance structure and requirements of a domestic corporation.

All business conducted and all property of a domestic corporation are generally controlled by the board of directors, which shall consist of at least 5 but not more than 15 individuals. Each director must hold at least one share in the corporation. As a rule, foreign nationals may be directors of a domestic corporation, subject to applicable restrictions for corporations that engage in nationalized or partially nationalized activities. Majority

of the directors of a domestic corporation must be Philippine residents.

For purposes of the residency requirements under the Corporation Code, current policies of the SEC consider a foreigner residing in the Philippines with a valid work permit / visa as a Philippine resident.

Corporate acts of a corporation generally require approval of the board of directors, in a meeting held in person or by telephone conference.

For certain fundamental actions of the corporation, approval of stockholders is also required in addition to the approval of the board of directors.

The notice, quorum and voting requirements for such meetings of the board of directors and the stockholders are governed by Corporation Code and the by-laws of the corporation.

### Foreign Corporations (e.g. branch office, representative office, etc.)

The Corporation Code requires foreign corporations doing business in the Philippines to appoint a resident agent in the Philippines to whom summons and legal processes may be served.

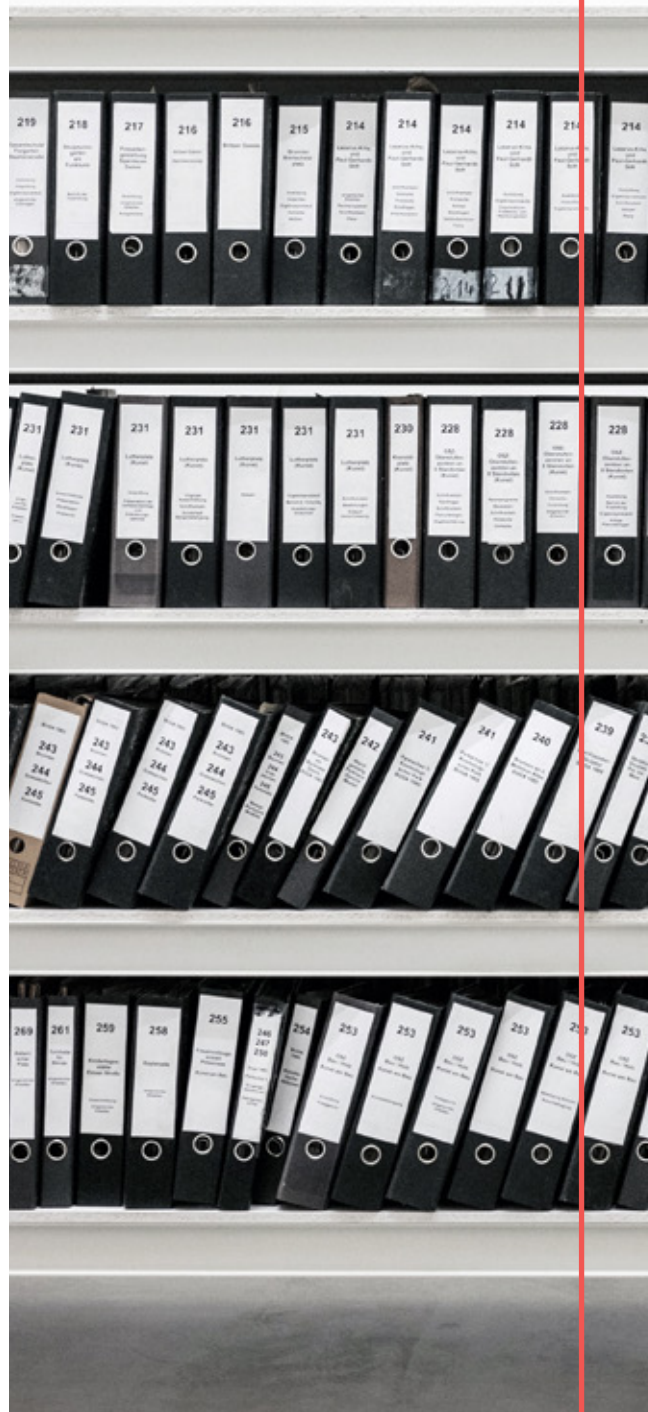
A registered foreign corporation, being an extension of its foreign head office, is not required to have its own board of directors or stockholders. Corporate governance matters of such a foreign corporation are governed by the laws of incorporation of the foreign head office, subject only to certain actions that require approval of the SEC.



# 04

## INCENTIVES UNDER SPECIAL REGISTRATIONS

The Philippine government has identified certain priority sectors for investment in the Philippines, and grants incentives to investments in such sectors.



## OMNIBUS INVESTMENTS CODE / 2017 INVESTMENTS PRIORITIES PLAN

The Omnibus Investments Code (**OIC**), through tax incentives and other benefits, encourages investments in preferred areas of economic activity specified in the Investment Priorities Plan of the Philippine Government (**IPP**). The current 2017 Investment Priorities Plan is the current IPP.

Qualified enterprises that will engage in preferred areas of investment may register with the Board of Investments (**BOI**) to avail of incentives.

In general, only Filipino citizens or corporations that are organized in the Philippines and that at least of the outstanding capital stock entitled to vote of which corporation is owned and held by Philippine nationals, can register with the BOI.

An investor that does not meet the said nationality requirement may still register under the IPP provided that:

1. It will engage in a pioneer project.
2. It obligates itself to attain the status of a Philippine national within 30 years from the date of registration or within such longer period as the BOI may require.
3. The pioneer area it will engage in is one that is not within the activities reserved by the 1987 Philippine Constitution or other laws of the Philippines to Philippine citizens or corporations owned and controlled by Philippine citizens.

Under the OIC, an enterprise may apply for registration either as a pioneer or non-pioneer enterprise. A "pioneer enterprise" is a registered enterprise: (i) engaged in the manufacture, processing, or production, and not merely in the assembly or packaging of goods, products, commodities, or raw materials that have not been or are not being produced in the Philippines on a commercial scale; or (ii) using a design, formula, scheme, method, process, or system of production or transformation of any element, substance, or raw materials into another raw material or finished goods that are new and untried in the Philippines; or (iii) engaged in the pursuit of agricultural, forestry, and mining activities and/or services, including the industrial aspects of food processing whenever appropriate, predetermined by the BOI, in consultation with the appropriate department, to be feasible and highly essential to the attainment of the national goal, in relation to a declared specific national food and agricultural program for self-sufficiency and other social benefits of the project; or (iv) producing non-conventional fuels or manufacturing equipment that utilizes non-conventional sources of energy or using or converting to coal or other non-conventional sources of energy in its production, manufacturing, or processing

operations. Provided that, the final product in any of the foregoing instances involves or will involve substantial use and processing of domestic raw materials, whenever available, taking into account the risks and magnitude of investment.

**The 2017 IPP provides for the following general areas for investment that may be entitled to incentives:**

### A. Preferred Activities

1. All qualified manufacturing activities including agro-processing
2. Agriculture, Fishery and Forestry
3. Strategic Services
  - Integrated Circuits (**IC**) Design
  - Creative Industries/Knowledge-Based Services
  - Maintenance, Repair, and Overhaul (**MRO**) of aircraft
  - Charging/Refueling Stations for Alternative Energy Vehicles
  - Industrial Waste Treatment
  - Telecommunications
  - 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. Environment or Climate Change-Related Projects
10. Energy

## B. Export Activities

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

## C. Special Laws

1. Industrial Tree Plantation (**P.D. 705**)
2. Mining (**R.A. 7942**) (limited to capital equipment incentive)
3. Publication or Printing of Books/Textbooks (**R.A. 8047**)
4. Refining, Storage, Marketing and Distribution of Petroleum Products (**R.A. 8479**)
5. Rehabilitation, Self-Development and Self-Reliance of Persons with Disability (**R.A. 7277**)
6. Renewable Energy (**R.A. 9513**)
7. Tourism (**R.A. 9593**)

## D. Autonomous Region of Muslim Mindanao (ARMM) List

1. Export Activities
  - Export Trader and Service Exporters
  - Support Activities for Exporters
2. Agriculture, Agribusiness, Aquaculture, and Fishery
3. Basic industries
4. Infrastructure and services
5. Industrial service facilities
6. Engineering industries
7. Logistics
8. BIMP-EAGA Related Investment Enterprises
9. Tourism
10. Health and education services and facilities
11. Halal industry
12. Banking, non-bank financial institutions and facilities
13. Energy

Please refer to Schedule B - 2017 Investment Priorities Plan for the specific scope, conditions and limitations of the above areas of investment that will be entitled to incentives.

## E. Tax Incentives

An enterprise registered with the BOI may be entitled to the following tax and non-tax special incentives:

1. Income tax holiday consisting of income tax exemption for six years from the start of commercial operations for pioneer firms, and four years for non-pioneer firms. This incentive may be extended in certain instances and upon approval by the BOI.

Expanding firms are entitled to an exemption from income taxes proportionate to their expansion for a period of three years from the start of commercial operations of the expansion. However, they are not entitled to additional deductions for incremental labor expenses during the period that they avail themselves of this incentive.

The income tax holiday may not be extended for more than eight years.

2. Exemption from taxes and duties on spare parts and consumable supplies imported by a registered enterprise with a customs-bonded manufacturing warehouse and exporting at least 70% of its production

3. Exemption from taxes and duties on machinery, equipment, spare parts and accessories imported by new and expanding registered enterprises

4. For the first five years from registration, an additional deduction from taxable income of 50% of the wages of additional skilled and unskilled workers in the direct labor force. This incentive is granted only if the registered enterprise meets a prescribed capital-to-labor ratio.

5. Exemptions from taxes and duties on the importation of breeding stocks and genetic materials within 10 years from the date of registration or commercial operation

6. Tax credit for taxes and duties on raw materials, supplies and semi-manufactured products used for the manufacture of export products and forming part thereof

7. For registered enterprises with bonded manufacturing warehouses, exemption from taxes and duties on the importation of supplies and spare parts for imported equipment and consigned equipment

8. Exemption from wharfage duties and any export tax, duty, impost and fees on exports by a registered enterprise of its non-traditional export products

9. Exemption from local taxes for six years from the date of registration for pioneer enterprises, and four years for non-pioneer enterprises

## F. Non-tax Incentives

1. Simplified customs procedures for the importation of equipment, spare parts, raw materials, and supplies, and the export of processed products

2. No restriction on the use of consigned equipment but re-export bond is required

3. Employment of foreign nationals in supervisory, technical, or advisory positions for five years from registration, extendible for limited periods. The president, general manager and treasurer (or their equivalent) of foreign-owned registered firms are not subject to the foregoing limitations.

4. The privilege to operate bonded manufacturing/trading warehouses, subject to customs rules and regulations

## G. Additional Incentives

The following additional incentives are available to projects (excluding mining, forestry, and processing of minerals and forest products) located in less-developed areas:

1. Double deduction from taxable income of 50% of the wages corresponding to the increment in the number of direct labor

2. Deduction of the cost of necessary and major infrastructure works constructed

## PHILIPPINE ECONOMIC ZONE AUTHORITY REGISTRATION

Investors may also register with the Philippine Economic Zone Authority (**PEZA**) to avail of incentives for activities that are conducted within PEZA Ecozones and PEZA-registered buildings.

### Registrable Activities

To disperse industry and generate employment in non-urban areas, the government has established several Ecozones. An Ecozone or Special Economic Zone is a selected area with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations.

Enterprises that establish their businesses within an Ecozone may register with the PEZA as any of the following:

1. Export Manufacturing Enterprise

An Ecozone Manufacturing Enterprise is an entity engaged in the assembly, manufacturing or processing activities resulting in the exportation of at least 70% of its production. "Manufacturing or processing" is the process by which raw materials or semi-finished materials are converted into a new product through a change in their

physical, mechanical, or electromagnetic characteristics and/or chemical properties. "Assembly" is the process by which semi-finished parts or materials are put together or combined to form a distinct product without substantially changing their physical or mechanical characteristics or electromagnetic and/or chemical properties.

2. Information Technology Service Export Enterprise

An Information Technology (**IT**) Service Export Enterprise is a company operating or offering IT services, of which 70% of total revenues are derived from clients abroad. "IT Service Activities" are activities that involve the use of any IT software and/or system for value addition. Among the IT Service Activities eligible for incentives are IT-enabled services such as business process outsourcing, call centers, data encoding, transcribing, and processing; software development and application, including programming and adaptation of system software and middleware; content development for multimedia or Internet purposes; and others.

3. Tourism Enterprise

4. Medical Tourism Enterprise

5. Agro-industrial Export Manufacturing Enterprise

6. Agro-industrial Biofuel Manufacturing Enterprise

7. Logistics and Warehousing Services Enterprise

8. Economic Zone Development and Operation, such as:

- Manufacturing Economic Zone

- IT Park

- Tourism Economic Zone

- Medical Tourism Economic Zone

- Agro-Industrial Economic Zone

- Retirement Economic Zone

- Facilities Providers, such as:

- Facilities for Manufacturing Enterprises

- Facilities for IT Enterprises

- Retirement Facilities

10. Establishment, operation, and maintenance of light and power systems, and water supply and distribution systems inside Special Economic Zones.

### Tax and other incentives

As a general rule, an Ecozone Enterprise (except a Logistics and Warehousing Services Enterprise, an Ecozone Developer and Operator, a Facilities Provider and an Ecozone Utilities Enterprise) is entitled to income tax holiday, which may have a duration of four years for new registered non-pioneer firms or six years for new registered pioneer firms. Expanding firms may be entitled to an income tax holiday of three years from the start of commercial operation of the expansion.

Upon expiry of the income tax holiday, an Ecozone Enterprise becomes entitled to a preferential rate of 5%

of gross income in lieu of all national and local taxes.

Ecozone Enterprises (except Logistics and Warehousing Services Enterprises, Ecozone Developers and Operators, Facilities Providers, and Ecozone Utilities Enterprises) are further entitled to the following incentives:

1. VAT zero rating of local purchases of goods and services<sup>1</sup>
2. Exemption from duties and taxes on importation of merchandise, raw materials, and supplies of equipment and machineries, including importation of capital equipment, construction materials, specialized office equipment and furniture, specialized vehicles and other transportation equipment, professional instruments, and household effects
3. Tax credit for import substitution
4. Exemption from wharfage dues, export tax, impost, or fee
5. Additional deduction for training expenses
6. Tax credit on domestic capital equipment, breeding stocks and genetic materials (as applicable)
7. Additional deduction for labor expenses
8. Unrestricted use of consigned equipment
9. Employment of foreign nationals in executive, supervisory, technical and advisory positions, provided that the total number of foreign nationals employed by an Ecozone Enterprise does not at any time exceed 5% of its workforce

## OTHER REGISTRATIONS

In addition to registration with the BOI and the PEZA, investors that locate their operations in other special economic zones may also be entitled to incentives.

### Enterprises registered with the Subic Bay Metropolitan Authority

The Subic Special Economic Zone (**SSEZ**) and Subic Freeport Zone (**SFZ**) were established by the Philippine government with the aim of developing the area into a self-sustaining industrial, commercial, financial and investment center in the Philippines. In addition, the SFZ was established to be operated and managed as a separate customs territory ensuring the free flow or movement of raw materials, capital, equipment and consumer items within, into, and exported out of the SFZ.

The territory of the SSEZ includes the city of Olongapo and the municipality of Subic, and the former US Naval Base at Subic Bay as well as its extensions located in the municipalities of Hermosa and Morong in Bataan Province. The SFZ is an area within the SSEZ that is fenced in and designated as a Freeport Zone.

A business enterprise may register with the Subic Bay Metropolitan Authority (**SBMA**) as an Ecozone Enterprise in the SSEZ, or a Freeport Enterprise in the SFZ.

A SSEZ Enterprise is a business entity located within the SSEZ that is duly registered with the SBMA to operate any lawful economic activity within the SSEZ. An SFZ Enterprise is a business entity located within the SFZ that is duly registered with the SBMA. Registration as an SSEZ/SFZ Enterprise is open to any business enterprise in any area of economic activity, subject only to limitations under the Philippine Constitution.

An SSEZ Enterprise shall be entitled to the 5% special tax on gross income earned, in lieu of national and local taxes, while an SFZ Enterprise shall be entitled to: (i) tax- and duty-free importation within the SFZ; and (ii) 5% special tax on gross income earned, in lieu of national and local taxes.

### Enterprises Registered in the Clark Special Economic Zone

The Clark Special Economic Zone (**CSEZ**) covers certain areas of Angeles City, the municipalities of Mabalacat and Porac in Pampanga province, and the municipalities of Capas and Bamban in Tarlac province.

A portion of the CSEZ has been converted into a freeport zone called the Clark Freeport Zone. The Clark Freeport Zone is operated and managed as a separate customs territory, with the following incentives available to registered business enterprises located therein: (i) tax rate of 5% on gross income earned, in lieu of national and local taxes; and (ii) tax- and duty-free importation of raw materials and capital equipment. The government agency that registers enterprises and grants and administers incentives to those enterprises is the Bases Conversion and Development Authority (**BCDA**), with the Clark Development Corporation (**CDC**) as its implementing arm.



<sup>1</sup> Please note that Republic Act ("RA") No. 10963 as amended by a presidential veto of certain items, appears to remove the VAT zero-rating privilege of the sale of goods and services to registered enterprises within a separate customs territory as provided under special law. This has created some uncertainty on the VAT exemption of PEZA enterprises because RA No. 10963 did not repeal the RA No. 7916 (as amended by RA No. 8748) which states that economic zones are operated and managed as a separate customs territory. Thus, there are conflicting opinions on whether services rendered to PEZA enterprises may qualify for 0% VAT or will be subject to 12% VAT.

# 05

## PUBLIC COMPANY INVESTMENTS

Investments in public companies are subject to the same foreign equity restrictions as those applicable to private companies. In terms of corporate governance and share acquisitions and transfers, they are subject to additional or stricter rules that are essentially intended to protect public investors.



## MANDATORY TENDER OFFER

Under the Philippine Securities Regulation Code (SRC), any person or group of persons acting in concert, who intends to acquire any of the following amounts of shares in a public company must do a tender offer prior to completing the proposed acquisition:

- A. At least 15% of the shares in the public company in one or more transactions within a period of 12 months
- B. At least 35% of the outstanding voting shares in the public company, or such outstanding voting shares that are sufficient to gain control of the board of directors of the public company, in one or more transactions within a period of 12 months
- C. At least 35% of the outstanding voting shares in the public company, or such outstanding voting shares that are sufficient to gain control of the board of directors of the public company, directly from one or more stockholders
- D. Such amount of the outstanding shares in the public company that will result in the acquiring party owning more than 50% of the total outstanding shares

The SRC lists down specific types of acquisitions that are exempt from the tender offer requirement, including, among others, (i) purchases through an open market at the prevailing market price, and (ii) merger or consolidation.

## REPORTING OF ACQUISITION OF SUBSTANTIAL SHAREHOLDINGS

A person is required to file a report regarding his acquisition of beneficial ownership of shares in a public company in the following instances:

- A. Upon acquisition of 5% beneficial ownership
- B. Upon any increase (to less than 10%) or decrease in beneficial ownership
- C. Upon acquisition of at least 10% beneficial ownership
- D. Upon any change in the 10% beneficial ownership
- E. Upon change in the information submitted in an earlier beneficial ownership report

“Beneficial owner” is defined in the SRC rules as any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote, or to direct the voting of such security) and /or investment returns or power (which includes the power to dispose of, or to direct the disposition of such security).

The report referred to above must be filed with the SEC, the Philippine Stock Exchange (PSE), and the public company.

## CORPORATE STRUCTURE: GOVERNANCE, OFFICERS, STOCKHOLDERS

“Beneficial owner” is defined in the SRC rules as any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote, or to direct the voting of such security) and /or investment returns or power (which includes the power to dispose of, or to direct the disposition of such security).

The report referred to above must be filed with the Philippine Securities and Exchange Commission (SEC), the Philippine Stock Exchange (PSE), and the public company.

- A. The board of directors is primarily responsible for governance of the company. It should be composed of a majority of non-executive directors who possess the necessary qualifications to effectively participate and help secure objective, independent judgment on corporate affairs and to substantiate proper checks and balances. It should have at least three independent directors, or such number as to constitute at least one-third of the members of the board of directors, whichever is higher.
- B. A public company should have the following committees:
  - Audit Committee
  - Corporate Governance Committee
  - Board Risk Oversight Committee
  - Related Party Transaction Committee
- C. The board of directors should establish corporate disclosure policies and procedures to ensure a comprehensive, accurate, reliable and timely report to shareholders and other stakeholders that gives a fair and complete picture of a company's financial condition, results and business operations.
- D. The board must appoint a compliance officer, who shall be responsible for monitoring, reviewing, evaluating and ensuring the compliance by the company, its officers and directors with the relevant laws, rules and regulations and all governance issuances of regulatory agencies, and the Code of Corporate Governance for Publicly Listed Companies.
- E. The company should establish standards for the appropriate selection of an external auditor, and exercise effective oversight of the same to strengthen the external auditor's independence and enhance audit quality.
- F. The board of directors should oversee that an appropriate internal control system is in place, including setting up a mechanism for monitoring and managing potential conflicts of interest of Management, board members, and shareholders.

- G. The board of directors should ensure that basic shareholder rights are disclosed in the Manual on Corporate Governance and on the company's website. It should encourage active shareholder participation.
- H. The board of directors should identify the company's various stakeholders and promote cooperation between them and the company in creating wealth, growth and sustainability.

## DISCLOSURE OBLIGATION OF PUBLIC COMPANIES

Public companies are required to comply with the following disclosure requirements:

- A. Structured/regular continuing disclosure requirements, including submission of (i) periodic and other reports and (ii) submission of beneficial ownership report
- B. Unstructured/current continuing disclosure requirements (relating to every material fact or event that occurs which would reasonably be expected to affect investors' decision in relation to the shares)

In addition, in the event a news report appears in the media involving an alleged material event, which report would create public speculation if not officially denied or clarified by the issuer, and the issuer has not yet submitted a current report therefor, the SEC may require the issuer to file such a report within the period prescribed, in order to clarify the news report.

## REGISTRATION OF SECURITIES

Items 1.1. to 1.4 above cover certain topics that may be relevant to foreign companies that intend to invest in public companies in the Philippines.

In cases where, instead of investing in shares in a public company in the Philippines, the foreign company would like to offer its shares or other types of securities to persons in the Philippines, or would like its subsidiary in the Philippines to go public, then it should be aware of the requirement for the registration of securities under the SRC.

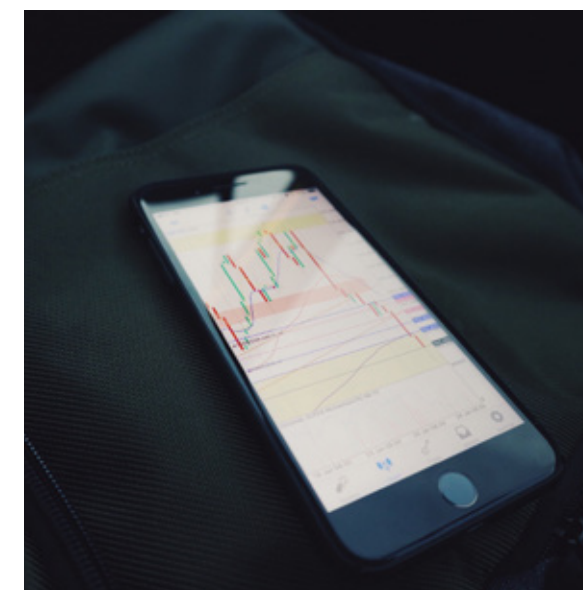
Under the SRC, as a rule, no securities shall be sold or offered for sale or distribution within the Philippines unless such securities shall have been registered with the SEC. By way of exception, registration of securities with the SEC is not required under any of the following circumstances, notwithstanding that the subject securities are sold or offered for sale or distribution within the Philippines:

- A. If the securities are of a class of securities that is exempt as listed in Section 9.1 of the SRC, including, among others: (i) any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity, provided, that the SEC may

require compliance with the form and content for disclosures the SEC may prescribe; (ii) any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Rule Regulatory Board, or the BIR; and (iii) any security issued by a bank except its own shares of stock

- B. If the securities are to be offered or sold in a transaction that is exempt as listed in Section 10.1 of the SRC, including, among others: (i) the distribution by a corporation actively engaged in the business authorized by its articles of incorporation, of securities to its stockholders or other security holders as a stock dividend or other distribution out of surplus; (ii) the sale of capital stock of a corporation to its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale of such capital stock; (iii) the sale of securities by an issuer to fewer than 20 persons in the Philippines during any 12-month period (private placement); and (iv) the sale of securities to any number of qualified buyers (as this term is defined in SRC rules)
- C. If the securities are to be offered or sold in a transaction that is not an exempt transaction under Section 10.1 but which transaction the SEC, pursuant to its power under Section 10.2 of the SRC, exempts from the registration requirement on the ground that the SEC finds that requiring registration is not necessary in the public interest or for the protection of the investors such as by reason of the small amount involved or by the limited character of the offering

If the company intends to list the securities on the PSE, it must comply with the listing requirements under PSE rules.





# 06

## FOREIGN EXCHANGE CONTROLS



### CROSS BORDER REMITTANCE OF PHILIPPINE PESO

Under the regulations of the Bangko Sentral ng Pilipinas (BSP or the Central Bank of the Philippines), an amount of more than PHP 50,000 may be remitted into and out of the Philippines only with BSP approval. BSP approval is generally granted only under specific conditions — for testing or calibration of money or for numismatics.



### CROSS BORDER REMITTANCE OF FOREIGN EXCHANGE

The Manual of Regulations on Foreign Exchange Transactions issued by the BSP (MORFXT) generally allows the electronic transfer of foreign currency into or out of the Philippines without prior approval from the BSP.

On the other hand, a person, who brings into or takes out of the Philippines foreign currency and other foreign currency-denominated bearer monetary instruments, through means other than electronic transfer of funds, in excess of USD10,000 or its equivalent is required to declare the same in writing and to furnish information on the source and purpose of the transport of such currency or monetary instrument.

#### Trade Transactions

Under BSP regulations, provided that the subject of the importation is not a prohibited commodity and subject to compliance with the relevant guidelines of the BSP, residents are generally allowed to purchase foreign exchange from the Philippine banking system without prior BSP approval to fund payments for imports under certain arrangements. These arrangements include letters of credit, documents against payment, documents against acceptance, direct remittance, advance payment, and open account (including intercompany netting arrangement among non-bank related parties).

As regards export trade transactions, payments for exports made under certain arrangements, such as letters of credit, documents against payment or cash against documents, documents against acceptance, and open account arrangements, are generally allowed without prior BSP approval, provided that the subject of the exportation is not a prohibited commodity.

#### Non-trade Transactions

BSP regulations generally allow residents to purchase foreign exchange from the Philippine banking system without prior BSP approval if the foreign exchange will be used to fund payments to non-resident beneficiaries for non-trade transactions enumerated in the relevant regulations of the BSP, subject to submission of an application to purchase foreign exchange and documentary requirements to the selling bank.

However, prior BSP approval and/or registration with the BSP of foreign loans is required to enable the borrower to purchase foreign exchange from the Philippine banking system to service payment of the principal and interest on foreign loans. Further, registration of foreign direct investments with the BSP is required if the investee firm needs to purchase foreign exchange from the Philippine banking system to fund the repatriation of capital and the remittance of profits, dividends and earnings which accrue thereon.

Obtaining prior BSP approval and/or registration of foreign loans and registration of foreign direct investments with the BSP are not mandatory. These requirements apply only if foreign exchange to service payments on the foreign loan and in respect of foreign direct investment, to fund repatriation of capital and remittance of profits, dividends and earnings which accrue thereon, will be purchased from the Philippine banking system.

#### Outward Investments

BSP regulations allow residents to invest in: (i) debt and equity securities issued offshore by non-residents; (ii) offshore foreign currency-denominated mutual funds and UITFs; (iii) foreign currency-denominated intercompany loans to offshore parent companies/subsidiaries of residents with an original tenor of at least one year; (iv) investments in real property abroad; and (v) foreign currency-denominated investment instruments issued onshore by non-residents without BSP approval if such investments are funded by:

- A. the resident's foreign currency deposit account and/or
- B. foreign exchange of up to USD 60,000,000 purchased from the Philippine banking system per investor per year.

Qualified investors, such as insurance and pre-need companies, collective/pooled funds, public or private pension or retirement or provident funds, may apply with the BSP for a higher annual investment limit.

# 07

## TAXATION



### CORPORATE INCOME TAX

A domestic corporation is taxed on its net income (gross income less allowable deductions) from all sources at the rate of 30%. A resident foreign corporation, such as a branch, is taxed only on its net income from Philippine sources at the same rate as a domestic corporation.

A non-resident foreign corporation is subject to final withholding tax on its gross income (without the benefit of deductions) from Philippine sources at the rate of 30%.

A foreign corporation is considered a resident when it is engaged in trade or business in the Philippines and is licensed by the Philippine SEC to engage in trade or business in the Philippines.

### INDIVIDUAL INCOME TAX

A resident citizen is taxed on income from all sources at progressive rates ranging from 0 to 35% of net taxable income.

A non-resident alien engaged in trade or business in the Philippines is generally subject to tax on net income from Philippine sources at the same progressive tax rates imposed on resident aliens and citizens. A non-resident alien is deemed engaged in trade or business if he or she stays in the Philippines for an aggregate period of more than 180 days during any calendar year.

A non-resident alien not engaged in trade or business in the Philippines is taxed on gross income from Philippine sources at the rate of 25%, withheld at source.

### VALUE ADDED TAX

Value Added Tax (**VAT**) is a tax on consumption levied on the sale, barter, exchange or lease of goods or properties and services in the Philippines, and on the importation of goods into the Philippines.

A person becomes subject to the 12% VAT when his or her gross sales or receipts for the past 12 months exceed PHP 3,000,000.

A VAT taxpayer is allowed input VAT credits against his or her output VAT liability, subject to certain limitations.

### LOCAL AND REAL PROPERTY TAXES

Local government units, such as provinces, cities, municipalities and barangays, may also levy taxes and impose local license fees pursuant to the Local Government Code. Furthermore, real property tax applied solely to the lands, buildings and other improvements thereon is levied on the assessed value of the real property.

### TREATIES

Currently, the Philippines has entered into tax treaties with 41 countries which include the following members of the European Union (**EU**): Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Netherlands, Poland, Romania, Spain, Sweden, and the United Kingdom. Under these treaties, the final withholding tax on dividends, interest and royalties can be as low as 10%.



# 08

## BORDER CONTROL AND CUSTOMS REGULATIONS

In addition to the 12% VAT and any applicable excise tax, importations are generally subject to customs duties. The Customs Modernization Act provides for the imposition of anti-dumping duty, countervailing duty, marking duty, safeguard duty and discriminating duty under special circumstances.

The rules of the Bureau of Customs (BOC) on border control measures prevent the entry into the Philippines of infringing merchandise and ensure expedited procedures for the handling and disposition of goods suspected to be imported in violation of the Intellectual Property Code of the Philippines (IP Code).



The Strategic Trade and Management Act likewise provides a mechanism for trade control in the importation, exportation, re-exportation, reassignment, transit and transshipment of strategic goods and the provision of related services.

Strategic goods are goods enumerated in the National Strategic Goods List, which has yet to be issued by the National Security Council - Strategic Trade Management Committee. These are products that, for security reasons or due to international agreements, are considered to be of such military importance that their export is either prohibited altogether or subject to specific conditions. Such goods are generally suitable to be used for military purposes or for the production of weapons of mass destruction.

Related services refer to brokering, financing, and transporting in relation to the movement of strategic goods between two foreign countries and providing technical assistance.

### CUSTOMS AND TRADE AGREEMENTS

The Philippines is a member of the Association of Southeast Nations (ASEAN) and is a signatory to the ASEAN Trade in Goods Agreement (previously referred to as the **ASEAN Free Trade Area Common Effective Preferential Tariff Scheme**) along with the other ASEAN member states. The ASEAN aims to eliminate all import duties amount the member states.

In addition, as part of the ASEAN, the Philippines has existing FTAs with China (**ASEAN-China**), South Korea (**ASEAN-Korea**), Japan (**ASEAN-Japan Comprehensive Economic Partnership**), Australia and New Zealand (**ASEAN-Australia and New Zealand**), and India (**ASEAN-India**).

### SPECIAL DISCUSSION REGARDING EU

The EU-Philippines Free Trade Agreement negotiations was launched in December 2015. A series of negotiation rounds are being undertaken with the aim to conclude an agreement that covers relevant trade issues such as tariffs, non-barriers to trade, trade in services and investment as well as trade aspects of public procurement, intellectual property (IP), competition and sustainable development. The Philippine Senate recently ratified the Framework Agreement on Partnership and Cooperation Between the Philippines and the European Union (PCA). The PCA should bolster the Philippines' status as a beneficiary country under the EU's Generalised Scheme of Preferences Plus (GSP+) and provide basis for concluding a free trade agreement with the EU.

### EU GSP+

The EU has also granted the Philippines zero tariff for over 6000 products to be exported to any of the 28 member states under the Generalized System of Preferences Plus (GSP+). Products that may avail of the duty free access include coconut and marine products, processed fruit, prepared food, animal and vegetable fats and

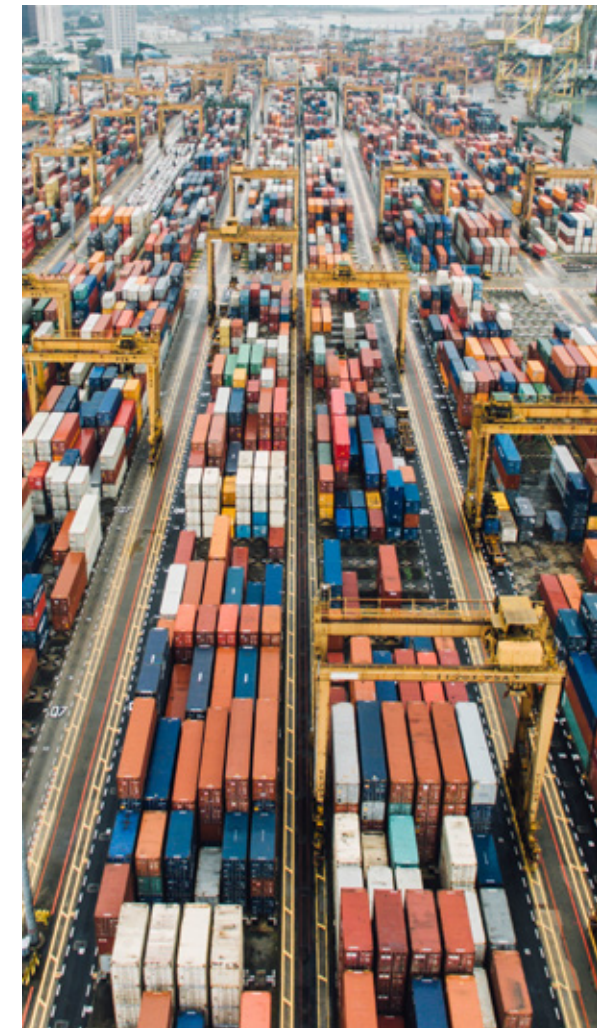
oils, textiles, garments, headwear, footwear, furniture, umbrellas, and chemicals.

The Philippines, meanwhile, has signed a free trade agreement with the European Free Trade Association (EFTA) Member States - Iceland, Liechtenstein, Norway and Switzerland, on 28 April 2016. The Parties are currently undertaking their respective domestic processes for the ratification and entry into force of the Agreement.

The Philippines' engagement with EFTA is part of a parallel three-pronged approach to increase the country's presence in the European region through the FTA engagements with EFTA and the European Union and the EU Generalized System of Preferences.

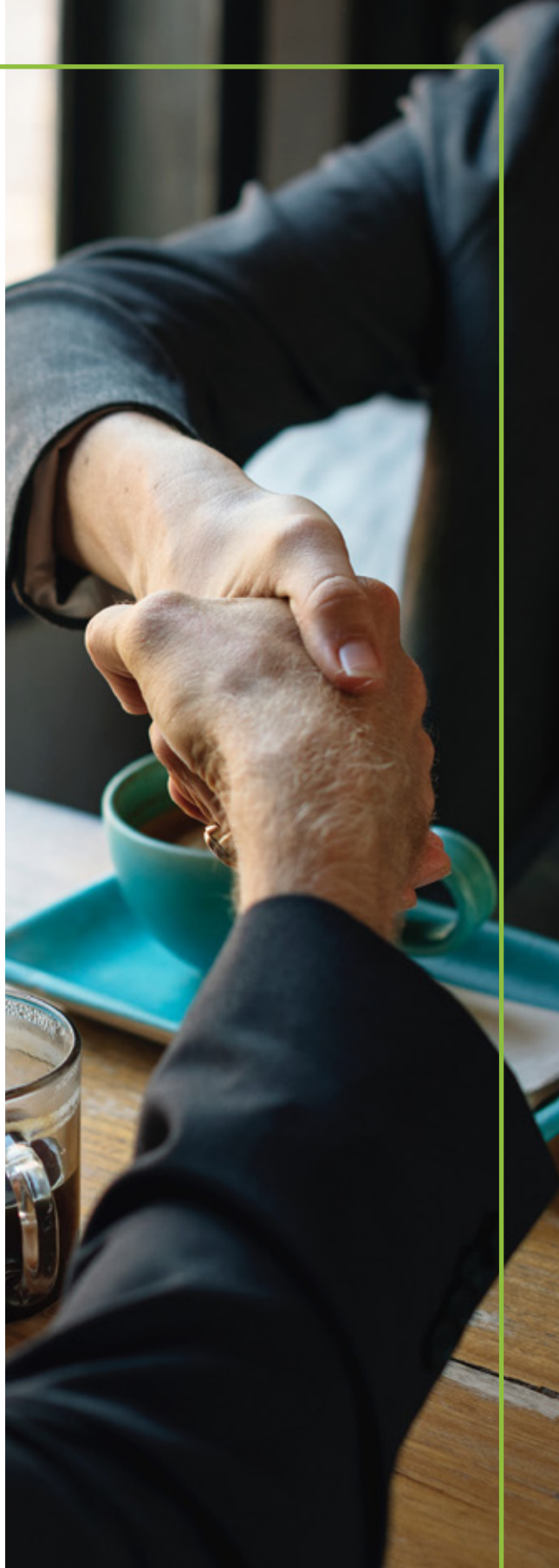
New enterprises operating in the special zones may enjoy income tax holidays for up to eight years from the start of commercial operations. The enterprises are also entitled to a preferential tax treatment of 5% tax on gross income in lieu of all other Philippine income taxes.

Goods that are imported into special economic zone are generally not subject to duty or tax while they remain inside the zones. However, they will become subject to duties and taxes if they are removed from the ecozone.



# 09

## EMPLOYMENT



### LABOR STANDARDS

The Labor Code of the Philippines (**Labor Code**) lays down the minimum terms, conditions and benefits of employment that employers must provide or comply with and to which the employees are entitled as a matter of right.

#### COMPENSATION

The Philippines has a minimum wage law. The minimum wage rate varies from one region of the country to another and is set by the relevant Regional Tripartite Wages and Productivity Board. An employer may not pay lower than the minimum wage the Regional Tripartite Wages and Productivity Board has set for the region where its workers are working. Under the most recent wage order for the National Capital Region (i.e., Metro Manila), the minimum gross basic wage is PhP 502 per day plus cost of living allowance of PhP 10 per day.

Wages should be paid in legal tender (i.e., cash) at least once every two weeks or twice a month at intervals not exceeding 16 days.

#### WORK HOURS AND OVERTIME

The normal hours of work should not exceed eight hours a day. Unless there is a valid compressed work week arrangement, an employee who renders work in excess of eight hours a day is entitled to overtime pay equivalent to the applicable wage rate plus at least 25% thereof. The overtime rate will vary if the overtime work is rendered on a rest day, regular holiday or special day or during the period between 10 pm and 6 am of the following day. However, certain classes of employees (called exempt employees in this publication) are not entitled to such overtime pay, namely:

- A. Government employees
- B. Managerial employees<sup>2</sup> and officers or members of the managerial staff<sup>3</sup>
- C. Field personnel<sup>4</sup>
- D. Members of the family of the employer who are dependent on him for support;
- E. Domestic helpers and persons in the personal service of another

<sup>2</sup> Employees who meet the following conditions may be considered as managerial employees:

- Their primary duty consists of the management of the establishment where they are employed or of a department or subdivision of the establishment;
- They customarily and regularly direct the work of two or more employees in such establishment; and
- They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight.

<sup>3</sup> Employees who meet the following conditions may be considered as officers or members of the managerial staff:

- Their primary duty consists of the performance of work directly related to management policies of their employer;

- F. Workers who are paid by results, as determined by the Secretary of the **DOLE** in appropriate regulations

Non-exempt employees are the workers who do not fall in the above enumeration.

Entitlement of employees to overtime pay depends on the nature of their duties and responsibilities. If the employees' duties and responsibilities do not qualify them as exempt employees, they are entitled to overtime pay. Conversely, should these employees' duties and responsibilities qualify them as exempt employees, they are not entitled to overtime pay.

Furthermore, employers may not require employees to perform overtime work except in certain cases and provided appropriate compensation is paid. In practice, they ask employees to sign employment contracts where the employees agree to perform overtime work.

#### NIGHT SHIFT DIFFERENTIAL

If a non-exempt employee performs work between 10 pm and 6 am, he or she must be paid a night shift differential equivalent to at least 10% of his or her regular wage for work done between these hours.

#### REST DAYS

An employer may require its employees to work six days per week. Employees, except exempt employees, are entitled to a rest period without pay of not less than 24 consecutive hours for every six consecutive normal working days. For work done on rest days, the employer should pay compensation equivalent to the applicable wage rate plus at least 30% thereof. The rate for work on a rest day will vary if the rest day is also a regular holiday or a special day or the work is during the period between 10 pm and 6 am of the following day.

Moreover, employers may not require employees to work during their scheduled rest day except in certain cases and provided appropriate compensation is paid. In practice, they ask employees to sign employment contracts where the employees agree to perform work outside their normal work schedule.

• They customarily and regularly exercise discretion and independent judgment;

• They (a) regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment where the managerial employee is employed or a subdivision of the establishment; (b) execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or (c) execute under general supervision special assignments and tasks; and,

• They do not devote more than 20% of their working hours to activities that are not directly and closely related to the performance of the work described in the immediately preceding three bullets.

<sup>4</sup> Field personnel refer to non-agricultural workers who regularly perform their duties away from the principal place of business or branch office of their employers and whose actual hours of work in the field cannot be determined with reasonable certainty.

## REGULAR HOLIDAYS

There are 12 regular holidays, namely:

- New Year's Day (1 January)
- Maundy Thursday (movable date)
- Good Friday (movable date)
- Eidul Fitr (movable date)
- Eidul Adha (movable date)
- Araw ng Kagitingan (Monday nearest 9 April)
- Labor Day (Monday nearest 1 May)
- Independence Day (Monday nearest 12 June)
- National Heroes Day (Last Monday of August)
- Bonifacio Day (Monday nearest 30 November)
- Christmas Day (25 December)
- Rizal Day (Monday nearest 30 December)

Except exempt employees and employees of retail and service establishments regularly employing fewer than 10 workers, employees are entitled to be paid their regular daily wage for any unworked regular holiday. When an employer asks a non-exempt employee to work during a regular holiday, the employee should receive at least 200% of his applicable wage rate on the regular holiday. The rate for work on a regular holiday will vary if the regular holiday work is rendered during the period between 12 midnight and 6 am and 10 pm and 12 midnight of the regular holiday.



## SPECIAL HOLIDAYS

There are four special holidays, namely:

- Benigno S. Aquino Jr. Day (Monday nearest 21 August)
- All Saints Day (1 November)
- Feast of the Immaculate Conception of Mary (8 December)
- Last day of the year (31 December)

The President may declare additional special holidays.

Employees who are not required to work on these special days are not, by law, entitled to compensation. Work performed on these days by non-exempt employees,

however, merits compensation equivalent to the applicable wage rate plus at least 30% thereof. If the special day also happens to be the non-exempt employee's scheduled rest day, the premium rate is increased to at least 50% of the applicable wage rate. The rate for work on a special holiday will vary if the special holiday work is rendered during the period between 12 midnight and 6 am and 10 pm and 12 midnight of the special holiday.

## SERVICE INCENTIVE LEAVE

Except for exempt employees, every employee who has rendered at least one year of service is entitled to a yearly service incentive leave (which is commonly replaced by vacation leave) of five days with pay. The service incentive leave should be converted to its money equivalent and paid to the non-exempt employee by the employer if not used or exhausted by the said employee at the end of the year. As a general rule, an employer can regulate the schedule of the service incentive leave of its employees.

## MEAL PERIOD

An employer must give its non-exempt employees at least one hour non-compensable time-off for regular meals. However, an employer is allowed to give employees a meal break of less than one hour in certain cases. In any of these cases, the shorter meal period must be considered as compensable hours worked and must not, in any case, be less than 20 minutes.

## LACTATION PERIOD

Nursing employees are entitled to paid break intervals (i.e., lactation periods) in addition to the unpaid regular one-hour meal period, to breastfeed or express milk. There may be several lactation periods of short duration during the work day; and, each lactation period should include the time it takes a nursing employee to go to and from the workplace lactation station. The employer and nursing employee may agree on the duration and frequency of the lactation periods, provided the total length of all the lactation periods is not less than 40 minutes for every eight-hour working period.

## PRIVATE RETIREMENT BENEFIT

An employee is entitled to receive such retirement benefits as he or she may have earned under existing laws and any collective bargaining agreement (CBA) and other agreements. However, an employee's retirement benefits under any collective bargaining and other agreements should not be less than those provided by the Labor Code.

In the absence of any provision on optional retirement in a CBA, employer's retirement plan or any other agreement, an employee (except an underground mining employee) has the option to retire and receive retirement pay upon reaching the age of 60 years or more, provided he or she has served at least five years with his or her employer. When the employee (who is not an underground mining employee) reaches the compulsory retirement age of 65 years, his or her employer may retire him or her and pay him or her retirement pay. In the case of underground mining employees, they may retire and receive retirement

pay upon reaching 50 years of age and completing five years of service to their employer, and their employer may retire them and pay them retirement pay when they reach 60 years (which is the compulsory retirement age for underground mining worker). An eligible retiring employee is entitled to retirement pay equivalent to at least his or her half-month salary for every year of service, a fraction of at least six months of service being considered as one whole year.

The term "half-month salary" for retirement pay purposes generally includes the 15-day salary of the employee based on his or her latest salary date, cash equivalent of five days of service incentive leave, 1/12 of the 13th month pay due the employee, and all other benefits that the employer and employee may agree upon to be included in computing the retirement pay.

## MATERNITY LEAVE

A qualified pregnant woman is entitled to maternity leave of 60 days in case of normal delivery, abortion or miscarriage, or 78 days in case of caesarean delivery. During such leave, the pregnant woman shall receive daily maternity benefit equivalent to 100% of her average salary credit, computed based on the formula of the Social Security System (SSS), for 60 or 78 days, as the case may be. The maternity benefits shall be paid only for the first four deliveries or miscarriages. The employer is required to advance to the pregnant female employee the full maternity benefit within 30 days from the filing of the maternity leave application. The SSS shall immediately reimburse the employer 100% of the amount of maternity benefits advanced to the employee upon receipt of satisfactory proof of such payment and legality thereof.

## PATERNITY LEAVE

All married male employees, regardless of employment status, are entitled to paternity leave. It applies to the first four deliveries of the employee's lawful wife with whom he is cohabiting. The leave shall be for seven days, with full pay, consisting of his basic salary, provided that his pay shall not be less than the mandated minimum wage. In the event the paternity leave benefit is not availed of, said leave is not convertible to cash.

## PARENTAL LEAVE

In addition to other leave privileges under existing laws, a solo parent employee as defined in the law who has rendered service of at least one year is entitled to parental leave of not more than seven working days every year. A change in the status or circumstance of the parent claiming the parental leave benefit, such that he or she is no longer left alone with the responsibility of parenthood, shall terminate his or her eligibility for this benefit.

## LEAVE DUE TO DOMESTIC VIOLENCE

An employee who is a victim under Republic Act No. 9262 (**Anti-Violence against Women and Their Children**) is entitled to paid leaves of up to 10 days in addition to paid leaves under other laws, extendible when the necessity

arises as specified in a protection order issued by an appropriate authority. The availment of the 10-day leave is at the option of the female employee, and such leave shall cover the days that the employee has to attend to medical and legal concerns. Unused leaves are not cumulative and not convertible to cash.

## 13<sup>TH</sup> MONTH PAY

All "rank-and-file" employees of employers covered by the Revised Guidelines on the Implementation of the 13th Month Pay Law are entitled to a bonus called "13th month pay," regardless of the amount of their monthly basic salary, their designation or employment status, and the method by which their salary is paid, provided they have worked for at least one month during a calendar year. The 13th month pay of a rank-and-file employee should be equivalent to at least 1/12 of the total basic salary that the employee earned within a calendar year. The required 13th month pay should be paid not later than 24 December of each year. Nonetheless, an employer may give its rank-and-file employees half of the required 13th month pay before the opening of the regular school year in June and the other half on or before 24 December. The frequency of payment of the 13th month pay may also be the subject of an agreement between the employer and the collective bargaining agent of its rank-and-file employees.

## RULE ON NON-DIMINUTION OF EMPLOYMENT BENEFITS

If an employer grants employee benefits that are not required by law or are more than that required by law, the benefit may become part of the terms and conditions of employment and cannot be unilaterally withdrawn or discontinued by the employer, despite the absence of a legal or contractual requirement to grant the said benefit, if the grant of the benefit has become an employer practice or policy.

The following criteria may be used to ascertain the existence of a binding and enforceable employer practice or policy under Philippine law:

- a. The act of the employer has been done for a long period or is consistently repeated.
- b. The act is done deliberately, knowingly and consistently.
- c. The act is not a product of erroneous interpretation or construction of a doubtful or difficult question of law.

## LABOR RELATIONS

The right of employees to self-organization is embodied in the 1987 Philippine Constitution. Furthermore, it is the policy of the Philippines to promote the free and responsible exercise of the right to self-organization.

Employees generally have the right to self-organization and the right to form, join or assist labor unions for purposes of collective bargaining. There are, however, certain limitations to the right to form, join or assist labor unions. Managerial employees and confidential employees are not eligible to form, join or assist labor unions. Supervisory employees are not eligible for membership in the collective bargaining unit of rank-and-file employees, but may join, assist or form separate collective bargaining units and/or labor unions of their own.

While the formation of labor unions is encouraged, the activities of labor unions are regulated. For example, labor unions are not allowed to commit unfair labor practices. Labor unions are prohibited from, among other things: (i) restraining or coercing employees in the exercise of their right to self-organization; (ii) causing or attempting to cause an employer to discriminate against an employee; and (iii) asking for or accepting negotiation fees from the employer as part of the settlement of any issue in collective bargaining.

A labor union has to be registered with the DOLE for it to enjoy all the rights granted by law to labor unions. It may register as an independent labor union or as a charter of a federation or national union. Also, it has to be recognized or certified as the exclusive bargaining representative of the employees of the bargaining unit for it to represent them in collective bargaining. The Labor Code and its implementing rules and regulations define the registration process and specify the recognition or certification process and the manner of collective bargaining.

Employees, through their union representatives, may negotiate and enter into CBAs with their employers. The employees negotiate the terms and conditions of their employment through CBAs.

Employees, under specified circumstances, have the right to conduct a strike in accordance with law. Correspondingly, the employer, under specified circumstances, has the right to lock out employees.

Aside from labor unions, employees may form and join workers' associations and other mutual aid and benefit associations for legitimate purposes, other than collective bargaining.

The Labor Code also allows the formation of labor-management councils in private companies to provide a venue for labor and management representatives to discuss company and personnel policies. The Labor Code and its implementing rules and regulations specify the organizational structure and procedures in forming such councils.

## WELFARE LEGISLATION



The employer and its employees are required to be members of the SSS, Employees' Compensation (EC) program, Philippine Health Insurance Corporation (PhilHealth) and Home Development Mutual Fund (HDMF). The SSS administers both the social security and EC programs for employees in the private sector.

The employer should register with the SSS, PhilHealth and HDMF and report its employees for coverage with the said agencies. Furthermore, the employer and its employees should contribute to these agencies, with the contributions based on the monthly compensation of the employees. Each agency has its own definition of monthly compensation. The employer is responsible for withholding and remitting the contributions of its employees, and remitting its (i.e., the employer's) counterpart contributions, within the period that each agency has set. The employers' contributions may not be deducted from the employees' salary. Failure to remit the contributions to the SSS, PhilHealth and HDMF could give rise not only to monetary liability for the employer but also to criminal sanctions against the employer and its officers. If a juridical person is guilty of the offense, its managing director, partner, president, general manager and/or the responsible person are liable for the penalties.

The monetary liability would involve interest on the contributions that have not been remitted, computed from the date the contributions fall due until they are remitted to the relevant agencies. On the other hand, the criminal sanctions would involve a fine or imprisonment or both.

## RIGHTS OF EMPLOYER

Every employer has the right to regulate all aspects of employment according to its own discretion and judgment. This includes the hiring of employees, work assignments, instructing working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees. The only limitations to the exercise of this management prerogative are those imposed by labor laws and the requirements of good faith.

With respect to the transfer of employees, the employer has the prerogative to move them around in order to ascertain where they will function with maximum benefit to the company. While an employee enjoys the right to security of tenure, this does not mean that he has such a vested right in his or her position as would deprive the company of its prerogative to change the employee's assignment or transfer him or her where he or she will be most useful to the company. However, the transfer should not be unreasonable, nor inconvenient, nor prejudicial to the employee, and it should not involve a demotion in rank or a diminution of his or her salaries, benefits, and other privileges.

The termination of employees will be discussed in further detail below.

## CONTRACT OF EMPLOYMENT

Although not generally required, it is best to put the employment contract between the employer and the employee in writing. This will protect the employer in the event of a future disagreement as to the terms and conditions of employment.

It is also advisable for the employer to have an employment handbook containing the rules and regulations that will govern the relationship with the employee/s.



## TYPES OF EMPLOYMENT

The Labor Code and jurisprudence classify employment status into regular, project, seasonal, casual, probationary and fixed-term.

The employment status of an employee is not determined by the specific designation given to it in the employment contract but by the nature of the work being performed by the employee.

An employment is presumed to be regular or permanent in nature, unless the legal requirements for the other types of employment are strictly observed. For instance, a probationary employee must be provided with written standards for regular employment no later than the start of his or her employment. Otherwise, he or she shall be deemed a regular employee from the start of his or her employment.

The classification of an employee is important because under Philippine law, the causes for terminating an employer-employee relationship will depend upon the classification of the employee.

### REGULAR AND PROBATIONARY EMPLOYMENT

If an individual is engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer, he or she should be employed as a regular employee (i.e., an employee with an indefinite term) unless the employment relationship can qualify as an alternative employment arrangement.

In this connection, before an employee becomes a regular employee, his or her employer can require him or her to undergo probationary period. The maximum length of the probationary period is six months, counted from the date the new employee started working. The employer normally may not extend the probationary period. Once the new employee is allowed to work after the lapse of the probationary period, his or her employment will be deemed a regular employment by operation of law. Also, at or before the beginning of the probationary period, the employer must notify the employee of the standards that he or she must satisfy. Otherwise, the employment will also be deemed a regular employment from the time the employee started working.

### PROJECT AND SEASONAL EMPLOYMENT

There is project employment when the period of employment has been fixed for a specific undertaking, the completion of which has been determined at the time of the engagement of the employee. A project employee may acquire the status of a regular employee when he or she is continuously rehired after the cessation of a project and the tasks he or she performs are vital, necessary and indispensable to the usual business or trade of his or her employer.

In contrast, there is seasonal employment when the work is to be performed only at a certain time of the year and the employment is for the duration of that time of the year.

## CASUAL EMPLOYMENT

There is casual employment when an employee is engaged to perform work that is merely incidental to the business of the employer, and such work is for a definite period made known to the employee at the time of his or her engagement. If the casual employee renders at least one year of service, whether such service is continuous or not, he or she shall be considered a regular employee with respect to the activity for which he or she is employed and his or her employment shall continue while such activity exists.

## FIXED-PERIOD EMPLOYMENT

There is fixed-period employment when the commencement and termination dates of the employment relationship have been set before the employment relationship begins. Fixed-period employment is highly restricted and is subject to the following criteria: (i) the fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his or her consent; or (ii) it satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no dominance exercised by the former over the latter. As much as possible, fixed-period employment should involve highly educated people or highly technical positions.



## TERMINATION OF EMPLOYMENT

Corollary to the employer's right to hire, terminate and discipline employees is an employee's right to security of tenure.

In general, an employer may terminate an employment only if there is a legal (i.e., just or authorized) cause for termination and it has followed the procedures required for the cause of termination. At-will employment, where the employer may dismiss an employee at any time, without cause and by mere notice or salary in lieu of notice, is not allowed under Philippine labor law.

On the other hand, an employee may terminate his or her employment for any reason by serving a written notice to his or her employer at least one month in advance. In the event that the employee does not give any notice, the employer may hold the employee liable for damages. Under certain instances, the employee may terminate his or her employment without need of any notice.

## CAUSE FOR DISMISSAL

An employer may terminate an employment for any of the just and authorized causes defined in the Labor Code. The just causes for termination of employment are as follows:

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

On the other hand, the authorized causes for termination of employment are as follows:

- Installation of labor-saving devices
- Redundancy
- Retrenchment to prevent losses
- Closing or cessation of operation of the establishment or undertaking
- Disease, where the continued employment of the afflicted employee is prohibited by law or is prejudicial to his health as well as to the health of his co-employees

Termination of employment by the employer without a legal cause will entitle the illegally dismissed employee to reinstatement without loss of seniority rights and other privileges, to payment of full back wages and of other benefits or their monetary equivalent computed from the time compensation was withheld until actual reinstatement, and to payment of damages.

## PROCEDURES FOR DISMISSAL

In dismissing an employee from work due to a just cause, the Labor Code requires the employer to serve a written notice to the employee informing him or her of the charges against him or her. After serving the notice, the employer must afford the employee an opportunity to be heard where the employee can answer the charges with the assistance of counsel, if he or she so desires. If the employer decides to dismiss the employee, it must serve another written notice to the employee to inform him or her of its decision to dismiss him or her.

In case of termination of employment due to an authorized cause, the employer must serve a written notice to each affected employee and to the DOLE at least one month before the intended effective date of the termination. For employment termination by reason of disease, there must also be a certification by a competent public health authority that the disease cannot be cured within a period of six months even with proper medical treatment. In all cases of authorized cause employment termination, the employee is entitled to receive separation pay. The separation pay is equivalent to half-month's salary for every year of service or one-month's salary for every year of service depending on the authorized cause of employment termination.

If an employee is dismissed without his employer observing the appropriate procedures, he or she is entitled to nominal damages, the amount of which is subject to the discretion of the court, even if there is a just or authorized cause for employment termination. For this purpose, the court will take into consideration the relevant circumstances of each case, particularly the gravity of the due process violation. The nominal damage serves as a penalty upon the employer for its failure to comply with the requirements of procedural due process for employment termination.

# 10

## IMMIGRATION



### ENTRY TO THE PHILIPPINES

A foreign national, who is not a “restricted” national<sup>5</sup>, may enter the Philippines without obtaining an entry (9[a]) business visa from the Philippine Embassy from the country of origin. However, the said unrestricted foreign national must, upon entry: (a) have a passport valid for not less than six months; and (b) hold a valid return ticket. Upon arrival in the Philippines, the foreign national will be granted a 9(a) visa valid for 30-, 21-, 14-, or 7-days, depending on his or her nationality.

If the foreigner is a “restricted” national, he or she must, in addition to the passport and return ticket requirements, obtain from the Philippine Embassy or Consulate in his country of origin or residence a 9(a) visa before entering the country.

Nationals of countries that are part of the EU are not considered “restricted” nationals.



### WORK/EMPLOYMENT REQUIREMENTS

All foreign nationals who intend to work in the Philippines are required to obtain proper work visas and/or permits, through a local petitioner or sponsor. The local petitioner or sponsor may be a domestic corporation (incorporated in the Philippines) or a foreign corporation registered and licensed to do business in the Philippines. The work visa and/or permit applications are usually filed upon the arrival of the foreign national in the Philippines.

Entities engaged in nationalized or partly-nationalized industries (industries where foreign ownership / control is limited) can only employ foreign nationals as technical personnel and subject to issuance by the Department of Justice (DOJ) of an Authority to Employ. The issuance of an Authority to Employ is required before a foreign national can work for a partly-nationalized entity.

#### Short-Term Assignments (3-6 months)

A foreign national who: (a) intends to work in the Philippines for a short period not exceeding six months; and (b) will occupy a temporary position, is required by the Bureau of Immigration (BI) to obtain a special work permit (SWP). The SWP is a special permit issued for an initial period of three months and may be extended only once for another three months. The SWP must be filed by a local petitioner or sponsor on behalf of the foreign national, upon the latter’s arrival in the Philippines.

#### Long-Term Expatriates, and/or Local Transfer

##### Alien Employment Permit

A foreign national who intends to work in the Philippines beyond six months is required to obtain an alien employment permit (AEP) and a work visa from the relevant government agencies.

The issuance of an AEP is subject to the non-availability of a person in the Philippines who is competent, able and willing to perform the services for which the foreign national is desired. In general, the AEP application must first be filed with the DOLE on behalf of the foreign national.

It takes around two to three weeks from submission of the complete documentary requirements to process the AEP application. The validity period of the AEP usually coincides with the duration of the foreign national’s assignment in the Philippines.

There are certain instances when a foreign national is exempt/excluded from securing an AEP, some examples of which are when the foreign national is: (a) a corporate officer under the Corporation Code, Articles of Incorporation and By-Laws of the Corporation such as President, Secretary and Treasurer; (b) an intra-corporate transferee who is a manager, executive or specialist who is an employee of the foreign service supplier for at least one year prior to deployment to a branch/subsidiary/affiliate or representative office in the Philippines; and (c) a consultant who does not have an employer in the Philippines.

The AEP application, once accepted for filing by the DOLE, does not allow a foreign national to work immediately. A Provisional Work Permit will have to be applied for and issued before the foreign national can commence work with the Philippine employer during the pendency of the work visa and AEP applications.

<sup>5</sup> The Department of Foreign Affairs (DFA) Advisory enumerates the countries whose nationals are not required to obtain an entry or 9(a) visa from the Philippine Embassy/Consulate abroad before entering the country. These nationals are called “unrestricted” nationals. Nationals of countries not appearing in the DFA Advisory are called “restricted” nationals and are required to obtain a 9(a) visa from the relevant Philippine Embassy/Consulate prior to entering the Philippines. For further information, please visit the DFA’s website at [www.dfa.gov.ph](http://www.dfa.gov.ph).



## WORK VISAS

The most common types of work visas that may be obtained are the following:

### Pre-arranged employment or 9(g) visa

This visa is available to a foreign national who is proceeding to the Philippines to engage in a lawful occupation or gainful employment in a Philippine entity. The 9(g) visa may be extended to the foreign national's spouse and unmarried minor children under 21 years of age.

The 9(g) visa is granted for a period coterminous with the AEP, which is in turn granted for a period discretionary to the DOLE, usually based on the duration of the assignment of the foreigner. However, the officers of the BI have the discretion to shorten the validity period of the approved pre-arranged employment visa to one year.

It takes approximately two to three months from submission of the complete documentary requirements to process a 9(g) visa application.

### Treaty Trader's/Investor or 9(d) visa

A foreigner is entitled to a treaty trader or investor visa only if he or she is a national of the US, Germany or Japan, countries with which the Philippines has concluded a reciprocal agreement for the admission of treaty traders or investors. The local petitioning company must be majority-owned by US, German or Japanese interests. The nationality of the foreigner and the majority of the shareholders of the employer company must be the same.

When granted, the visa may be extended to the foreigner's spouse and unmarried children below 21 years of age.

The treaty trader's/investor's visa is granted for a period coterminous with the AEP, which is in turn granted for a period discretionary to the DOLE, usually based on the duration of the assignment of the foreigner. However, the officers of the BI have the discretion to shorten the validity period of the approved 9(d) visa to one year.

It takes approximately two to three months from submission of the complete documentary requirements to process a 9(d) visa application.

### Special non-immigrant (47[a][2]) visa

This visa is granted under Section 47(a)(2) of the Philippine Immigration Act, which allows the President to issue such visas when public interest warrants, subject to conditions the President may prescribe.

The President, acting through the appropriate government agencies, has exercised this authority to allow foreign nationals to be employed in supervisory, technical or advisory positions in Export Processing Zone Enterprises, BOI-registered enterprises, and Special Government Projects (e.g., MRT, Skyway).

The 47(a)(2) visa may be extended to the foreign national's spouse and unmarried minor children under 21 years of age.

The 47(a)(2) visa is generally valid for an initial period of one year and is renewable from year to year.

It takes approximately five to six weeks from submission of the complete documentary requirements to process a 47(a)(2) visa application.

Special types of work visas are the following:

### OBU or PD1034 visa

This visa is granted under Section 7 of Presidential Decree No. 1034, which allows foreign personnel to be assigned by any foreign bank to work in its OBU in the Philippines. Such foreign personnel, their spouses and unmarried children under 21 years of age shall be granted a multiple entry special visa, valid for a period of one year.

### Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouse or RA8756 Visa

This visa is granted under Section 5, Art. 60 of Republic Act No. 8756, which allows foreign personnel of regional or area headquarters and regional operating headquarters 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-immigrants, to be issued a multiple-entry special visa, which shall be valid for a period of three years. Please note, however, that the validity period of the visa may be shorter, depending on the contract of the foreign personnel.

### Subic Free Port Zone Work Visa

A foreign national who possesses executive or highly technical skills, which no Filipino citizen within the SFZ possesses, as certified by the DOLE, may apply for this visa with the SBMA.

### Clark Special Economic Zone Work Visa

Foreign nationals who possess executive or highly technical skills, which no Filipino citizen within the CSEZ possesses, may apply for this type of work visa with the Clark Development Authority.



## SPECIAL RESIDENT VISAS

A foreigner may apply for special resident visas. These visas allow a foreigner to work in the Philippines, subject to other requirements or limitations imposed by law.

The following are the different types of special resident visas:

### Special Resident Retiree's Visa

The special resident retiree's visa (SRRV) program is available to foreigners and former Filipinos at least 35 years of age, who deposit the minimum amount required by law with a bank accredited by the Philippine Retirement Authority (PRA).

The holder of an SRRV may stay in the Philippines indefinitely or visit the country at any time.

The holder may also invest in any of the areas specifically designated by the PRA.

### Special Investor's Resident Visa

The special investor's resident visa (SIRV) is a program offered by the Philippine government to alien investors wanting to obtain a special resident status with multiple entries for as long as the required investment subsists.

The applicant's spouse and unmarried children under 21 years of age, who are accompanying the applicant, may be included in the visa application.

### SIRV for Investors in Tourist-Related Projects and Tourist Establishments

A foreigner who invests an amount of at least USD50,000 in a qualified tourist-related project or tourism establishment, as determined by a governmental committee, shall be entitled to an SIRV.

### Subic Free Port Zone Residency Visas for Retirees

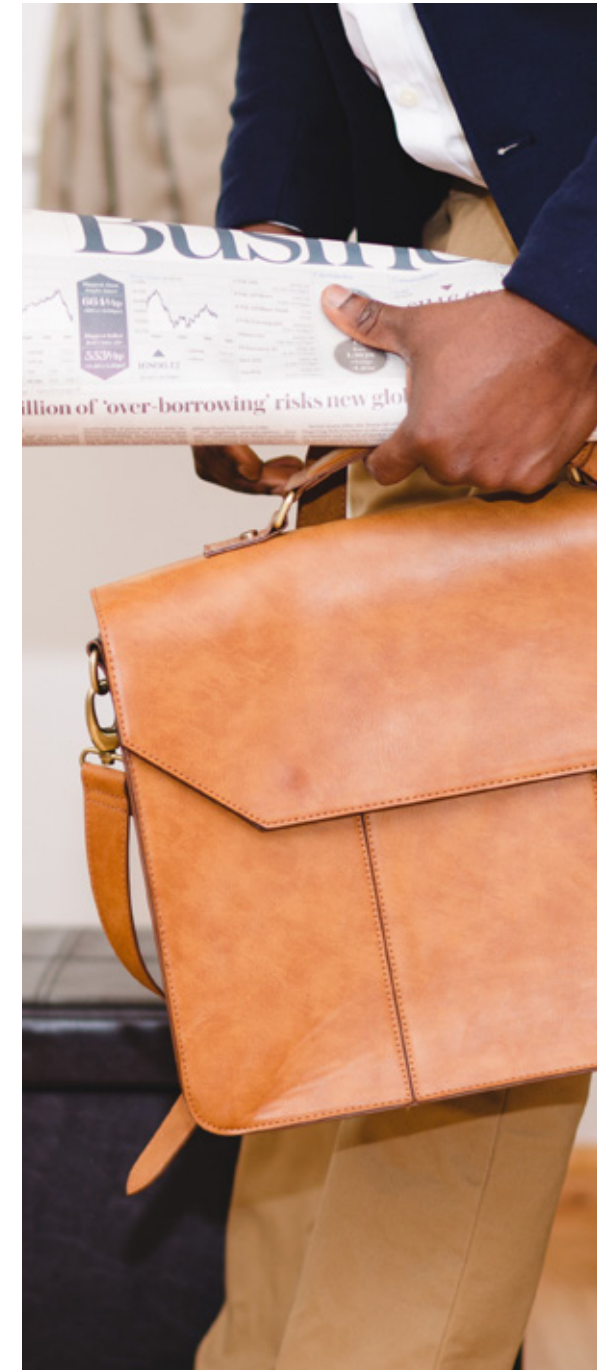
This visa requires the applicant to be over 60 years old, of good moral character, with no previous conviction of a crime involving moral turpitude, no longer employed or not self-employed, and receiving a pension or passive income, exceeding USD50,000 per year.

### Quota Visa

A Quota Visa is issued on "quota basis" (i.e., not more than 50 in a calendar year) to foreign nationals of countries that have reciprocity agreements with the Philippines. The following EU member countries have reciprocity agreements with the Philippines: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

## OTHERS

There are other types of visas that are available to foreign nationals depending on the following factors: (i) nature of the business, registration and corporate structure of the Philippine company; (ii) nature of the work that the foreign nationals will perform while in the Philippines; (iii) nationality of the majority stockholder of the corporation; (iv) nationality (original and/or acquired), as well as nationality of the spouses, if any, of the foreign nationals; and (iv) other related information.



# 11

## INTELLECTUAL PROPERTY

The Philippines is a member of the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (**Madrid Protocol**), and the World Trade Organization and, by such membership, adheres to the Agreement on Trade Related Aspects of Intellectual Property Rights (**TRIPS**).

Intellectual property rights are primarily protected and enforced in the Philippines through the IP Code, and the rules of the Intellectual Property Office (**IPO**) and the BOC (**BOC**). Remedies in connection with enforcement of intellectual property rights, such as injunctive relief and damages, may also be secured by the holder of the intellectual property right from the civil courts.



## INTELLECTUAL PROPERTY OFFICE

The IPO processes applications for trademarks, service marks, trade names, patents, utility models, industrial designs, and copyrighted works, and issues the corresponding certificates of registration. Copyrighted works are deposited with the National Library or the IPO, as well as the Supreme Court Library for copyrighted works in the field of law.

Trademarks, service marks, and trade names owned by persons, corporations, partnerships, or associations domiciled in the Philippines or in any foreign country may be registered with the IPO. Trade names are protected even before or without registration.

Rights to a mark are acquired by registration. Priority is given to whoever applies first for registration. There is a single procedure for both foreign and local applicants for the registration of marks. An applicant should file a declaration of use within three years from the date of application.

Trademark registration is valid for 10 years, for as long as the registrant files with the IPO a declaration of use/justifiable non-use within one year following the fifth anniversary of the registration or renewal date. The registration is renewable at the end of each 10-year period from the registration or renewal date so long as the mark is still in commercial use. Starting 1 August 2017, a declaration of actual use should also be filed with the IPO within one year from the renewal date in order to maintain the trademark registration.

Inventions, utility models and industrial designs may be patented. A patent is granted to the inventor who filed his or her patent application earlier than others, thus simplifying the determination of who is entitled to own the patent.

A patent registration for an invention is valid for 20 years from the filing date of the application, subject to the payment of an annual fee starting from the expiration of four years from the date of publication of the application. A registration for a utility model is valid for seven years from the filing date of the application and automatically expires at the end of the period. The term of registration of an industrial design is five years from the filing date and may be renewed for two consecutive periods of five years each.

Literary, scholarly, scientific, and artistic works, whether published or unpublished, may be copyrighted. Copyright protection extends to computer programs, multimedia works, and databases that are original by reason of the selection, coordination or arrangement of their contents.

In general, copyrights endure for the lifetime of the creator and for 50 years after his or her death.

## BORDER CONTROL

The BOC rules on border control measures prevent the entry into the Philippines of infringing merchandise and ensure expedited procedures for the handling and disposition of goods suspected to be imported in violation of the IP Code.

IP owners may record their products covered by patents, trademarks, copyrights and other similarly protected IP rights with the BOC.

The application for recordal serves as the consent of the IP owner for the BOC to conduct a physical inspection of imports suspected to be infringing. The application for recordal also serves as a continuing complaint on the part of the IP owner for importers of infringing products or material.

The recordal will be the basis of the BOC for monitoring suspected imports to determine whether they are liable to seizure, forfeiture and subsequent destruction. A BOC recordal is valid for two years from the date of recordal.

The Strategic Trade and Management Act also provides a mechanism for trade control in the importation, exportation, re-exportation, reassignment, transit, and transshipment of strategic goods and the provision of related services.

Strategic goods are goods enumerated in the National Strategic Goods List, which has yet to be issued by the National Security Council - Strategic Trade Management Committee. These are products that, for security reasons or due to international agreements, are considered to be of such military importance that their export is either prohibited altogether or subject to specific conditions. Such goods are generally suitable to be used for military purposes or for the production of weapons of mass destruction.

Related services refer to brokering, financing, and transporting in relation to the movement of strategic goods between two foreign countries and providing technical assistance.

## TECHNOLOGY TRANSFER ARRANGEMENTS

A technology transfer arrangement (TTA) is a contract or an agreement involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or the rendering of a service, including management contracts. It also refers to an agreement to transfer, assign, or license all forms of intellectual property rights, including the licensing of computer software, except computer software developed for the mass market.

TTAs should not contain certain prohibited clauses which are deemed to be adverse to competition and trade, and should contain certain mandatory provisions. Non-conformity to the requirement on prohibited and mandatory clauses will automatically render the TTA unenforceable. However, there are exceptional cases where exemptions from the prohibited and/or mandatory clauses may be allowed by the IPO on a case by case basis, upon showing that substantial benefits will accrue to the Philippine economy as a result of the implementation of the TTA.

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## CONSIDERATIONS FOR MEMBERS OF THE EU

The EU and the Philippines are both signatories to the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Madrid Protocol, and the TRIPS. The Philippines therefore grant nationals of Member States of the EU rights and remedies with regard to intellectual property rights similar to those afforded to Philippine nationals.

# 12

## COMPETITION LAW



## OVERVIEW

The Philippine Competition Act (PCA), which took effect on 8 August 2015, provides for the following, among others:

- A. The creation of the Philippine Competition Commission (PCC) as an independent quasi-judicial body classified as an attached agency to the Office of the President and as the primary government agency tasked with the implementation of the PCA
- B. The regulation of certain commercial activities associated with free and fair competition in the Philippines, such as anti-competitive agreements, abuse of market dominance, and anti-competitive mergers and acquisitions (M&A)
- C. The establishment of a regulatory framework for the investigation, review and approval, adjudication, enforcement and sanctioning of commercial activities relating to free and fair competition in the Philippines

The PCA represents the country's long-awaited comprehensive legal framework on antitrust. Passed as part of a concerted effort to prepare the country for the ASEAN integration, the PCA brings the Philippines closer to the level of antitrust regulation in other countries.



## PROHIBITED AGREEMENTS AND CONDUCT

The PCA prohibits anti-competitive agreements, abuse of a dominant position in the market, and anti-competitive M&A.

### ANTI-COMPETITIVE AGREEMENTS

The PCA prohibits the following anti-competitive agreements:

1. As illegal *per se*, agreements among competitors: (i) restricting competition on price, its components or other terms of trade; and (ii) various forms of bid rigging
2. Agreements among competitors, which have the object or effect of substantially preventing, restricting or limiting competition in the relevant market, in respect of: (i) setting, limiting, or controlling production, markets, technical development, or investment; and (ii) dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers, or any other means
3. Agreements other than (1) and (2) above that have the object or effect of substantially preventing, restricting or lessening competition in the relevant market in the Philippines, provided that those agreements, which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be prohibited under the PCA

### ABUSE OF DOMINANT POSITION

The PCA also prohibits an entity from abusing its dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition.

Under the PCA, such conduct would include the following actions of a dominant entity:

1. Selling goods or services below cost with the object of driving competition out of the relevant market
- The PCC will consider whether the entity or entities did not have such object, and the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality.
2. Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner, except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws
3. Tying, or making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction
4. Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where the effect may be to lessen competition substantially

However, the following are considered permissible price differentials:

- Socialized pricing for the less fortunate sector of the economy
  - Price differential that reasonably or approximately reflects differences in the cost of manufacture, sale or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers
  - Price differential or terms of sale offered in response to the competitive price of payments, services or changes in the facilities furnished by a competitor
  - Price changes in response to changing market conditions, marketability of goods or services, or volume
5. Imposing restrictions on the lease or sale or trade of goods or services, such as where, to whom, or in what forms goods or services may be sold or traded, fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially

Nonetheless, the following are not prohibited under the PCA:

- Permissible franchising, licensing, exclusive merchandising or exclusive distributorship agreements such as those that give each party the right to unilaterally terminate the agreement
  - Agreements protecting intellectual property rights, confidential information or trade secrets
6. Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier that has no direct connection with the main goods or services to be supplied
7. Imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers; fisher-folk; micro-, small-, and medium-scale enterprises; and other marginalized service providers and producers
8. Imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers, provided that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices
9. Limiting production, markets or technical development to the prejudice of consumers

However, limitations that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws are not considered violative of the PCA.

While the PCA prohibits the above actions that constitute abuse of dominance, it does not prohibit a person from having a dominant position in a relevant market or on acquiring, maintaining and increasing market share through legitimate means that do not substantially prevent, restrict or lessen competition. Further, any conduct which contributes to improving production or distribution of goods or services within the relevant market, or promoting technical and economic progress while allowing consumers a fair share of the resulting benefit may not necessarily be considered an abuse of dominant position.

Under the PCA, there is a rebuttable presumption of dominance when an entity has a market share of at least 50% of the relevant market. An entity may also be considered dominant despite a lower market share, according to the following factors under the PCA:

- A. The share of the entity in the relevant market and whether it is able to fix prices unilaterally or to restrict supply in the relevant market
- B. The existence of barriers to entry and the elements which could foreseeably alter both said barriers and the supply from competitors
- C. The existence and power of its competitors
- D. The possibility of access by its competitors or other entities to its sources of inputs
- E. The power of its customers to switch to other goods or services
- F. Its recent conducts
- G. Other criteria established by the regulations of the Competition Act.

## MERGER CONTROL

The PCC has been given the power to review proposed M&A based on such guidelines as the Commission may set, and, where any such M&A will substantially prevent, restrict or lessen competition in the relevant market, to prohibit such M&A.

An “acquisition” within the contemplation of the law refers to the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control by: (a) one entity of the whole or part of another; (b) two or more entities over another; or (c) one or more entities over one or more entities. “Control,” on the other hand, is statutorily defined as the “ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise.”

In determining the existence of “control” by one entity over another, the PCC may consider the following:

1. Control shall be presumed to exist when the parent owns directly or indirectly, through subsidiaries, more than one-half of the voting power of an entity, unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control.

2. Control also exists even when an entity owns one-half or less of the voting power of another entity when:

- there is power over more than one-half of the voting rights by virtue of an agreement with investors
- there is power to direct or govern the financial and operating policies of the entity under a statute or agreement
- there is power to appoint or remove the majority of the members of the board of directors or equivalent governing body
- there is power to cast the majority votes at meetings of the board of directors or equivalent governing body
- there exists ownership over or the right to use all or a significant part of the assets of the entity
- there exist rights or contracts which confer decisive influence on the decisions of the entity

Under the PCA, parties to a M&A are required to notify the PCC and obtain clearance of such transaction where:

1. The aggregate annual gross revenues in, into or from the Philippines, or the value of the assets in the Philippines of the ultimate parent entity of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, exceeds PHP 5 billion.

2. The value of the transaction exceeds PHP 2 billion, as may be determined below.

A. With respect to a proposed acquisition of assets in the Philippines, if either:

- the aggregate value of the assets in the Philippines of the acquiring entity exceeds PHP 2 billion, and
- the gross revenues generated in or into the Philippines by those assets acquired outside the Philippines exceed PHP 2 billion

B. With respect to an acquisition of assets outside the Philippines, if:

- the aggregate value of the assets in the Philippines of the acquiring entity exceeds PHP 2 billion, and
- the gross revenues generated in or into the Philippines by those assets acquired outside the Philippines exceed PHP 2 billion

C. With respect to a proposed acquisition of assets inside and outside the Philippines, if:

- the aggregate value of the assets in the Philippines of the acquiring entity exceeds PHP 2 billion; and
- the aggregate gross revenues generated in or into the Philippines by assets acquired in the Philippines and any assets acquired outside the Philippines collectively exceed PHP 2 billion.

D. With respect to a proposed acquisition of (1) voting shares of a corporation or of (2) an interest in a non-corporate entity:

- if the aggregate value of the assets in the Philippines that are owned by the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed PHP 2 billion, or
- the gross revenues from sales in, into, or from the Philippines of the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed PHP 2 billion, and

If:

(A) as a result of the proposed acquisition of the voting shares of a corporation, the entity or entities acquiring the shares, together with their affiliates, would own voting shares of the corporation that, in the aggregate, carry more than the following percentages of the votes attached to all the corporation’s outstanding voting shares:

(a) 35%, or

(b) 50%, if the entity or entities already own more than 35% before the proposed acquisition, or

(B) as a result of the proposed acquisition of an interest in a non-corporate entity, the entity or entities acquiring the interest, together with their

affiliates, would hold an aggregate interest in the non-corporate entity that entitles the entity or entities to receive more than the following percentages of the profits of the non-corporate entity or assets of that non-corporate entity on its dissolution:

(a) 35%, or

(b) 50%, if the entity or entities already own more than 35% before the proposed acquisition, or

3. Where an entity has already exceeded the 35% threshold for an acquisition of voting shares, or the 35% threshold for an acquisition of an interest in a non-corporate entity, another notification will be required if the same entity will exceed the 50% threshold after making a further acquisition of either voting shares or an interest in a non-corporate entity.

4. An acquisition consisting of successive transactions, or acquisition of parts of one or more entities, which shall take place within a one-year period between the same parties, or any entity they control or are controlled by or are under common control with another entity or entities, shall be treated as one transaction. If a binding preliminary agreement provides for such successive transactions or acquisition of parts, the entities shall provide notification on the basis of such preliminary agreement. If there is no binding preliminary agreement, notification shall be made when the parties execute the agreement relating to the last transaction which, when taken together with the preceding transactions, satisfied the prescribed thresholds.

For purposes of calculating notification thresholds, the implementing rules of the Competition Act provide as follows:

1. The aggregate value of assets in the Philippines shall be as stated on the last regularly prepared balance sheet or the most recent audited financial statements in which those assets are accounted for.
2. The gross revenues from sales of an entity shall be the amount stated on the last regularly prepared annual statement of income and expense of that entity.

### **Procedure for Pre-Notification Consultations, Notification, and Review**

Based on the PCC Rules on Merger Procedure (**Merger Procedure**), which took effect on 8 December 2017, parties to a M&A that meets the threshold requirements are required to notify the PCC within 30 days from signing of definitive agreements relating to the proposed transaction.

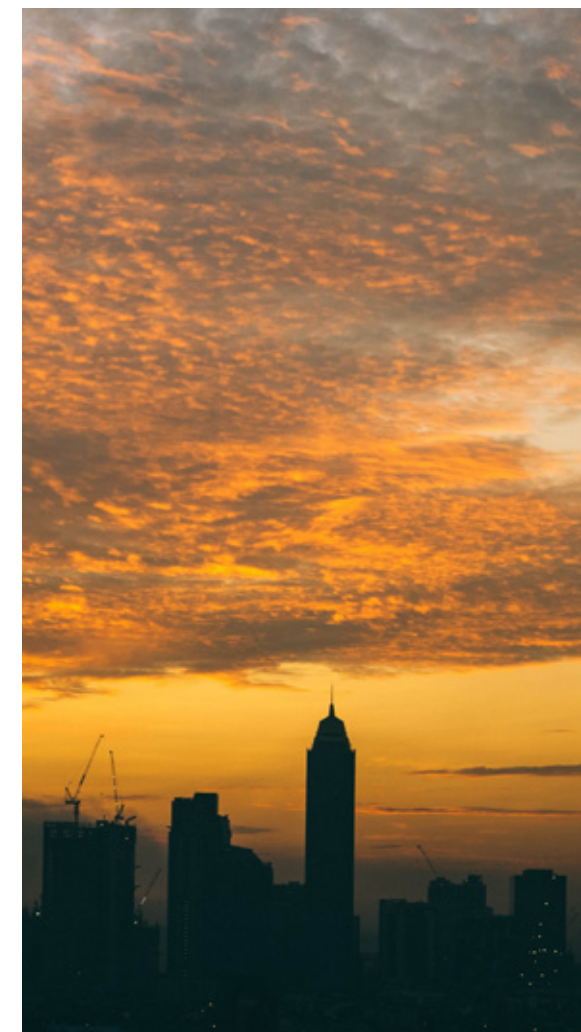
The PCC’s review covers various stages and periods, beginning with a review of the completeness and sufficiency of the notification and supporting documents, which shall be completed within 15 days from submission of the notification. Following a determination of the sufficiency of the notification and payment of the filing fees, the PCC will proceed to review the transaction within a period of 30 days (**Phase I review**), at which time it may inform the parties of the need for a more comprehensive

and detailed analysis of the transaction (**Phase II review**). A Phase II review shall take an additional 60 days, subject to circumstances that may suspend the running of the 60-day period, as provided in the Merger Procedure.

Within the review period, the PCC may approve the proposed transaction, absolutely prohibit the same, require certain changes to the agreement or for the parties to enter into agreements specified by the PCC, based on its assessment of whether the transaction will substantially prevent, restrict or lessen competition in the relevant market in the Philippines.

The parties must not consummate the proposed transaction, in whole or in part, unless they obtain the PCC’s approval, or in case the periods for review for Phase I or Phase II lapse without the PCC issuing any decision.

A merger or acquisition agreement consummated in violation of the notification requirement shall be considered void and subject the parties to an administrative fine of 1% to 5% of the value of the transaction, as determined under applicable regulations.



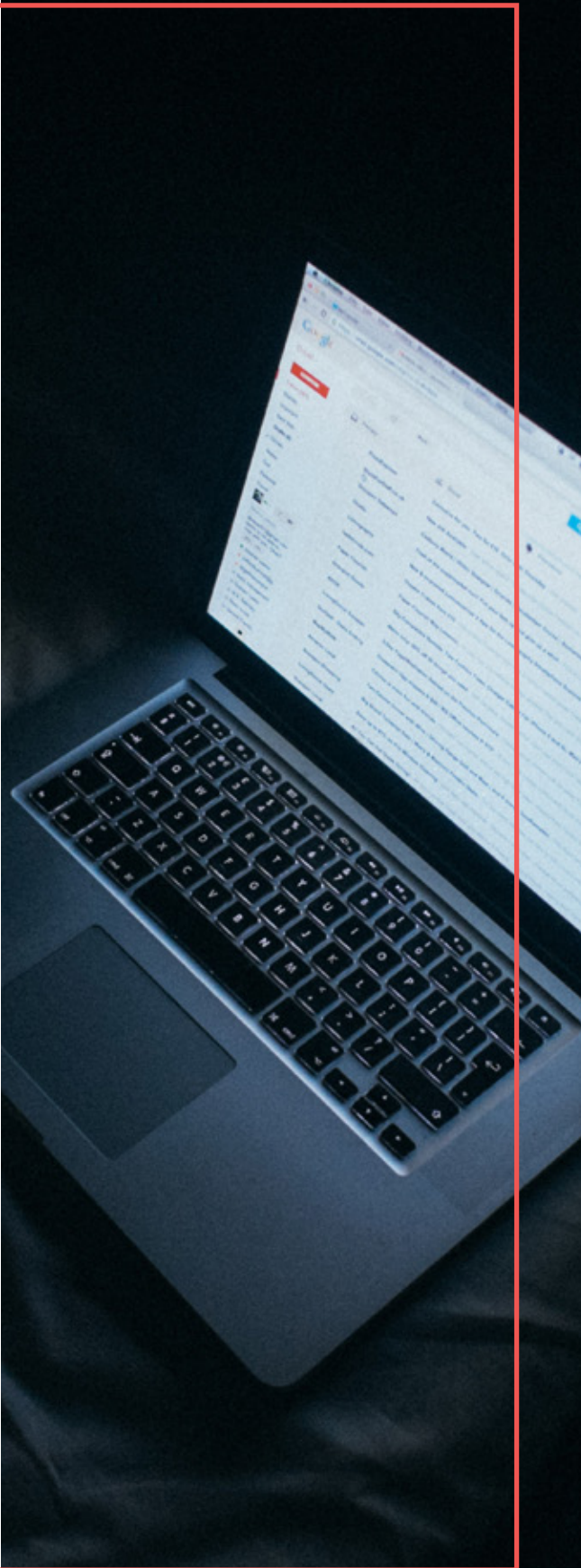
# 13

## PRIVACY LAWS

### OVERVIEW

Government policies in the Philippines and decisions of the Supreme Court tilt heavily toward the protection of an individual's right to privacy of communications. However, the Philippines also recognizes that the free flow of information is vital to promote innovation and growth. Thus, the recent trend in cases of conflict is to balance the interests of the business sector and that of an individual's right to privacy.

The Philippines also enacted a Data Privacy Act (**DPA**) which became effective on September 8, 2012. The DPA modeled after the European Union General Data Protection Regulation and the Asia-Pacific Economic Cooperation Privacy Framework. The National Privacy Commission (**NPC**) enforces the DPA and has issued the law's Implementing Rules and Regulations which took effect on 9 September 2016.

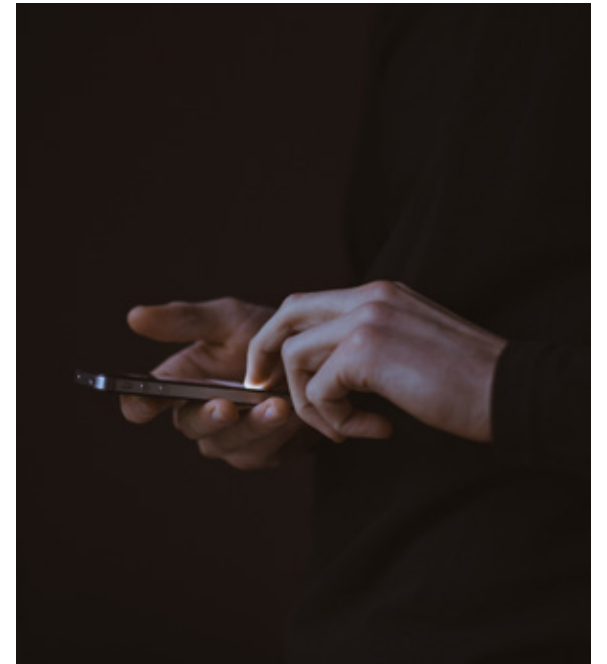


### RIGHT TO PRIVACY

Privacy of communications is a recognized right in the Philippines under Article III, Section 3 of the Philippine Constitution which upholds the privacy of communications and correspondence.

Other provisions on privacy of communications can be found in the Civil Code, and Republic Act No. 4200 (**RA No. 4200**) or the Anti-Wire Tapping Act which makes it unlawful for any person to record any private communication without the consent of all the parties involved in a communication. Private communication has been interpreted by the Supreme Court to mean one that is made between a person and another as opposed to a speaker and the public, and to cover communications of all types such as telephone conversations and electronic messages.

Rights to privacy of communications, however, may be waived so long as the waiver is not against the law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.



### DATA PRIVACY

Republic Act No. 10173, or the DPA of 2012, applies to the processing of all types of personal information and to any natural and/or juridical person involved in personal information processing, including those personal information controllers and processors who, although not found or established in the Philippines: (1) use equipment that are located in the Philippines, or maintain an office, branch, or agency in the Philippines; and (2) process personal information pertaining to a Philippine citizen or resident, and maintain commercial links to the Philippines.

"Personal Information" is defined as any information from which the identity of an individual is apparent or can be reasonably and directly ascertained, or that, when put together with other information, would directly and certainly identify an individual.

"Sensitive personal information," on the other hand, is defined as personal information: (1) about an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations; (2) about an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings; (3) issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and (4) specifically established by an executive order or an act of Philippine Congress to be kept classified.

In general, the DPA prohibits the processing of personal information without the express and recorded consent of the data subject. The law also enumerates the rights of data subjects (i.e., notice, access, control, data portability, and the right to be indemnified by personal information controllers for damages arising from the unlawful processing of personal information), and the obligations of personal information controllers and processors to ensure the privacy, security, and integrity of personal information (including but not limited to a breach notification requirement). More particularly, the DPA requires personal information controllers to employ reasonable and appropriate organizational, physical, and technical measures to protect the security of personal information. At a minimum, these measures should include: (1) anti-computer hacking safeguards; (2) a security policy; (3) a process for preventing and mitigating security breaches; (4) contractual or other reasonable data protection arrangements with third party contractors; and (5) the appointment of an information security officer who will ensure the entity's compliance with the DPA.

In addition, the DPA creates the NPC, which is tasked with administering and implementing the provisions of the law, as well as with monitoring and ensuring compliance with international standards for data protection.

The DPA sets forth a detailed schedule of penalties for violations of the Act, e.g., unauthorized processing, accessing due to negligence, improper disposal, processing for unauthorized purposes, unauthorized access or intentional breach, concealment of security breaches, malicious disclosure, and unauthorized disclosure of personal information and sensitive personal information, which include both imprisonment and fines. In addition, the NPC may also impose administrative penalties which may include compliance orders, cease-and-desist orders, temporary or permanent ban on personal information processing, and/or fines.

On August 25, 2016, the NPC issued the implementing rules and regulations (**Rules**) of the DPA. In addition to the more general requirements of the DPA on the processing of personal information, the Rules impose several registration and compliance obligations on covered controllers and processors. The most important of these obligations are:

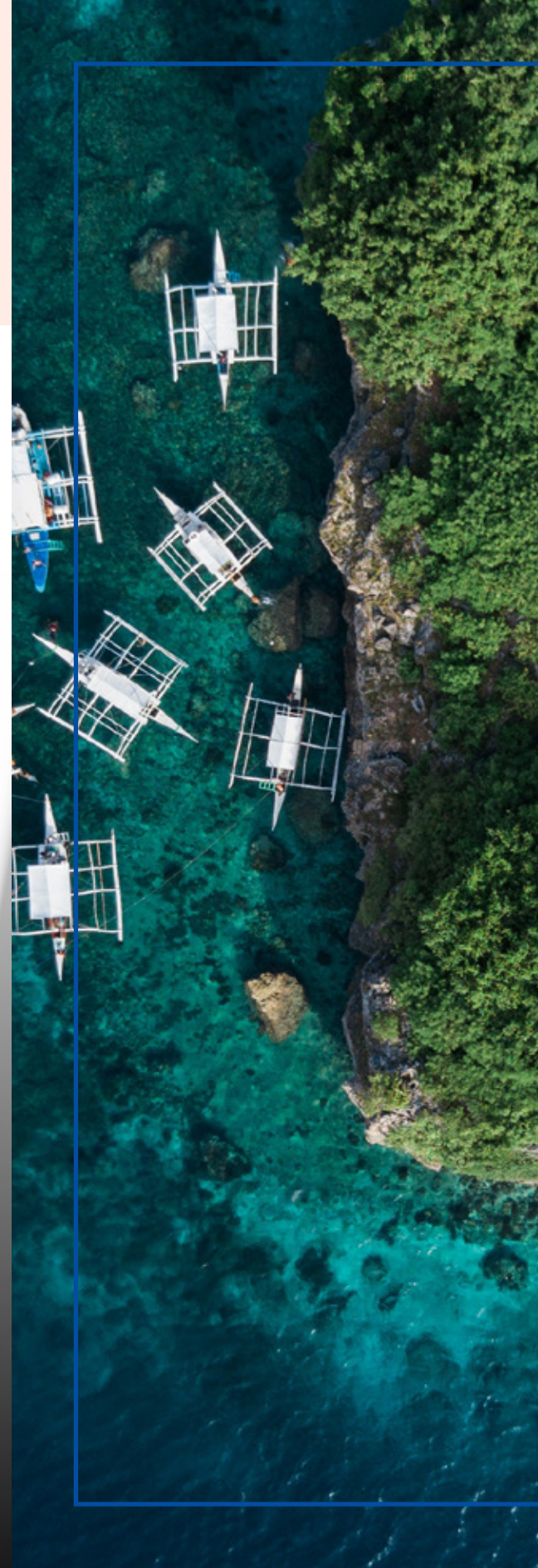
- **Registration of Personal Data Processing Systems.** Personal data processing systems operating in the Philippines that involve the processing of sensitive personal information belonging to at least 1,000 individuals, or those systems that are being operated by a personal information controller or processor that employs at least 250 persons or belongs to one of the sectors identified by the NPC as subject to the mandatory registration requirement shall be registered with the NPC by 8 March 2018.
- **Reportorial Requirements.** Personal information controllers are required to notify the NPC and affected data subjects of a data breach within 72 hours from the discovery thereof. In addition, covered entities shall also report to the NPC with a summary of documented security incidents and data breaches on an annual basis, and also notify the NPC when automated processing becomes the sole basis of making decisions about a data subject.
- **Nature of Consent of Data Subjects.** The Rules clarify that in cases not exempt from the consent requirement, the data subject's consent to the personal information processing is time-bound in relation to the purpose of the processing. Data sharing, even between entities belonging to the same corporate organization, should also have the prior consent of the affected data subjects.
- **Minimum Security Requirements; Contents of Data Transfer Agreements between Controllers and Processors.** The Rules enumerate the specific minimum organizational, physical, and technical requirements which controllers and processors are required to implement while processing personal information. These security standards are subject to periodic evaluation and updating by the NPC via subsequent issuances. The Rules also contain the minimum requirements as to the compliance provisions to be included in any data processing agreement between personal information controllers and its processors.

### CONSIDERATIONS FOR MEMBERS OF THE EU

The DPA and its Rules are modeled after the general principles and requirements of the EU General Data Protection Regulation (**GDPR**). Compliance with the DPA and its Rules will be easy for personal information controllers and processors that are already geared towards fully complying with the GDPR in time for its effectivity on 25 May 2018.

# 14

## ENVIRONMENTAL REGULATIONS



## OVERVIEW

The Philippines adheres to the policy of protecting and advancing the right of its people to a balanced and healthy ecology.

Philippine environmental laws consist of a series of legislative enactments, executive decrees and administrative regulations, each addressing a specific area of concern relating to the environment.

The environmental law applicable to a particular business depends largely on the activities of that business.

The Department of Environment and Natural Resources (**DENR**) is the lead agency in environmental protection and administration.

## PROJECT REQUIREMENTS

Development projects that are classified by law as environmentally-critical or projects within statutorily defined environmentally critical areas are required to obtain an Environmental Compliance Certificate or ECC prior to commencement of operation. The DENR through its regional offices or through the EMB, determines whether a project is environmentally critical or located in an environmentally critical area. As a requisite for the issuance of an ECC, an environmentally critical project is required to submit an EIS to the EMB, while a project in an environmentally critical area is generally required to submit an Initial Environmental Examination (**IEE**) to the proper DENR regional office. The construction and operation of a power plant and other related auxiliary facilities are generally considered as environmentally critical projects for which an EIS and ECC are mandatory.

The EIS refers to both the document and the study of a project's environmental impact, including a discussion of the direct and indirect consequences to human welfare and ecological as well as environmental integrity. The IEE refers to the document and the study describing the environmental impact, including mitigation and enhancement measures, for projects in environmentally critical areas.

In addition to obtaining an ECC, projects that are determined by the DENR to pose a significant public risk to the environment are required to establish an Environmental Guarantee Fund. The Environmental Guarantee Fund is intended to compensate for any damage to the environment as a result of the project. Proponents who complete an EIS must also include a commitment to establish an Environmental Monitoring Fund when an ECC is eventually issued. The Environmental Monitoring Fund shall be utilized to support the activities of a multi-sectoral team that shall monitor compliance with the ECC and other applicable regulations.

The DENR is assisted in the formulation and implementation of environmental policies by the Environmental Management Bureau (**EMB**), local government units, and other governmental agencies and departments.

Presidential Decree No. 1586 (**PD 1586**) established the Philippine Environmental Impact Statement (**EIS**) System. Environmental impact assessment (**EIA**) is part of project planning for certain types of businesses, and is conducted to identify and evaluate important environmental consequences, including social factors that may occur if a project will be undertaken. Measures to eliminate or minimize these impacts are incorporated into project design and operations.

While the terms and conditions of an EIS or an IEE may vary from project to project, as a minimum, the same must contain all relevant information regarding the project's environmental effects. The entire process of organization, administration and assessment of the effects of any project on the quality of the physical, biological and socio-economic environment as well as the design of appropriate preventive, mitigating and enhancement measures is known as the EIS System. Approval by the EMB of a project proponent's EIS System successfully culminates in the issuance of an ECC by the EMB.

Essentially, the issuance of an ECC is a government certification that: (a) the proposed project or undertaking will not cause a significant negative environmental impact; (b) the proponent has complied with all the requirements of the EIS System; and (c) the proponent is committed to implement its approved Environmental Management Plan in the EIS or, if an IEE was required, that it shall comply with the mitigation measures provided therein. Thus, despite the issuance of an ECC, a grantee thereof must continually comply and adhere to its approved Environmental Management Plan.

Any person, corporation or partnership found violating the terms and conditions in the issuance of the ECC may be liable for the suspension or cancellation of such ECC and/or a fine. Generally, the suspension or cancellation will apply only to the relevant ECC subject of the violation and will not extend to any other ECCs or to the projects covered thereby that may have been granted to an entity.

## AREAS OF REGULATION

Presidential Decree No. 984 (**PD 984**), otherwise known as the National Pollution Control Decree of 1976, is the general legislation on pollution prevention and control.

Republic Act No. 9003 (**RA 9003**), or the Ecological Solid Waste Management Act of 2000, calls for the institutionalization of a national program that will manage the control, transfer, transport, processing and disposal of solid waste in the country.

Republic Act No. 6969 (**RA 6969**), or the Toxic Substances and Hazardous and Nuclear Wastes Control Act, provides the legal framework for the country's program to control and manage the importation, manufacture, processing, distribution, use, transport, treatment and disposal of toxic substances as well as that of hazardous and nuclear wastes.

Republic Act No. 9275, otherwise known as the Philippine Clean Water Act of 2004 (**Clean Water Act**) governs water quality management in all water bodies in order to abate and control pollution from land based sources. Under the Clean Water Act, owners or operators of facilities that discharge regulated effluents or wastewater flowing out of manufacturing plants and industrial plants including domestic, commercial and recreational facilities, must secure a discharge permit from the EMB. The operation of facilities that discharge regulated water pollutants without a valid discharge permit is a prohibited activity under the Clean Water Act, and may be punishable by a fine, closure of facility, and/or imprisonment.

Republic Act No. 8749 (**RA 8749**), or the Philippine Clean Air Act of 1999, provides the framework for preventing, managing, controlling and reversing air pollution nationwide.



Photo by Katt Baligod



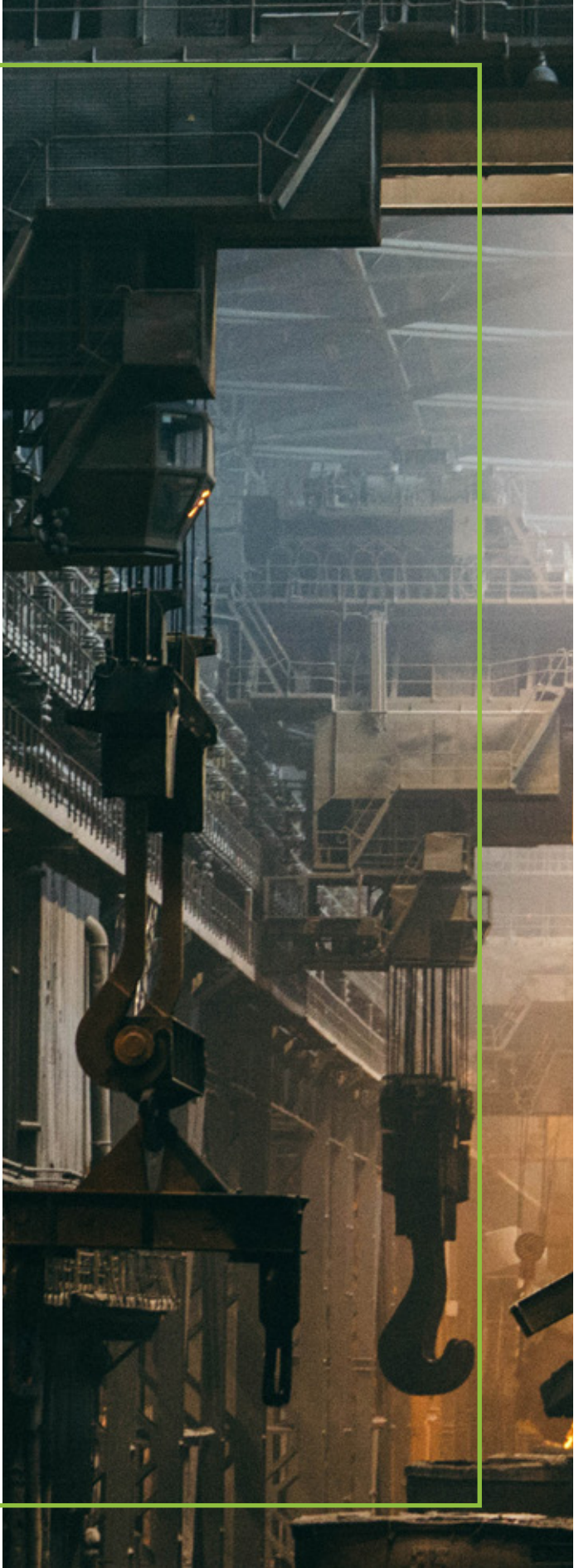
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## INDUSTRY SPECIFIC REGULATIONS

### OVERVIEW

Government policies in the Philippines and decisions of the Supreme Court tilt heavily toward the protection of an individual's right to privacy of communications. However, the Philippines also recognizes that the free flow of information is vital to promote innovation and growth. Thus, the recent trend in cases of conflict is to balance the interests of the business sector and that of an individual's right to privacy.

The Philippines also enacted a DPA which became effective on September 8, 2012. The DPA modeled after the European Union General Data Protection Regulation and the Asia-Pacific Economic Cooperation Privacy Framework. The NPC enforces the DPA and has issued the law's Implementing Rules and Regulations which took effect on 9 September 2016.



### BANKING

Under Philippine laws, banks are entities that engage in the lending of funds obtained in the form of deposits. An entity intending to engage in banking in the Philippines must obtain an authority or secondary license to operate (such as a commercial banking license) from the BSP.

Philippine law classifies banks into:

- A. Universal banks
- B. Commercial banks
- C. Thrift banks, composed of: (i) savings and mortgage banks, (ii) stock savings and loan associations, and (iii) private development banks
- D. Rural banks
- E. Cooperative banks
- F. Islamic banks
- G. Other classifications of banks as determined by the BSP

Philippine law provides that *foreign individuals and non-bank corporations* may own or control up to 40% (individual or aggregate) of the voting stock of a universal bank, commercial bank, thrift bank or rural bank.

By way of exception, foreign banks may own up to 100% of the voting stock of a universal bank, commercial bank, thrift bank or rural bank with prior approval from the BSP. In determining whether or not approval will be issued, the BSP will consider whether reciprocity rights are enjoyed by Philippine banks in the country of the foreign bank.



### FINANCING COMPANIES

Under Philippine law, financing companies are corporations, except banks, investment houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, that are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable property. An entity intending to engage as a financing company must obtain an authority or secondary license to operate as a financing company from the SEC. If the entity intends to perform quasi-banking functions, such entity must secure a quasi-banking license from the BSP.

Under the Financing Company Act, as amended, a financing company must have a paid-up capital ranging from at least PHP 2.5 million to PHP 10 million, depending on where the financing company will set up its office in the Philippines. Foreign citizens may own up to 100% of the shares in a financing company subject to certain conditions.

### LENDING COMPANIES

Under Philippine law, lending companies refer to corporations engaged in granting loans from its own capital funds or from funds sourced from not more than 19 persons. The term "lending companies" exclude banking institutions, investment houses, savings and loan associations, financing companies, pawnshops, insurance companies, cooperatives and other credit institutions already regulated by law.

A company intending to perform activities as a lending company must obtain an authority or secondary license to operate as a lending company from the SEC.

Under the Lending Company Act, as amended, a lending company must have a minimum paid-up capital of PHP 1 million. Foreign citizens are allowed to own up to 100% of the shares in a lending company subject to certain conditions.

However, no foreign national may be allowed to own shares in a lending company unless the country of which such person is a national accords reciprocal rights to Filipinos.

## CREDIT CARD ISSUERS AND ACQUIRERS

Under the Credit Card Industry Regulation Law (**Credit Card Law**), a credit card issuer is a bank or a corporation that offers the use of its credit card. On the other hand, a credit card acquirer refers to an institution that accepts and facilitates the processing of credit card transactions initially accepted by the merchant.

The Credit Card Law vests the authority to supervise all credit card issuers and acquirers on the BSP. However, the Credit Card Law does not provide any BSP licensing requirement for credit card issuers and acquirers. The Credit Card Law took effect on 16 August 2016 and its implementing rules and regulations have not been issued to date. The implementing rules and regulations may impose BSP licensing requirements on credit card issuers and acquirers.

## DIGITAL PAYMENT SERVICES

The BSP recently issued the regulatory framework for entities engaged in digital payment services including remittance and transfer companies and virtual currency exchanges.

### Remittance and transfer companies

The BSP regulates remittance and transfer companies (such as remittance agents, remittance platform providers and e-money issuers) or entities that provide money or value transfer service. Remittance and transfer companies are required to register with the BSP.

Foreign citizens are allowed to own up to 100% of the shares in a remittance and transfer company. Based on BSP regulations, remittance and transfer companies must meet benchmark capital requirements ranging from PHP 10 million to PHP 100 million, depending on the category.

### Virtual currency exchanges

BSP regulations define virtual currency as any type of digital unit that is used as a medium of exchange or a form of digitally stored value created by agreement within the community of virtual currency users. Virtual currencies are broadly construed to include digital units of exchange that have a centralized repository or administrator, are decentralized and have no centralized repository or administrator, or may be created or obtained by computing or manufacturing effort.

The BSP regulates virtual currency exchanges or entities that offer services or engages in activities that provide facility for the conversion or exchange of fiat currency to virtual currency or vice versa. A virtual currency exchange must obtain a certificate of registration to operate as a remittance and transfer company from the BSP.

The BSP does not impose nationality requirements on a virtual exchange.

## SECURITIZATION ACT

The Securitization Act provides the legal and regulatory framework for asset securitization, and grants tax exemptions and other incentives in favor of securitization transactions in the Philippines. It is designed to create a favorable capital market environment for asset-backed securities (**ABS**) and to facilitate the development of a secondary market for residential mortgage-backed securities.

In the securitization process, loans, receivables or similar financial assets with an expected cash payment stream (**Assets**) are sold on a without recourse basis by a seller to a special purpose entity (**SPE**). The SPE issues to investors ABS that depend, for their payment, on the cash flow from the Assets. The issuance of the ABS must be in accordance with the plan for securitization approved by the SEC.

## INSURANCE

### Entry of Foreign Insurance Companies

A certificate of authority must be obtained from the Philippine Insurance Commission (**IC**) before a person can engage in the insurance business.

There are no foreign equity restrictions on insurance companies.

An insurance company may be established as a domestic company, a branch of a foreign insurance company, or a mutual benefit association. (The discussion below focuses on domestic insurance companies and branches of foreign insurance companies.) A foreign insurance company may do business in the Philippines, provided: (i) it is among the top 200 foreign insurance corporations globally, or among the top 10 insurance companies in its country of origin; and (ii) it has been doing business for the last 10 years as of the date of its application for IC approval.

In addition, if the foreign insurance company will establish a domestic insurance company or a branch (as opposed to acquiring shares in an existing domestic insurance company), it must be: (i) widely owned and/or publicly listed in its country of origin; or (ii) majority-owned by the government of the country of origin. The term “widely-owned” means that not a single stockholder of the applicant owns more than 20% of its voting stock; while “publicly listed” means that its shares of stock are listed in the stock exchanges.

### Minimum capitalization requirement

A new domestic insurance or a branch must have a minimum capital paid-up capital / assigned capital of PHP1 billion.<sup>6</sup> In addition:

- In the case of a domestic company, the IC may require the stockholders of a new insurance company to pay in cash to the company, in proportion to their subscription interests, a contributed surplus fund of not less PHP100 million.
- In the case of a branch, it must deposit with the IC, for the benefit of policyholders and creditors of the foreign insurer in the Philippines, securities which have a market value of not less than PHP1 billion. The securities must be acceptable to the IC, and at least 50% of the securities must consist of bonds or other instruments of debt of the government of the Philippines.

Existing insurance companies (domestic companies and branches) as well as those to be established before 31 December 2019 must comply with the following net worth requirement:

Minimum net worth	Compliance date
PHP900 million	31 December 2019
PHP1.3 billion	31 December 2022

The minimum paid-up capital and net worth requirement must remain unimpaired for the continuance of the license. Foreign insurance companies are required to set aside an amount corresponding to the legal reserves of the policies written in the Philippines, and such amount may be invested only in certain classes of acceptable Philippine securities subject to aggregate limits.

Further insurance companies must comply with solvency requirements. The IC adopts a risk-based capital approach.

The President of the Philippines has the power to order a periodic review of the capital structures of insurance companies, to determine the capital adequacy of the local insurance industry, every two years from and after the integration and liberalization of the financial services (including insurance) in the ASEAN Region.

### Acquisition of control of a domestic insurance company

Prior IC approval must be obtained for an acquisition by a foreign company of control of a domestic insurance company. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities by a contract other than a commercial contract for goods or non-management services or otherwise. Control is presumed to exist if any person directly or indirectly owns, controls or holds with the power to vote 40% or more of the voting securities of an insurance company.

In reviewing a proposed acquisition of control, the IC will consider the following factors:

- (1) The financial condition of the acquiring person and the insurer
- (2) The trustworthiness of the acquiring person or any of its officers or directors
- (3) The plan for the proper and effective conduct of the insurer’s operations
- (4) The source of the funds or assets for the acquisition
- (5) The fairness of any exchange of stock, assets, cash or other consideration for the stock or assets to be received
- (6) Whether the effect of the acquisition may be substantially to lessen competition in any line of commerce in insurance or to tend to create a monopoly therein
- (7) Whether the acquisition is likely to be hazardous or prejudicial to the insurer’s policyholders or stockholders.<sup>7</sup>

<sup>6</sup> Section 194, Amended Insurance Code. See also IC Circular Letter No. 2015-20-A

<sup>7</sup> IC Circular Letter No. 2014-37.

## Registration with the Anti-Money Laundering Council

Insurance companies are considered 'covered persons' under the Anti-Money Laundering Act. A new insurance company must register as such with the Anti-Money Laundering Council.

## Insurance Brokers and Agents

A person (an individual, partnership, or corporation) intending to act as an insurance broker or an insurance agent must obtain authority from the IC.

An insurance agent refers to a person who, for compensation, solicits or obtains insurance on behalf of any insurance company or transmits for a person other than himself an application for a policy or contract of insurance to or from such company or offers or assumes to act in the negotiating of such insurance. On the other hand, an insurance broker refers to any person who, for any compensation, commission or other thing of value, acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract or in placing risk or taking out insurance, on behalf of an insured other than himself. A reinsurance broker is one who, for compensation, not being a duly authorized agent, employee or officer of an insurer in which any reinsurance is effected, acts or aids in any manner in negotiating contracts of reinsurance, or placing risks of effecting reinsurance, for any insurance company authorized to do business in the Philippines.

# HEALTHCARE

## Health Products

Republic Act No. 3720, as amended, or the Food and Drug Administration Act and its implementing rules and regulation (collectively, the **FDA Act**), regulates the manufacture, importation, distribution, marketing, advertising and related activities for health products. The FDA Act defines health products as including drugs, medical devices, cosmetics, and health supplements, among others.

Entities that deal with health products are generally required to obtain a license to operate from the Philippine Food and Drug Administration (**FDA**).

Furthermore, certain health products, such as drugs, certain medical devices, and health supplements, must be registered with the FDA.

Others, such as cosmetics, must only be notified to the FDA.

The labels of health products must also comply with the labelling requirements under FDA regulations.

## Clinical trials

Clinical trials in the Philippines are regulated by the FDA and the Philippine National Health Research System (**PNHRS**) through the Philippine Health Research Ethics Board (**PHREB**).

Clinical trials may be undertaken by sponsors or Contract Research Organizations (**CRO**). A sponsor refers to an individual, company, institution, organization, or an entity which takes responsibility for the initiation, management, and/or financing of a clinical trial. On the other hand, a CRO refers to a person or an organization (commercial, academic, or other) contracted by a sponsor to perform one or more of the sponsor's trial-related duties and functions.

Current FDA regulations require a sponsor and the CRO to obtain an LTO from the FDA. Furthermore, clinical trials must be conducted according to an approved clinical trial protocol from the FDA.

# ENERGY

## Regulatory framework

Republic Act No. 9136, also known as the Electric Power Industry Reform Act of 2001 (**EPIRA**) primarily governs the electric power industry and its participants, together with other special laws. The main objectives of the EPIRA include ensuring and accelerating the total electrification of the country and the quality, reliability, security and affordability of the supply of electric power.

For this purpose, the EPIRA has mandated the Department of Energy (**DOE**) to supervise the restructuring of the electric energy industry. The EPIRA also created the Energy Regulatory Commission (**ERC**), an independent quasi-judicial regulatory body. Its functions include to promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. The Wholesale Electricity Spot Market was also created to serve as the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity.

On the other hand, Republic Act No. 9513, also known as the Renewable Energy Act of 2008 (**RE Act**) provides for a framework for the accelerated development and advancement of Renewable Energy (**RE**) Resources, and the development of a strategic program to increase the utilization of RE Resources. The RE Act governs the renewable energy power generation in the Philippines. Under the RE Act the DOE was designated as the lead agency to implement the provisions thereof. The National Renewable Energy Board (NREB) and Renewable Energy Management Bureau were also created to perform the functions necessary to attain the objectives of the RE Act.

## Organization of the Philippine electric power industry; Foreign equity restrictions

The EPIRA restructured and divided the Philippine electric power industry into four sectors: generation, transmission, distribution and supply.

### 1. Generation

Generation of electricity refers to the production of electricity by a generation company or a co-generation facility. Generally, generation of electricity is not subject to foreign equity limitations. According, a company engaged in the generation of electricity may be 100% foreign-owned.

However, regulations issued by the DOE pursuant to the RE Act impose a Filipino nationality requirement of at least 60% on the generation of electricity from RE Resources. Accordingly, RE Developers<sup>9</sup> are generally subject to a

foreign equity limitation of a maximum of 40%. By way of exception, large-scale geothermal projects undertaken by way of foreign technical or financial assistance (**FTAA**) can be 100% foreign-owned. Hence, an RE Developer must be at least 60% Filipino-owned, unless the RE project is a large-scale geothermal project undertaken by way of FTAA.

### 2. Transmission

Transmission of electricity refers to the conveyance of electricity through the high voltage backbone system or the Philippine Grid. Under the EPIRA, the transmission of electricity shall be a regulated common electricity carrier business, which is considered a public utility requiring a franchise from the Philippine Congress. In this connection, the 1987 Philippine Constitution imposes a 60% Filipino ownership requirement on public utility operators. Accordingly, corporations and associations engaged in the transmission of electricity may have up to a maximum of 40% foreign equity and are required to obtain a franchise from the Philippine Congress.

In 2009, the transmission sector was privatized through a grant of a 25-year concession to the National Grid Corporation of the Philippines (**NGCP**) to operate the Philippine Grid. A congressional franchise was granted to NGCP for this purpose. Prior to the privatization, National Transmission Corporation (**TRANSCO**) assumed the electrical transmission function of the National Power Corporation, including the authority and responsibility for the planning, construction and centralized operation and maintenance of the Philippine Grid.

### 3. Distribution

Distribution of electricity refers to the conveyance of electric power by a distribution utility through its distribution system. Under the EPIRA, the distribution of electricity to end-users shall be a regulated common carrier business requiring a franchise. The EPIRA provides that the power to grant franchises to persons engaged in the distribution of electricity shall be vested exclusively in the Philippine Congress. Thus, similar to transmission of electricity, corporations or associations that will engage in the business of distribution of electricity must at least be 60% Filipino-owned and must also obtain a franchise from the Philippine Congress.

### 4. Supply

"Supply of electricity" means the sale of electricity by authorized persons or entities. There are no foreign equity restrictions imposed on corporations engaged in the business of supply of electricity to the contestable market subject to meeting certain requirements such as capitalization.

<sup>8</sup> Renewable Energy Resources refer to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time. These include, among others, biomass, solar, wind, geothermal, ocean energy, and hydropower conforming with internationally accepted norms and standards on dams, and other emerging renewable energy technologies.

<sup>9</sup> RE Developers refers to individual/s or juridical entity created, registered and/or authorized to operate in the Philippines in accordance with existing Philippine laws and engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities.

## MINING

### Philippine Constitution and Mining Law

Under the 1987 Philippine Constitution, the state can undertake the exploration, development, and utilization of the natural resources or it can enter into agreements with private parties or contractors under revenue-sharing or production-sharing arrangements. The general rule, as stated in the Philippine Constitution, is that contractors, with whom the state can enter into agreements for the exploration, development, and utilization of natural resources, must be Filipino citizens or corporations whose capital is at least 60% Filipino-owned. A mineral agreement must be held by a Filipino citizen or by a company that is at least 60% Filipino-owned.

The foreign equity limitation is removed for large-scale exploration, development, and utilization of minerals and petroleum, and other mineral oils. This exception is implemented through the FTAA. Furthermore, an Exploration Permit (EP) and a Mineral Processing Permit (MPP) can be held by a corporation that is up to 100% foreign-owned.

Under the Republic Act No. 7942 or the Philippine Mining Act of 1995 (Mining Act), there are three types of mineral agreements: Mineral Production Sharing Agreement (MPSA), Co-Production Agreement, and Joint Venture Agreement.

Under the Implementing Rules and Regulations of the Mining Act (Mining Act IRR), an applicant that wants to conduct exploration activities over a specific area needs to apply for and obtain an EP. Depending on the exploration results, the EP can be converted into an MPSA or an FTAA.

### Mining Act

The Mining Act governs the exploration, development, processing and utilization of mineral resources in the Philippines. The Mining Act and the Mining Act IRR define these agreements, delineate the various mining rights recognized in the Philippines and provide the requirements to acquire these mining rights.

#### 1. EP

The acquisition of mineral rights is a process that begins with the acquisition of an EP. An EP is a grant from the Philippine government that gives the permit holder the right to conduct exploration for all minerals within a specified area. An EP allows the holder to conduct "exploration," which is defined under the Mining Act as "searching or prospecting for mineral resources by geological, geochemical and/or geophysical surveys, remote sensing, test pitting, trenching, drilling, shaft sinking, tunneling or any other means for the purpose of determining their existence, extent, quality and quantity and the feasibility of mining them for profit."

#### 2. Mineral Agreements

These three types of mineral agreements are:

- MPSA, under which the government grants to the MPSA holder the exclusive right to conduct mining operations within a contract area. The share of the government is in the form of excise tax equivalent to a percentage of the gross output. The MPSA holder will provide the financing, technology, management and personnel necessary for the implementation of the MPSA;
- Co-production Agreement, under which the government will provide inputs to the mining operations other than the mineral resource;
- Joint Venture Agreement, under which a joint venture company is organized by the government and the contractor with both parties holding equity shares. In addition to earnings from the equity, the government will be entitled to a share in the gross output.

#### 3. FTAA

The Philippine Constitution provides that the President may, on behalf of the government, enter into agreements involving either technical or financial assistance for large scale exploration, development and utilization of minerals according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the Philippines.

To implement this Constitutional provision and to promote investments from both domestic and international sources, the Mining Act authorizes the President to execute and approve on behalf of the government FTAA to be entered into with qualified entities for large scale exploration, development and commercial utilization of mineral resources. The minimum project for development and construction for an FTAA is USD 50 million.

The FTAA holder is granted the exclusive rights to explore, mine, utilize, process, refine, market, transport, export and dispose of minerals and mineral products and by products that may be derived or produced from the FTAA area, subject to such permitting requirements that may be applicable under pertinent laws, rules and regulations.

#### 4. MPP

A MPP refers to permit granted by the Philippine government to allow the holder thereof undertake mineral processing. Mineral processing refers to the milling, beneficiation, leaching, smelting, cyanidation, calcination or upgrading of ores, minerals, rocks, mill tailings, mine waste and/or other metallurgical by-products or by similar means to convert the same into marketable products.

## TELECOMMUNICATIONS

### THE TELECOMS ACT

The Public Telecommunications Policy Act of the Philippines (RA 7925 or the Telecoms Act) and its implementing rules regulate the performance of telecommunications services in the Philippines. Telecommunications services are defined as those services involving "any process which enables a telecommunications entity to relay and receive voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible or audible signals or any control signals of any design and for any purpose by wire, radio or other electromagnetic, spectral, optical or technological means."

### THE PUBLIC SERVICE LAW

The Philippines' Public Service Law (Commonwealth Act No. 146) is the law that applies to industries/entities engaged in "public service" in general. The Public Service Law therefore applies to telecommunications services offered to the public.

The regulatory body in charge of telecommunications services in the Philippines is the National Telecommunications Commission (NTC). By virtue of the authority granted to it by the Telecoms Act and the Public Service Law, the NTC has regulatory and quasi-judicial powers. The NTC can also enforce compliance of its issuances by initiating complaints (which may result in fines and imprisonment) and/or imposing fees and penalties.

### PROVISION OF TELECOMMUNICATIONS SERVICES BY A PUBLIC TELECOMMUNICATIONS ENTITY

The provision of telecommunications services by a Public Telecommunications Entity (PTE) is heavily regulated. A PTE is a person, firm, partnership or corporation, government or private, engaged in the provision of telecommunications services (a) to the public; (b) for compensation. Generally, a PTE is required to secure a legislative franchise from the Philippine Congress and a CPCN or Provisional Authority (PA) from the NTC. The franchise contains conditions as to its grant, such as restrictions on transfers and annual reporting obligations.

On the other hand, the CPCN issued by the NTC certifies that the telecommunications service to be provided by the enfranchised entity is feasible and necessary. It is usually granted after an entity's showing of its legal, technical and financial capability to provide the contemplated service. Additionally, a PTE is required to be at least 60% Filipino owned.

### VALUE-ADDED SERVICES

Regulated telecommunications services also include Value-Added Service (VAS). The Telecoms Act provides that a VAS operator is "an entity which, relying on the transmission, switching and local distribution facilities of the local exchange<sup>10</sup> and inter-exchange operators,<sup>11</sup> and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers." The implementing rules of the Telecoms Act define VAS as "a service which adds a feature or value to basic telephone service not ordinarily provided by a public telecommunications entity such as format, media, conversion, enhanced security features, paging, internet protocol, computer processing and the like." Under the Telecoms Act, a VAS provider is not considered a PTE, provided that it does not put up its own network.

VAS providers are required to register with the NTC and submit quarterly reports of the operation. Under NTC regulations, only entities which are at least 60% Filipino-owned may register as VAS providers. In practice, however, the NTC differentiates between non-regulated VAS and regulated VAS. The NTC only applies the VAS restriction requirements (i.e. the registration/ nationality restriction requirements) to regulated VAS providers. VAS providers are regulated if they have the following characteristics: (1) the VAS services are provided directly to the Philippine public; and (ii) the VAS services are provided for free.



<sup>10</sup> Local exchange operators are entities providing transmission and switching of telecommunications services, primarily but not limited to voice-to-voice in a geographic area anywhere in the Philippines.

<sup>11</sup> It is an entity, sometimes referred to as carrier's carrier or national backbone network operator, authorized to install, own and operate facilities which connect local exchanges within the Philippines and to engage in the business of interexchange national long distance services.

## VOIP AS VALUE-ADDED SERVICES

Voice Over Internet Protocol (**VoIP**) is a form of VAS that is governed by its own set of rules. VoIP services intended to be offered for use by the public for compensation is expressly regulated by the NTC. Service providers which intend to offer such service are required to register with the NTC as VoIP providers. Further, “any person or entity that intends to derive or source VoIP from a duly registered VoIP provider under an agreement to resell the service directly to retail end-user customers” must also register with the NTC as a *VoIP Reseller*.

## CYBERCRIME PREVENTION ACT

The Philippines’ Cyber Crime Prevention Act of 2012 (**RA No. 10175** or the **Cyber Crime Act**) requires service providers<sup>12</sup> to preserve the integrity of “traffic data and subscriber information relating to communication services” for at least six months from the date of the transaction. Content data (defined as communication or content of communication, the meaning or purport of the communication, or the message or information being conveyed by the communication, other than traffic data), shall also be preserved following an order from law enforcement authorities.

## IMPORTATION / DISTRIBUTION OF TELECOMMUNICATIONS EQUIPMENT

Under current NTC regulations, type approval or type acceptance is required for all customer premises equipment (**CPE**) and radio transmitters and transceivers, i.e. devices capable of emitting radio waves or energy. Type approval refers to the process by which an equipment is evaluated for conformance to established standards, by undergoing laboratory tests and measurements. Type acceptance on the other hand is a process by which an equipment is evaluated for acceptability for use on the basis of type approval tests done by reputable foreign approval or certification agencies. The importer/distributor of CPEs and radio transmitters/transceivers should secure authorization from the NTC in order to supply these equipment.

An import permit must be secured from the NTC in order to import equipment that requires type approval or acceptance. The NTC import permit will be required by the BOC as a condition for customs clearance.

## CONSIDERATIONS FOR MEMBERS OF THE EU

There are no special considerations/requirements under Philippine telecommunication laws for nationals of EU Member States.

<sup>12</sup> “Service providers” is broadly defined under the Cyber Crime Prevention Act as “(1) any public or private entity that provides to users of its service the ability to communicate by means of a computer system; and (2) Any other entity that processes or stores computer data on behalf of such communication service or users of such service.”



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## DISPUTE RESOLUTION

### DISPUTE RESOLUTION IN THE PHILIPPINES

Dispute Resolution in the Philippines does not provide for any special rule, regulation, treatment and/or circumstance to European corporations. The general laws and rules on litigation, arbitration and other modes of alternative dispute resolution (ADR) apply to European corporations, as to other domestic or foreign corporation.



## LEGAL AND JUDICIAL SYSTEM

### TYPE OF LEGAL SYSTEM

The Philippine Legal System is a blend of the Roman civil law and the Anglo-American common law systems. The civil law system operates in the areas of family relations, property, succession, contracts and criminal law, while statutes and principles of common law origin are evident in fields such as constitutional law, procedure, corporation law, negotiable instruments, taxation, insurance, labor relations, and banking laws. Islamic personal law is recognized and is operative in some parts of Mindanao with the establishment of Shari'ah courts and the Shari'ah Bar.

## THE COURTS

### TRIAL COURTS

At the first level are the Metropolitan Trial Courts (**MeTC**), Municipal Trial Courts (**MTC**), the Municipal Trial Courts in Cities (**MTCC**), and Municipal Circuit Trial Courts (**MCTC**). MeTCs are stationed by law in the cities and municipalities making up the metropolitan areas such as Metro Manila, Cebu, and Davao. In cities outside the metropolitan areas, courts of the first level are called Municipal Trial Courts in Cities. There is an MTC in every municipality, and an MCTC presides over two or more municipalities grouped into a circuit.

Courts of the first level are essentially trial courts. They try and decide only cases specified by law. These courts have jurisdiction over cases of ejectment, recovery of personal property with a value of not more than PHP 300,000 (or PHP 400,000 in Metro Manila), cases involving title to or possession of real property where the assessed value of the property is not more than PHP 20,000 (or PHP 50,000 in Metro Manila), exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, the amount of which must be specifically alleged. These courts also have delegated jurisdiction over cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots where the value does not exceed PHP 100,000.

First level trial courts have also been given jurisdiction over small claims cases, which are defined as actions for payment of money where the value of the claim does not exceed PHP 200,000 exclusive of interest and costs. The action is commenced by filing a Statement of Claims, in a standard form issued by the Supreme Court, together with supporting affidavits and documents. No formal pleading is necessary. The defendant, once summoned, is

### MAIN SOURCES OF LAW

The main sources of Philippine law are the Constitution, statutes, treaties and conventions, and judicial decisions. The Constitution is the fundamental law of the land and as such, it is authority of the highest order against which no law can prevail. Every official action, to be valid, must conform to it. On the other hand, statutes are enactments passed by the Philippine Legislature. Statutes also include presidential decrees issued during the martial law period, and executive orders issued by the President under the 1986 Provisional "Freedom" Constitution.

Treaties entered into by the Philippines with other states have the same force of authority as legislative enactments. Philippine law is also derived from case decisions because the Civil Code provides that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." Only decisions of the Supreme Court, however, establish jurisprudence and are binding on all other courts.

required to file a Response within ten days from receipt of the summons. The parties must appear personally, and lawyers are not allowed to appear unless they are the plaintiffs or defendants. At the hearing, the judge is required to exert efforts to bring the parties to an amicable settlement. If such efforts fail, the judge shall proceed to hear the case and issue a decision on the same day as the hearing. The decision is final and executory and cannot be appealed.

At the second level are the Regional Trial Courts. The Philippines is divided into 13 regions and in each region there is a Regional Trial Court that may have one or more branches. Like the first level courts, Regional Trial Courts are trial courts. They are courts of general jurisdiction; they try and decide not only the particular classes or kinds of cases assigned to them by law, but also those which are not otherwise within the exclusive jurisdiction of first level courts or any other tribunal. Regional Trial Courts also exercise appellate jurisdiction over decisions rendered by the first level courts.

Regional Trial Courts have jurisdiction over cases, the subject matter of which, is incapable of pecuniary estimation; or those involving title to, or possession of, real property where the assessed value of the property exceeds PHP 20,000 (or PHP 50,000 in Metro Manila), except cases of ejectment; all actions in admiralty and maritime jurisdiction where the demand or claim exceeds PHP 300,000 (or PHP 400,000 in Metro Manila); and those where the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, or the value of the personal property in controversy exceeds PHP 300,000 (or PHP 400,000 in Metro Manila).

## APPELLATE COURTS

At the third level is the Court of Appeals. It is essentially an appellate court. While it exercises exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts, the Court of Appeals principally exercises exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution. The Court of Appeals may review questions of fact or mixed questions of fact and law.

Appeal of decisions rendered by the Regional Trial Courts in the exercise of the latter's original jurisdiction is a matter of right; but appeal of decisions rendered by the Regional Trial Courts in the exercise of appellate jurisdiction is a matter of discretion.

The Supreme Court is the highest court of the land. It is the court of last resort, from whose judgment no appeal lies. It exercises appellate jurisdiction over cases decided by the Court of Appeals and the Regional Trial Courts. As a general rule, appeals to the Supreme Court are not a matter of right and only questions of law may be raised in such appeals. The only exception is with respect to criminal cases where the penalty of death,<sup>13</sup> reclusion perpetua, or life imprisonment has been imposed by the lower courts. Such cases are subject to automatic review by the Supreme Court, and both issues of fact and law may be raised.

### LANGUAGE OF THE COURTS

The language used in and by the courts is English (i.e., in hearings, pleadings, court orders and decisions). Statements made in court in another language are required to be translated to English.



<sup>13</sup> The imposition of the Death Penalty has been suspended by Republic Act No. 9346.

## LITIGATION

### COMMENCING PROCEEDINGS

An action is generally commenced by the filing of a complaint containing a statement of the plaintiff's cause or causes of action. The complaint is required to contain a certification against forum shopping to the effect that the plaintiff has not commenced any action or filed any claim involving the same issue(s) in any court, tribunal or quasi-judicial agency and to the best of his knowledge, no such other action or claim is pending therein. Failure to comply with this requirement is a ground for dismissal of the case. The filing of the complaint must also be accompanied by the payment of the prescribed docket fee; otherwise, the trial court will not acquire jurisdiction over the case.

Upon the filing of the complaint and the payment of the requisite legal fees, the clerk of court will issue the corresponding summons to the defendant, together with a copy of the complaint.

When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service of summons may be made on its resident agent designated in accordance with law for that purpose, or, if there is no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines. If the foreign private juridical entity is not registered in the Philippines or has no resident agent, service may, with leave of court, be effected out of the Philippines through any of the following means:

1. By personal service through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs
2. By publication in a newspaper of general circulation in the country where the defendant may be found and by serving a copy of the summons and the court order by-registered mail at the last known address of the defendant
3. By facsimile or any recognized electronic means that can generate proof of service
4. By such other means as the court may, in its discretion, direct

### PILOTING OF A NEW SYSTEM FOR SPEEDY COURT TRIAL

The Supreme Court recently approved the piloting of proposed revisions to the rules on civil procedure on preliminary conference and trial. The pilot courts are selected first and second level courts in Quezon City, Makati, Angeles, Iloilo, Davao and Cebu. The proposed rules include use of video-conferencing in the preparation of judicial affidavits, the preparation of a terms of reference during preliminary conference, giving the court the discretion to conduct alternate trial (where the parties take turns in presenting their witnesses) or face-to-face trial (where witnesses from contending

sides sit face-to-face around a table in a non-adversarial environment, and answer questions from the court as well as the parties' counsels respecting the factual issues under consideration).

## DEFAULT JUDGMENT

If the defendant fails to file an answer within the required period, the court may issue an order of default upon motion of the plaintiff. The court will then proceed to render judgment as the pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. A judgment rendered against a party in default must not exceed the amount or be different in kind from that sought in the pleading. The court may not award unliquidated damages.

The order of default may be set aside, upon motion filed by the party declared in default, at any time after notice and before judgment, by a showing that the failure to answer was due to fraud, accident, mistake, or excusable negligence, and that the defaulting party has a meritorious defense.

In any case, the party declared in default is entitled to notice of subsequent proceedings, but may not take part in the trial.

## SUMMARY JUDGMENT

A summary judgment, upon motion of either party, is granted by the court for an expeditious settlement of the case if it appears from the pleadings, affidavits, depositions and admissions that, except as to the amount of damages, there are no genuine questions or issues of fact involved and that the movant is entitled to a judgment as a matter of law. Summary judgment may be rendered upon the whole case or only on parts thereof where some facts appear to be without genuine controversy.

## PROVISIONAL REMEDIES

### Preliminary Attachment

At the commencement of the action or at any time before entry of judgment, a plaintiff, or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in certain cases involving fraud or intent to defraud creditors.

### Preliminary Injunction

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency, or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

If, based on affidavits or on the verified application, it is shown that the applicant may suffer great or irreparable injury before the matter can be heard on notice, the court may issue a temporary restraining order before a hearing is conducted.

## Receivership

One or more receivers may be appointed by the court where the action is pending, or by the Court of Appeals or the Supreme Court, or a member thereof, in the following cases:

A. When the applicant has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger of being lost, removed, or materially injured;

B. When, in an action for foreclosure, it appears that the property is in danger of being wasted or dissipated or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;

C. To preserve the property during appeal, or to dispose of it according to the judgment, or to aid execution when the execution or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect;

D. Whenever it is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation.

## Replevin

A party praying for the recovery of possession of personal property may, at the commencement of the action or at any time before filing an answer, apply for an order for the delivery of such property to him.

### Support *Pendente Lite*

At the commencement of the proper action or proceeding, or at any time prior to the judgment or final order, a verified application for support pendente lite may be filed by any party stating the grounds for the claim and the financial conditions of both parties, and accompanied by affidavits, depositions, or other authentic documents in support thereof.

## DISCOVERY/DISCLOSURE

It is the duty of each contending party to lay before the court all the material and relevant facts known to him, suppressing or concealing nothing, nor preventing another party from also presenting all the facts within his knowledge. As only the ultimate facts are set forth in pleadings, evidentiary matters may be inquired into and learned by the parties before the trial through the deposition-discovery mechanism. Refusal to comply with an order for discovery may result in various sanctions against the disobedient party, including refusal to allow said party to support or oppose designated claims or defenses, prohibiting said party from introducing in evidence designated documents or things or items of testimony, striking out of pleadings or parts thereof, dismissal of the action, or rendition of a judgment by default against said party.

However, despite the provisions allowing various types of discovery (e.g., depositions, interrogatories, request for admissions), resort to such procedures is not prevalent in the Philippine legal system.

## REMEDIES

### Motion for New Trial

Within 15 days from receipt of the decision or judgment, a party may move to set aside the judgment or final order and grant a new trial for one or more of the following grounds:

a. Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such party has probably been impaired in his rights

b. Newly discovered evidence, which a party could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result

### Motion for Reconsideration

Within 15 days from receipt of the decision or judgment, a party may move for reconsideration on the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

If the motion for reconsideration is denied, the movant has a fresh period of 15 days from receipt or notice of the order denying or dismissing the motion for reconsideration within which to file a notice of appeal.

### Petition for Relief

When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

The Petition shall be filed within 60 days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than 6 months after such judgment or final order was entered.

### Petition for *Certiorari*, Prohibition and/or *Mandamus*

When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, a person aggrieved may file a verified petition for the annulment or modification of the proceedings of such tribunal, board or officer.

When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, a person aggrieved may file a verified petition to require

the respondent to desist from further proceedings in the action or matter specified therein.

When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, the person aggrieved may file a verified petition to command the respondent to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

As a rule, the foregoing remedies are available only if there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

The petition must be filed not later than 60 days from notice of the judgment, order or resolution being questioned. In case a motion for reconsideration or new trial is timely filed, the petition must be filed not later than 60 days counted from the notice of the denial of the motion.

## COSTS

Generally, costs are awarded to the prevailing party, but the court may, for special reasons adjudge that either party pays the costs, or that the same be divided equitably. Attorney's fees and expenses of litigation, other than judicial costs, are not recoverable in the absence of stipulation, except in specific cases enumerated in the Civil Code.

## APPEALS

Appeals from first level courts can only be taken to the proper Regional Trial Courts, i.e., the Regional Trial Court which has territorial jurisdiction over the first level court that rendered the decision. The appeal is a matter of right and made by filing a Notice of Appeal within 15 days after notice to the appellant of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within 30 days after notice of the judgment or final order.

The mode of appeal from decisions rendered by the Regional Trial Court depends on several factors (i.e., whether the judgment was rendered in its original or appellate jurisdiction and whether the appeal involves questions of fact and/or law).

When the Regional Trial Court renders a decision in the exercise of its original jurisdiction, the appeal normally goes to the Court of Appeals. The appeal is a matter of right when questions of fact, or mixed questions of fact and law are raised. The appeal is made by the filing of a notice of appeal with the Regional Trial Court within 15 days from notice of the judgment or final order appealed from. In the event that a losing party files a motion for new trial or reconsideration within the 15-day period for filing of appeal, the said party has 15 days from receipt or notice of a denial of the motion within which to file a notice of appeal. A motion for extension of time to file

a motion for new trial or reconsideration is not allowed.

When the judgment to be appealed is rendered by the Regional Trial Court in the exercise of its appellate jurisdiction, appeal is not a matter of right, regardless of whether only questions of law, of fact, or mixed questions of fact and law, are involved. It will be given due course by the Court of Appeals only when the petition shows prima facie that the lower court has committed errors in its conclusions of fact or law that will warrant reversal or modification of the decision sought to be reviewed. The method of appeal is by petition for review which should be filed and served within 15 days from notice of the decision sought to be reviewed. Upon proper motion and the payment of the full amount of fees before the expiration of the initial period, the Court of Appeals may grant an additional period of 15 days only within which to file the petition for review. No further extension will be granted except for the most compelling reason and in no case to exceed 15 days.

When the judgment to be appealed is rendered by the Regional Trial Court in the exercise of its original (not appellate) jurisdiction, and the appellant intends to raise only pure questions of law, the appeal from the Regional Trial Court may be taken directly to the Supreme Court, by petition for review on certiorari. The appeal, in this instance, is not a matter of right but subject to the discretion of the Supreme Court. The petition must be filed within 15 days from notice of the judgment or final order appealed from. On motion duly filed and served, with full payment of fees before the expiration of the reglementary period, the Supreme Court may, for justifiable reasons, grant an extension of 30 days only within which to file the petition.

Appeals from the Court of Appeals are taken to the Supreme Court by petition for review on certiorari, the appeal being discretionary and generally limited to questions of law. The petition must be filed within 15 days from notice of the judgment or final order appealed from. On motion duly filed and served, with full payment of fees before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of 30 days only within which to file the petition.

## ENFORCEMENT OF JUDGMENTS

Execution will issue as a matter of right on motion, upon the expiration of the period to appeal. If the appeal has been duly perfected and finally resolved, execution may be applied for in the court of origin on motion.

By way of exception, the prevailing party may file a motion for execution of a judgment or final order that has been appealed. Discretionary execution may only issue upon good reasons to be stated in the order after due notice and hearing.

Judgments in actions for injunction, receivership, accounting and support are immediately executory and are not stayed by appeal, unless otherwise ordered by the trial court. Moreover, a decision by a first level court (e.g., MTCs, MeTCs) against the defendant in an action for ejectment is executory and can be enforced pending

appeal unless the following requisites have been complied with: [i] an appeal has been perfected; [ii] defendant posts a sufficient supersedeas bond approved by the first level court; and [iii] deposits with the appellate court the amount of rent due from time to time.

A final and executory judgment or order may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

If a judgment debtor does not comply with the judgment upon demand, judgments may be enforced as follows:

- Satisfaction by levy, by seizure of sufficient property of the judgment debtor;
- Garnishment of debts and credits;
- Where a judgment directs a party to perform a specific act, a direction from the court that the act be done at the cost of the disobedient party;
- Where a judgment is for the sale of real or personal property, a direction to a sheriff of the court to sell such property and apply the proceeds;
- Delivery or restitution of real property;
- Removal of improvements on property subject to execution through a special order of the court.

## RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

A judgment of another State may not be directly enforced in the Philippines. A separate action must be filed in the Philippines for the foreign judgment to be recognized or enforced. The Philippine courts must be convinced that there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction. Moreover, a foreign judgment will not be enforced or recognized when it runs counter to laws which have for their object public order, public policy and good customs.

In case of a judgment in actions affecting title to or possession of real property or any interest therein, the judgment is conclusive upon the title to the property. However, in the case of a judgment in personal actions (e.g. actions against a person for his personal liability), the judgment is merely presumptive evidence of a right as between the parties and their successors in interest by a subsequent title. In either case, the judgment may be repelled by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

Comity and reciprocity are also factors to be considered in the recognition and enforcement of a foreign judgment by a Philippine court.<sup>14</sup>

<sup>14</sup> Marcos, Jr. v. Republic of the Philippines, G.R. No. 189434, 12 March 2014.

## ARBITRATION

Parties have the option to resort to arbitration in resolving their disputes in the Philippines.

All types of commercial disputes may be referred to arbitration. The word “commercial” is broadly defined as “matters arising from all relationships of a commercial nature, whether contractual or not.”

Moreover, Executive Order No. 78, series of 2012 and its Implementing rules and Regulations mandate the inclusion of provisions on the use of ADR mechanisms in all government contracts involving Public-Private Partnership (PPP) projects, Build-Operate and Transfer (BOT) projects, Joint Venture Agreements (JVAs) between the Philippine government and private entities, and contracts entered into by Local Government Units (LGUs).

The following disputes may not be submitted to commercial arbitration: (a) labor disputes covered by Presidential Decree No. 442 (PD 442), otherwise known as the Labor Code of the Philippines, as amended, and its Implementing Rules and Regulations; (b) the civil status of persons; (c) the validity of a marriage; (d) any ground for legal separation (of married persons); (e) the jurisdiction of courts; (f) future legitime; (g) criminal liability; and (h) those disputes which by law cannot be compromised.

## ADVANTAGES OF ARBITRATION COMPARED WITH COURT LITIGATION

Arbitration, which is steadily growing in popularity as an alternative mode of dispute resolution, may be more attractive than court litigation for several reasons.

### Speed

Despite the efforts of the Supreme Court to streamline the judiciary, the dockets of Philippine courts remain clogged. Consequently, it usually takes several years for the trial courts to hear and resolve cases filed with them.

In contrast, disputes submitted to arbitration are more speedily resolved. Unlike judges, arbitrators do not have to contend with heavy caseloads. The parties may choose arbitrators whose schedules can accommodate the long hours necessary to hear and decide a case.

### Flexibility of the Rules

Foreign investors who are not familiar with local court procedures may prefer a more neutral process. Arbitration allows the parties to choose or craft the rules that will govern the arbitration proceedings. Since the procedure is mutually agreed upon, the parties have more faith in the integrity of the process. Also, the parties need not be bound by the strict rules of evidence.

### Choice of Arbitrators

The parties are free to choose the arbitrators. They are expected to appoint arbitrators whom they regard as honest and competent. The ability to choose the arbitrator(s) is especially attractive to a foreign party who

may harbor reservations about the neutrality of a “home court” judge. Since the parties are given a free hand in choosing their arbitrator(s), the outcome becomes more acceptable.

On the part of the arbitrators, they have an added incentive to establish and build a reputation for competence and integrity. The greater their reputation for competence and integrity, the higher will be the demand for their services.

### Finality of the Award

Awards in commercial arbitration are generally not appealable. The grounds to question an arbitral award are limited as compared to judicial decisions.

### Arbitrators with expertise

Parties are usually able to appoint arbitrators who are knowledgeable in the subject matter of the dispute.

### Confidentiality

Whereas court proceedings are open to the public, arbitration proceedings are private and confidential. Documents and information disclosed in arbitration proceedings are generally confidential and may be disclosed to third parties only under exceptional circumstances.

## ARBITRATION AS A CONTRACT

An agreement to arbitrate is a contract, the relation of the parties is contractual, and the rights and liabilities of the parties are controlled by the law of contracts. As a general rule, there can be no arbitration unless the parties agree to submit their dispute to arbitration. If there is no agreement to submit a dispute to arbitration, the remedy of the aggrieved party is to file a case in court. An aggrieved party cannot compel the other party to arbitrate. When there is an agreement to arbitrate, the same can take effect only between the parties, their assigns and heirs. Thus, as a general rule, a corporation’s representative who did not personally bind himself to an arbitration agreement cannot be forced to participate in arbitration proceedings made pursuant to an agreement entered into by the corporation<sup>15</sup>. However, corporate representatives may be compelled to submit to arbitration proceedings pursuant to a contract entered into by the corporation they represent if there are allegations of bad faith or malice in their acts representing the corporation in order to determine if the distinction between the personality of the corporation and the personalities of its representatives should be disregarded.<sup>16</sup>

Philippine Law recognizes the principle of separability of arbitration contracts. An arbitration agreement that forms part of the main contract shall not be regarded as invalid or non-existent just because the main contract is invalid or did not come into existence, since the arbitration agreement shall be treated as a separate agreement independent of the main contract.<sup>17</sup> In PEZA



*v. Edison (Bataan) Cogeneration Corporation*,<sup>18</sup> the Supreme Court further held that “the invalidity of the main contract, also referred to as the ‘container’ contract, does not affect the validity of the arbitration agreement.”

The parties may agree to submit a dispute to arbitration either before or after a dispute arises.

The right to refer a dispute to arbitration can be waived by estoppel<sup>19</sup>

## ARBITRATION LAW

The following laws govern arbitration in the Philippines: Republic Act No. 876 (**Arbitration Law**), Republic Act No. 9285 (**Alternative Dispute Resolution Act of 2004** or **ADR Act**), Implementing Rules and Regulations of the ADR Act (**ADR Act IRR**), Executive Order No. 1008 (**Construction Industry Arbitration Law**), and the Special Rules of Court on Alternative Dispute Resolution (**Special ADR Rules**).

### International Arbitration

International commercial arbitrations seated<sup>20</sup> in the Philippines are governed by the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985 (**United Nations Document A/40/17**).

Arbitration is considered *international* if:

A. the parties to an arbitration agreement have, at the time of the conclusion of such agreement, their places of business in different countries; or

B. one of the following places is situated outside the State in which the parties have their places of business:

- i. the place of arbitration determined in or pursuant to the arbitration agreement; or
- ii. any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or

C. the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

### Domestic Arbitration

The Arbitration Law, as amended by the ADR Act, applies to domestic arbitrations. Domestic arbitration is simply defined as arbitration that is not international. Thus, if the dispute is between parties who have their place of business in the Philippines, the place of arbitration is the Philippines, their obligations are to be performed in the Philippines, and there is no stipulation in the arbitration agreement that the subject matter of the arbitration agreement relates to another country, the arbitration will be considered domestic.

### Construction Arbitration

The arbitration of construction disputes is governed by the Construction Industry Arbitration Law. The Construction Industry Arbitration Commission (**CIAC**) has

original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines and all that is needed for the CIAC to acquire jurisdiction is for the parties to agree to submit the same to arbitration.

The Supreme Court has held that “as long as the parties agree to submit their dispute to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specifically choose another forum, the parties will not be precluded from electing to submit their dispute before the CIAC because this right has been vested by law.”<sup>21</sup>

In *Ibex International, Inc. v. GSIS, et. al.*,<sup>22</sup> the Supreme Court held that: “The CIAC is the duly constituted quasi-judicial agency accorded with jurisdiction to resolve disputes arising from construction contracts in the Philippines. This Court must confer finality to its factual findings as they are supported by evidence.”

On average, proceedings in the CIAC take around six months.

## ROLE OF THE COURTS IN ARBITRATION

The Special ADR Rules define the role of the courts in relation to arbitration proceedings, including: challenge to the existence, validity and enforceability of arbitration agreements; referral to arbitration; interim measures of protection; appointment, challenge and termination of arbitrators; assistance in taking evidence; confidentiality/protective orders; confirmation, correction or vacation of awards in domestic arbitration; recognition and enforcement or setting aside of international commercial arbitration awards; recognition and enforcement of foreign arbitral awards; and appeals to the Court of Appeals and the Supreme Court. The Special ADR Rules reiterate the State policy of promoting arbitration.

<sup>15</sup> (See *Aboitiz Transport System v. Carlos A. Gothong Lines, G.R. No. 198226, 18 July 2014*.)

<sup>16</sup> (*Lanuza v. BF Corporation, G.R. No. 174938, 1 October 2014*.)

<sup>17</sup> (*Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc. G.R. No. 175404, 31 January 2011*.)

<sup>18</sup> G.R. No. 179537, 23 October 2009.

<sup>19</sup> (*Benguet Corporation v. Department of Environment and Natural Resources - Mines Adjudication Board, et. al., G.R. No. 163101, 13 February 2008*.)

<sup>20</sup> These are the instances when the Philippines is chosen as the place or seat of arbitration. The place or seat of arbitration is the legal or juridical home (or domicile) of the arbitration, the choice of which results in a number of highly significant legal consequences as it determines the (a) the national arbitration legislation applicable to the arbitration; (b) the law applicable to the “external” relationship between the arbitration and national law and courts (including annulment of awards and selection and removal of arbitrators); (c) the law applicable to the “internal” procedures of the arbitration (including requirements for equality of treatment and due process); and (d) the law presumptively applicable to the substantive validity of the arbitration agreement. GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION, (2014), 2051

<sup>21</sup> *National Irrigation Administration v. Court of Appeals, G.R. No. 129169, 17 November 1999*.

<sup>22</sup> G.R. No. 162095, 12 October 2009.

## ARBITRAL INSTITUTIONS

Several arbitral institutions have been established in the Philippines, similar to those of the International Chamber of Commerce, Hong Kong International Arbitration Center, and the Singapore International Arbitration Center. The leading commercial arbitration center in the Philippines is the Philippine Dispute Resolution Center, Inc. (**PDRCI**).

The PDRCI is a non-stock, non-profit organization incorporated in 1996 out of the Arbitration Committee of the Philippine Chamber of Commerce and Industry. It was formed for the purpose of promoting and encouraging the use of arbitration as an alternative mode of settling commercial transaction disputes and providing dispute resolution services to the business community. PDRCI’s membership includes prominent lawyers and members of the judiciary, academicians, arbitrators, bankers, accountants, engineers, architects and businessmen.

It takes the PDRCI an average of around 1 year from the time of filing of the request for arbitration to hear the case and render an award.

To reflect recent trends in international commercial arbitration, and in order to keep pace with other arbitral institutions, the PDRCI recently approved its revised Rules of Arbitration and Guidelines on Fees, which became effective on January 2015. The revised rules contain new provisions on joinder of additional parties, consolidation of arbitrations, appointment of emergency arbitrator and expedited procedure, among others.

## AD HOC ARBITRATION

There is no prohibition in the Philippines regarding the conduct of ad hoc arbitrations in accordance with the existing policy in favor of arbitration.

## ENFORCEMENT OF AWARDS

The Philippines is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. An action for the recognition and/or enforcement of a foreign arbitral award must be filed with the proper Regional Trial Court and a copy of the award and the original agreement must likewise be submitted. If the said award or agreement is not made in an official language of the Philippines, the party-applicant shall produce a translation of the documents into the official language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

The Special ADR Rules provide rules for the confirmation of awards in domestic arbitration, and the recognition/enforcement of international commercial arbitration awards and foreign arbitral awards.

## CHALLENGING AWARDS

The grounds to set aside arbitral awards are limited. Generally, awards may only be challenged on the basis of due process and procedural grounds and not on questions of facts or law affecting the merits of the award. The following are the grounds to challenge awards

in international arbitrations:

- A party to the arbitration agreement was under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereof, under Philippine law.
- The party making the application to set aside or resist enforcement was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case.
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside or only that part of the award which contains decisions on matters submitted to arbitration may be enforced.
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of Philippine law from which the parties cannot derogate, or, failing such agreement, was not in accordance with Philippine law.
- The subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines.
- The recognition or enforcement of the award would be contrary to public policy.

An additional ground for opposing recognition/enforcement is that “the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which that award was made.”

Domestic arbitral awards may be vacated on any of the following grounds:

- The arbitral award was procured with through corruption, fraud or other undue means.
- There was evident partiality or corruption in the arbitral tribunal or any of its members.
- The arbitral tribunal was guilty of misconduct or any form of misbehavior that has materially prejudiced the rights of any party such as refusing to postpone a hearing upon sufficient cause shown or to hear evidence pertinent and material to the controversy.
- One or more of the arbitrators was disqualified to act as such under the law and willfully refrained from disclosing such disqualification.
- The arbitral tribunal exceeded its powers, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter

submitted to them was not made.

- The arbitration agreement did not exist, or is invalid for any ground for the revocation of a contract or is otherwise unenforceable.
- A party to arbitration is a minor or a person judicially declared to be incompetent.

## OTHER MODES OF ALTERNATIVE DISPUTE RESOLUTION

There have been increased efforts in recent years to institutionalize ADR in the Philippine legal system to aid in the speedy administration of justice.

### COURT-ANNEXED ADR

#### Court-Annexed Mediation

Beginning in 2001, the Supreme Court, in the exercise of its supervisory and regulatory powers over the Philippine judicial system, implemented, initially on a trial basis, the requirement for the conduct of mediation for certain cases commenced before the courts. In 2011, the Supreme Court expanded the cases covered by the Court-Annexed Mediation scheme (**CAM**). The following cases are currently covered by the rule on CAM:

- All civil cases and the civil liability of criminal cases covered by the Rules on Summary Procedure, including civil liability for violation of the Bouncing Checks Law
- Special proceedings for the settlement of estates
- All civil and criminal cases requiring a certificate to file action under the Revised Katarungang Pambarangay Law
- The civil aspect of quasi-offenses under the Revised Penal Code
- The civil aspect of less grave felonies not exceeding 6 years of imprisonment where the offended party is a private person
- Civil aspects of estafa (swindling), theft and libel
- All civil cases and probate proceedings brought on appeal from the first-level courts
- All cases of forcible entry and unlawful detainer brought on appeal from the first-level courts
- All civil cases involving title or possession of real property or interest therein brought on appeal from first-level courts
- Habeas corpus cases brought up on appeal from the first-level courts.

The following cases are not proper subject of CAM:

- Civil cases which by law cannot be compromised
- Other criminal cases not covered by the third to sixth items on the previous list
- Habeas corpus petitions

- All cases under the Violence Against Women and Children Act
- Cases with pending applications for restraining orders or preliminary injunctions

The court before which a case was filed involving any of the aforementioned disputes calls the parties to a conference before a mediator appointed by the trial court from the list provided by the Supreme Court. During the mediation period, the court orders the suspension of the proceedings before it for 30 days. Individual parties are required to personally appear for mediation unless they send a representative who is fully authorized to appear, negotiate and enter into a compromise, through a Special Power of Attorney. Corporations, partnerships or other juridical entities shall be represented by a ranking corporate officer fully authorized by a Board Resolution to offer, negotiate, accept, decide and enter into a compromise agreement, without need of further approval by or notification to the authorizing party.

If a settlement is reached, the compromise agreement entered into between the parties is submitted to the court and serves as basis for the rendition of a judgment by compromise that may be enforced by execution. Otherwise, the case is returned to the court.

Any and all matters discussed or communications made and documents presented during the mediation proceedings are privileged and confidential and inadmissible as evidence for any purpose in any other proceedings.

The period during which the case is undergoing mediation or conciliation are excluded from the regular and mandatory periods for trial and rendition of judgment in ordinary cases as well as in cases under summary procedure.

#### Judicial Dispute Resolution

Judicial Dispute Resolution (**JDR**) is governed by A.M. No. 11-1-6-SC-PHILJA and is promulgated pursuant to the ADR Act. Together with Court-Annexed Mediation, JDR is intended to put an end to pending litigation through a compromise agreement and help unclog court dockets in the country. Cases covered by CAM are also subject to JDR.

Judicial proceedings covered by JDR are divided into two stages: (1) from the filing of the complaint to the conduct of Court-Annexed Mediation and JDR; and (2) pre-trial proper to trial and judgment. The judge to whom the case had been originally assigned is referred as the JDR judge,

who presides over the first stage. Another judge, called the trial judge, presides over the second stage. At the initial stage of the preliminary conference, the JDR judge briefs the parties on Court-Annexed Mediation and JDR. Upon failing to secure a settlement of the dispute during Court-Annexed Mediation, a second attempt to arrive at a compromise agreement is made through JDR. The JDR judge facilitates the settlement discussions between the parties and tries to reconcile their differences, assesses the relative strengths and weaknesses of each party's case, and makes a non-binding and impartial evaluation of the chances of each party's success in the case. On the basis of this neutral evaluation, the judge seeks to persuade the parties to a fair and mutually acceptable settlement of their dispute. The JDR judge may not preside over the trial of the case if the parties do not settle their dispute at JDR.

To complete the JDR process, judges of the first level courts shall have a period of not exceeding 30 days, while judges of the second level courts shall have a period of not exceeding 60 days. A longer period, however, may be granted upon the discretion of the JDR judge if there is a high probability of settlement and upon joint written motion of the parties. Both periods shall be computed from the date when the parties first appeared for JDR proceedings as directed in the respective orders issued by the judge.

If full settlement of the dispute is reached within 30 days (in the first level court) or 60 days (in the second level court), the parties, assisted by their respective counsels, shall draft a compromise agreement which shall be submitted to the court for a judgment upon compromise, enforceable by execution. Only upon failure of the JDR will parties proceed to trial proper, when the case is turned over to the trial judge.

Any and all matters discussed or communications made, including requests for mediation, and documents presented during the JDR proceedings before the trial judge, are privileged and confidential and inadmissible as evidence for any purpose in any other proceedings. Further, the JDR judge may not pass any information obtained in the course of conciliation and early neutral evaluation to the trial judge or to any other person.

#### Philippine Mediation Center - Appeals Court Mediation

At the Court of Appeals level, cases covered by Court-Annexed Mediation and JDR, which have not been settled and went to trial, must be referred to the Philippine Mediation Center - Appeals Court Mediation unit for mediation.

## COMMERCIAL ADR

The ADR Act, without limiting the modes of ADR that the parties can avail of, provide for, in addition to arbitration, the following modes of ADR:

#### Mediation

Mediation is a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assists the parties

in reaching a voluntary agreement regarding a dispute. Information obtained through mediation is privileged and confidential. A party, a mediator, or a non-party participant may refuse to disclose and may prevent any other person from disclosing a mediation communication.

A mediated settlement agreement may be deposited with the appropriate clerk of a Regional Trial Court of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court. Pursuant to the Special ADR Rules, after a summary hearing, if the court finds that the agreement is a valid mediated settlement agreement, that there is no merit in any of the affirmative or negative defenses raised, and the respondent has breached that agreement, in whole or in part, the court shall order the enforcement thereof; otherwise, it shall dismiss the petition.

The parties may agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award which shall be subject to enforcement.

#### Early Neutral Evaluation

Early neutral evaluation is an ADR process wherein parties and their lawyers are brought together early in the pre-trial phase to present summaries of their cases and to receive a non-binding assessment by an experienced neutral person, with expertise in the subject matter or substance of the dispute.

All papers and written presentations communicated to the neutral third person, including any paper prepared by a party to be communicated to the neutral third person or to the other party as part of the dispute resolution process, and the neutral third person's written non-binding assessment or evaluation, shall be treated as confidential.

The proceedings are governed by the rules and procedure agreed upon by the parties. By default, the ADR Act IRR shall govern.

#### Mediation-Arbitration or Med-Arb

Med-Arb is a two-step dispute resolution process involving mediation and then followed by arbitration. It is governed by the rules and procedure agreed upon by the parties. Otherwise, the ADR Act IRR shall govern. As a general rule, a mediator may not act as an arbitrator in respect of the same dispute, or vice-versa.

#### Mini-trial

Mini-trial is a structured dispute resolution method in which the merits of a case are argued before a panel comprising of senior decision-makers, with or without the assistance of a neutral third person, before which the parties seek a negotiated settlement. It shall be governed by the rules and procedure agreed upon by the parties. Otherwise, the ADR Act IRR shall govern.

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## INSOLVENCY IN THE PHILIPPINES

Insolvency laws in the Philippines do not provide for any special rule, regulation, treatment and/or circumstance applicable only to European Corporations. Insolvency laws apply the same way to European Corporations, as other domestic or foreign corporations.



## OVERVIEW AND INTRODUCTION TO THE JURISDICTION/ APPLICABLE LEGISLATION

There are three types of remedies available to a financially distressed individual or juridical person: suspension of payments (only available to individuals), corporate rehabilitation (voluntary / involuntary, pre-negotiated, or out-of-court or informal restructuring agreements) and liquidation. The applicable laws and regulations are the Civil Code, the Financial Rehabilitation and Insolvency Act (FRIA), Presidential Decree No. 902-A (PD 902-A)<sup>23</sup>, the Financial Rehabilitation Rules of Procedure (**Financial Rehabilitation Rules**)<sup>24</sup>, and the Financial Liquidation and Suspension of Payments Rules for Procedure for Insolvent Debtors (**FLSP Rules**)<sup>25</sup>. The type of proceeding that applies to a debtor depends on the particular relief sought.

The FRIA became effective on 31 August 2010. It provides for a more comprehensive framework for rehabilitation and liquidation of debtors. More importantly, the FRIA has made available to partnerships and sole proprietorships, the benefits of rehabilitation proceedings. This is advantageous for small businesses as they are more commonly formed as partnerships or individual enterprises. Banks, insurance companies and pre-need companies, and national and local government agencies or units, however, are not covered under the FRIA.

On 27 August 2013, the Supreme Court promulgated the Financial Rehabilitation Rules which provides for the procedure governing rehabilitation proceedings under the FRIA. On 21 April 2015, the Supreme Court also promulgated the FLSP Rules which provides for

the procedure governing liquidation proceedings of insolvent juridical and individual debtors and suspension of payments of insolvent individual debtors under the FRIA. On 21 June 2016, the Supreme Court expanded the coverage of the current Special Commercial Courts to include cases governed by the FRIA<sup>26</sup>. On 5 October 2016, the Supreme Court also issued the schedule of legal fees for proceedings under the FRIA<sup>27</sup>.

If what is sought is merely a little financial breathing space, then the remedy is suspension of payments (available to individual debtors), which provides for the deferment of payments and temporary protection against actions/ executions by unsecured creditors.

If, on the other hand, a company would need to undergo rehabilitation which would of a company entail more radical measures such as changes in organization, management and/or strategy, and requires temporary protection against both secured and unsecured creditors, then the remedy is to seek corporate rehabilitation. Finally, if the debtor company has become insolvent and incapable of being rehabilitated, it may apply for liquidation and have its assets distributed accordingly among its creditors. In all cases under the FRIA, the debtor shall be insolvent or is generally unable to pay its or his liabilities as they fall due in the ordinary course of business or has liabilities that are greater than its or his assets.

Each of these remedies is discussed in more detail below.

## SUSPENSION OF PAYMENT AND REHABILITATION

### SUSPENSION OF PAYMENTS

An individual debtor who possesses sufficient property to cover all of his or her debts, but foresees the impossibility of meeting them when they respectively fall due, may file a petition with a Philippine Regional Trial Court (**the Court**) to be declared in a state of suspension of payments. The petition must be filed with the Court of the place where the individual debtor has resided at least six months prior to the filing of the petition.

### Action on the Petition for Suspension of Payments

If the Court finds the petition for Suspension of Payments sufficient in form and substance, it will issue an Order:

- i. Calling a meeting of all the creditors named in the schedule of debts and liabilities (**Creditors' Meeting**)
- ii. Directing such creditors to prepare and present written evidence of their claims before the Creditors' Meeting

<sup>23</sup> After the promulgation of Republic Act 8799 or the Securities Regulation Code, jurisdiction over petitions of corporations, partnerships or associations to be declared in the state of suspension of payments was transferred from the SEC to the Regional Trial Court. The SEC, however, retained jurisdiction over pending suspension of payments and rehabilitation cases filed as of 30 June 2000 until final disposition of such cases.

<sup>24</sup> Supreme Court Administrative Matter No 12-12-11

<sup>25</sup> Supreme Court Administrative Matter No. 15-04-06-SC

<sup>26</sup> Supreme Court Administrative Matter No. 03-03-03-SC

<sup>27</sup> Supreme Court Administrative Matter No. 04-04-04-SC

- iii. Directing the publication of the said Order in a newspaper of general circulation
- iv. Directing the clerk of court to cause the sending of a copy of the Order to all creditors named in the schedule of debts and liabilities
- v. Forbidding the individual debtor from selling, transferring, encumbering or disposing of in any manner his or her property, except those used in the ordinary operations of commerce or of industry in which the petitioning individual debtor is engaged so long as the proceedings relative to the suspension of payments are pending
- vi. Prohibiting the individual debtor from making any payment outside of the necessary or legitimate expenses of his or her business or industry, so long as the proceedings relative to the suspension of payments are pending
- vii. Appointing a commissioner to preside over the Creditors' Meeting

#### Actions Suspended

Upon motion filed by the individual debtor, the Court may issue an order suspending any pending execution against the individual debtor, provided that properties held as security by secured creditors will not be the subject of such suspension order.

A creditor may not sue or institute proceedings to collect his or her claim from the individual debtor from the time of the filing of the petition for suspension of payments and for as long as proceedings remain pending except for the following:

1. Creditors having claims for personal labor, maintenance, expense of last illness and funeral of the wife or children of the individual debtor incurred in the sixty (60) days immediately prior to the filing of the petition
2. Secured creditors.



#### Agreement for Suspension of Payments

The petition for suspension of payments must include a statement of the individual debtor's assets and liabilities, and the individual debtor's proposed agreement with the creditors for the suspension of payments. The presence of creditors holding claims amounting to at least three-fifths (3/5) of the liabilities is necessary for holding a Creditors' Meeting. The proposed agreement must be approved by two-thirds (2/3) of the creditors representing at least three-fifths (3/5) of the individual debtor's total liabilities. The proposed agreement will be deemed rejected if the number of creditors required for holding a Creditors' Meeting is not attained, or if the required vote is not achieved. In such instances, the proceeding will be terminated and the creditors may enforce their respective credits.

If the required vote is achieved without any objection from the creditors, or the decision of the majority of the creditors to approve the proposed agreement or any amendment thereof made during the Creditors' Meeting is upheld by the Court, the latter will issue an order that the proposed agreement be carried out, and such agreement shall be binding on all creditors that have been properly summoned and included in the schedule of debts and liabilities. However, the agreement will not be binding upon those creditors mentioned in 2.1.b (i) and (ii) above.

If the required vote is achieved but there is an objection from any of the creditors, the Court will conduct a hearing on the objection. If the objection is found to be meritorious, the proceeding will terminate. If the objection is found to be unmeritorious, the Court will proceed as though no objection has been made.

The amount of the debts of the individual debtor is not affected by a suspension of payments. However, the payment for such debts is delayed.

#### Objections to the Debtor's Proposed Agreement

The possible grounds for objecting to the proposed agreement are as follows:

1. Defects in the call for the meeting of the creditors, in the holding thereof, and in the deliberations thereat, which prejudice the rights of the creditors
2. Fraudulent connivance between one or more creditors and the individual debtor to vote in favor of the proposed agreement
3. Fraudulent conveyance of claims for the purpose of obtaining the required majority

If the individual debtor fails wholly or in part to perform the Court-approved agreement, the rights which the creditors had against the individual debtor before the agreement shall re-vest in them. In such case the individual debtor may be made subject to the insolvency proceedings in the manner established by the FRIA.

<sup>28</sup> Under the FRIA, the commencement date refers to the date on which the court issues the commencement order, which shall be retroactive to the date of filing of the petition for voluntary/involuntary proceedings.

## COURT-SUPERVISED REHABILITATION

Some of the salient provisions of the FRIA on court-supervised rehabilitation are as follows:

A. Under the FRIA, obligations incurred after the commencement date<sup>28</sup> to finance the rehabilitation of the debtor are considered administrative expenses. Thus, these obligations can be paid in the ordinary course of business during the rehabilitation period and enjoy priority in preference of credits. This provision improves creditor rights for creditors coming in during rehabilitation. By way of comparison, under the Rules on Corporate Rehabilitation, a Stay Order directs the payment of new loans or other forms of credit accommodations obtained for the rehabilitation of the debtor only with prior court approval.

B. The FRIA also provides for a waiver of taxes and fees due to the government (national and local) upon issuance of the Commencement Order by the court and until approval of the Rehabilitation Plan or dismissal of the petition whichever is earlier.

C. The duration of a Stay Order extends from the issuance of the Commencement Order until the termination of the proceedings, unlike before where the Stay Order was effective only until the approval of the Rehabilitation Plan.

D. Compensation of employees required to carry on the business shall be considered an administrative expense. Claims for salary and separation pay for work performed after the commencement date shall also be an administrative expense. However, claims of separation pay for months worked prior to the commencement date shall be considered a pre-commencement claim.

E. The FRIA provides further clarifications on the treatment of contracts. Under the FRIA, unless cancelled by a final judgment of a court of competent jurisdiction issued prior to the issuance of the Commencement Order, or at anytime thereafter by the court before which the rehabilitation proceedings are pending, all valid and subsisting contracts of the debtor with creditors and other third parties as at the commencement date shall continue in force: provided, that within 90 days following the issuance of the Commencement Order, the debtor, with the written consent of the rehabilitation receiver, must notify in writing each contractual counter-party whether it is confirming the particular contract. Contractual obligations of the debtor arising or performed during this period, and afterwards for confirmed contracts, are considered administrative expenses. Contracts not confirmed within the required deadline shall be considered terminated. Claims for actual damages, if any, arising as a result of the election to terminate a contract shall be considered pre-commencement claims against the debtor, to be filed with the rehabilitation court as a separate claim. The claim will be considered in the rehabilitation plan with the other claims against the debtor. The provisions of the FRIA do not prevent the cancellation or termination of any contract of the debtor for any ground provided by law.

F. The ability of the debtor's directors or officers to dispose of the debtor's assets is restricted. Directors or officers may be held liable for double the value of the property involved if having notice of the commencement of the proceedings under the FRIA, or having reason to believe that proceedings are about to be commenced, or in contemplation of the proceedings, willfully: (a) dispose or cause to be disposed of any property of the debtor other than in the ordinary course of business or authorize or approve any transaction in fraud of creditors or in a manner grossly disadvantageous to the debtor and/or creditors; or (b) conceal or authorize or approve the concealment, from the creditors, or embezzles or misappropriates, any property of the debtor. The liability of the director or officer shall be determined by considering the amount of shareholding or equity interest of such director or officer, the degree of his control, and the extent of his involvement in the actual management of the operations of the corporation.

#### Types of Proceedings

##### *Voluntary Proceedings*

An insolvent debtor (whether a sole proprietorship, partnership or corporation) may initiate voluntary proceedings by filing a petition for rehabilitation with the Philippine Regional Trial Court, which has jurisdiction over the principal office of the debtor, as specified in its articles of incorporation or partnership or, in cases of sole proprietorships, in its registration papers with the Department of Trade and Industry (DTI). A group of debtors may also jointly file a petition for rehabilitation when one or more of its members foresee the impossibility of meeting debts when they respectively fall due, and the financial distress would likely adversely affect the financial condition and/or operations of the other members of the group, and/or the participation of the other members of the group is essential under the terms and conditions of the proposed Rehabilitation Plan.

##### *Involuntary Proceedings*

Any creditor or group of creditors with a claim of, or the aggregate of whose claims is, at least PHP 1 million or at least 25% of the subscribed capital stock or partners' contributions, whichever is higher, may initiate involuntary proceedings with the Philippine Regional Trial Court, which has jurisdiction over the principal office of the debtor, as specified in its articles of incorporation or partnership or, in cases of sole proprietorships, in its registration papers with the DTI against the debtor by filing a petition for rehabilitation with the court, under any of the following circumstances:

1. There is no genuine issue of fact or law on the claim/s of the petitioner/s, and that the due and demandable payments thereon have not been made for at least 60 days or that the debtor has failed generally to meet its liabilities as they fall due.
2. A creditor, other than the petitioner/s, has initiated foreclosure proceedings against the debtor that will prevent the debtor from paying its debts as they become due or will render it insolvent.

## Action on the Petition and Commencement of Proceedings

If the court finds the petition sufficient in form and substance, it will, not later than five working days from the filing of the petition, issue a "Commencement Order" which, among others: (a) declares that the debtor is under rehabilitation; (b) appoints a Rehabilitation Receiver; (c) prohibits the debtor from selling, encumbering, transferring or disposing of in any manner any of its properties except in the ordinary course of business; (d) prohibits the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition; (e) prohibits the debtor's suppliers of goods or services from withholding the supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the Commencement Order; (f) authorizes the payment of administrative expenses as they become due; (g) suspends all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor;<sup>29</sup> (h) suspends all actions to enforce any judgment, attachment or other provisional remedies against the debtor; (i) sets an initial hearing on the petition; and (j) directs all creditors and interested parties to file their claims at least five days before the said initial hearing.

If, within the same period, the court finds the petition deficient in form or substance, it may give the petitioner/s not more than five working days to amend or supplement the petition. If the deficiency is not cured within the extended five-day period, the court must dismiss the petition.

Upon issuance of the Commencement Order and until approval of the Rehabilitation Plan or dismissal of the petition, whichever is earlier, the imposition of all taxes and fees including penalties, interests and charges thereof due to the national government or to LGUs will be considered waived, in furtherance of the objectives of rehabilitation.



<sup>29</sup> The issuance of a Stay or Suspension Order suspending all actions or proceedings for enforcement of all claims against the debtor, any judgment, attachment or other provisional remedies against the debtor and prohibits the debtor from selling, encumbering, transferring or disposing of any of its properties except in the ordinary course of business and from making any payment for its outstanding liabilities as of commencement date does not affect the right to commence actions or proceedings in order to preserve ad cautelam a claim against the debtor and to toll the running of the prescriptive period to file the claim.

## Effectivity and Duration of Commencement Orders

Unless lifted by the court, or where the rehabilitation plan is seasonably confirmed or approved, or the rehabilitation proceedings are ordered terminated by the court, the Commencement Order will be effective for the duration of the rehabilitation proceedings for as long as there is a substantial likelihood that the debtor will be successfully rehabilitated.

## Court Proceedings

If, after the initial hearing on the petition for rehabilitation, the court is satisfied that there is merit in the petition, it will give due course to the petition and refer the same to the Rehabilitation Receiver.

The Rehabilitation Receiver will evaluate the rehabilitation plan and submit his or her recommendations to the Court within a period of not more than 90 days. However, the court may also refer any dispute relating to the Rehabilitation Plan or the rehabilitation proceedings to arbitration or other modes of dispute resolution.

If the petition is dismissed because of a finding that: (a) debtor is not insolvent; (b) the petition is a sham filing intended only to delay the enforcement of the rights of the creditor/s or of any group of creditors; (c) the petition, the Rehabilitation Plan and the attachments thereto contain any materially false or misleading statements; (d) the debtor has committed acts of misrepresentation or in fraud of its creditor/s or a group of creditors, the court may, in its discretion, order the petitioner to pay damages to any creditor or to the debtor, as the case may be, who may have been injured by the filing of the petition, to the extent of any such injury.

The court may also convert the proceedings into one for the liquidation of the debtor upon a finding that: (a) the debtor is insolvent; and (b) there is no substantial likelihood for the debtor to be successfully rehabilitated as determined in accordance with the rules promulgated by the Supreme Court; and (c) there is failure of rehabilitation.

The court may also convert the proceedings into liquidation:

- Upon motion of the debtor (juridical debtor) at any time during the pendency of court-supervised or pre-negotiated rehabilitation proceedings
- When, one year from the date of filing of the petition to confirm a rehabilitation plan, no rehabilitation plan is confirmed within the said period
- In cases of termination of proceedings due to failure of rehabilitation or dismissal of petition for reasons other than technical grounds
- Upon verified motion of three or more creditors whose aggregate claims total at least one million pesos (PHP1 million) or at least 25% of the subscribed capital or partners' contributions of the debtor, whichever is higher.

## Management of the Juridical Debtor

Unless otherwise ordered by the court upon motion of any interested party, the management of the juridical debtor will remain with the existing management subject to the applicable laws and agreements, if any, on the election or appointment of directors, managers or managing partner. However, all disbursements, payments or sale, disposal, assignment, transfer or encumbrance of property, or any other act affecting title or interest in property, will be subject to the approval of the Rehabilitation Receiver and/or the court.

## Claw-back Provisions

The court may, upon motion and after notice and hearing, rescind or declare as null and void any sale, payment, transfer or conveyance of the debtor's unencumbered property or any encumbering thereof by the debtor or its agents or representatives after the commencement date which are not in the ordinary course of the business of the debtor.

The court may also rescind or declare as null and void any transaction that occurred prior to the commencement date entered into by the debtor or involving its funds or assets, on the ground that the same was executed with intent to defraud a creditor or creditors or which constitute undue preference of creditors.

## Rehabilitation Plan

### Confirmation of the Rehabilitation Plan

If no objections to the Rehabilitation Plan are filed within the relevant period or if the objections filed are found by the court to be lacking in merit or have been cured or have been resolved pursuant to an order to cure issued by the court, then the court must issue an order confirming such Rehabilitation Plan. The court may confirm the Rehabilitation Plan notwithstanding the existence of unresolved disputes over claims, if the Rehabilitation Plan has made adequate provisions for paying such claims.

### Effect of Confirmation of the Rehabilitation Plan

- The confirmed Rehabilitation Plan will be binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not they participated in the proceedings, opposed the Rehabilitation Plan or whether or not their claims have been included in the schedule.
- The debtor must comply with the provisions of the Rehabilitation Plan and take all actions necessary to carry them out.
- Payments will be made to the creditors in accordance with the provisions of the Rehabilitation Plan.
- Contracts and other arrangements between the debtor and its creditors will be deemed as continuing in application but only to the extent that they do not conflict with the provisions of the Rehabilitation Plan.

- Any compromise on amounts or rescheduling of timing of payments by the debtor will be binding on creditors regardless of the successful implementation of the Rehabilitation Plan.
- Claims arising after approval of the Rehabilitation Plan that are otherwise not treated by the Rehabilitation Plan are not subject to any Suspension Order.

## Termination of Rehabilitation Proceedings

The rehabilitation proceedings may be terminated upon motion by an interested party or the rehabilitation receiver if: [i] there is a successful implementation of the Rehabilitation Plan; or, [ii] there is a failure of rehabilitation.

There is failure of rehabilitation in the following cases: (a) dismissal of the petition by the court; (b) the debtor fails to submit a Rehabilitation Plan; (c) there is no substantial likelihood that the debtor can be rehabilitated within a reasonable period based on the Rehabilitation Plan submitted by the debtor; (d) the Rehabilitation Plan or its amendment is approved by the court but the debtor fails to perform its obligations thereunder or there is a failure to realize the objectives, targets or goals set forth therein; (e) the commission of fraud in securing the approval of the Rehabilitation Plan or its amendment; and (f) other analogous circumstances.

## PRE-NEGOTIATED REHABILITATION

An insolvent debtor, by itself or jointly with any of its creditors, may file a verified petition with the court for the approval of a pre-negotiated Rehabilitation Plan, supported by an affidavit showing the written endorsement or approval of creditors holding at least two-thirds of the total liabilities of the debtor, including secured creditors holding more than 50% of the total secured claims of the debtor and unsecured creditors holding more than 50% of the total unsecured claims of the debtor.



## OUT-OF-COURT OR INFORMAL RESTRUCTURING AGREEMENTS AND REHABILITATION PLANS

In addition to the existing court-supervised and pre-negotiated rehabilitation, the FRIA introduces out-of-court rehabilitation (**OCRA**) or informal restructuring.

### Minimum Requirements

The following are the minimum requirements for an out-of-court or informal restructuring/work-out agreement or Rehabilitation Plan under the FRIA:

- The debtor must agree to the out-of-court or informal restructuring/workout agreement or Rehabilitation Plan.
- It must be approved by creditors representing at least 67% of the secured obligations of the debtor.
- It must be approved by creditors representing at least 75% of the unsecured obligations of the debtor.
- It must be approved by creditors holding at least 85% of the total liabilities, secured and unsecured, of the debtor.

## LIQUIDATION PROCEEDINGS (INDIVIDUALS OR CORPORATIONS)

In cases where the debtor does not have enough assets/properties to cover his/her obligations or is generally unable to pay his or her liabilities as they fall due in the ordinary course of business, a liquidation proceeding may be initiated. It may be voluntary or involuntary.

### VOLUNTARY LIQUIDATION

An insolvent debtor may apply for liquidation by filing a verified petition for liquidation with the court. The petition must establish the insolvency of the debtor, and must contain the following:

- A schedule of the debtor's debts and liabilities including a list of creditors with their addresses, amounts of claims and collaterals, or securities, if any
- An inventory of all its assets including receivables and claims against third parties
- The names of at least three nominees to the position of liquidator

At any time during the pendency of court-supervised or pre-negotiated rehabilitation proceedings, the debtor may also initiate liquidation proceedings by filing a motion to convert the rehabilitation proceedings into liquidation proceedings in the same court where the rehabilitation proceedings are pending.

If the court finds the petition or the motion, as the case may be, to be sufficient in form and substance, the court will issue a Liquidation Order.

A standstill period, not exceeding 120 days, may be agreed upon by the parties pending negotiation and finalization of the out-of-court or informal restructuring. The standstill period will be effective and enforceable not only against the contracting parties but also against the other creditors; provided that the necessary creditor approval on the standstill period is obtained and notice thereof is published in a newspaper of general circulation once a week for two consecutive weeks.

### Cram-Down Effect

A restructuring/workout agreement or Rehabilitation Plan that is approved pursuant to an informal work-out framework will have the same legal effect as a court-approved Rehabilitation Plan.

Any court action or other proceedings arising from, or relating to, the out-of-court or informal restructuring shall not stay its implementation, unless the relevant party is able to secure a temporary restraining order or injunctive relief from the Court of Appeals.

## EFFECTS OF THE LIQUIDATION ORDER

Upon the issuance of the Liquidation Order:

- The juridical debtor will be deemed dissolved and its corporate or juridical existence terminated.
- Legal title to and control of all the assets of the debtor, except those that may be exempt from execution, will be deemed vested in the liquidator or, pending his or her election or appointment, with the court.
- All contracts of the debtor will be deemed terminated and/or breached, unless the liquidator, within 90 days from the date of his or her assumption of office, declares otherwise and the contracting party agrees.
- No separate action for the collection of an unsecured claim will be allowed. Such actions already pending will be transferred to the liquidator to accept and settle or contest. If the liquidator contests or disputes the claim, the court will allow, hear and resolve such contest except when the case is already on appeal. In such a case, the suit may proceed to judgment, and any final and executory judgment therein for a claim against the debtor will be filed and allowed in court.
- No foreclosure proceeding will be allowed for a period of 180 days.

## RIGHTS OF SECURED CREDITORS

The Liquidation Order will not affect the right of a secured creditor to enforce his or her lien in accordance with the applicable contract or law. A secured creditor may:

- Waive his or her right under the security or lien, prove his or her claim in the liquidation proceedings and share in the distribution of the assets of the debtor, or
- Maintain his or her rights under the security or lien.

If the secured creditor maintains his or her rights under the security or lien:

- The value of the property may be fixed in a manner agreed upon by the creditor and the liquidator. When the value of the property is less than the claim it secures, the liquidator may convey the property to the secured creditor and the latter will be admitted in the liquidation proceedings as a creditor for the balance. If its value exceeds the claim secured, the liquidator may convey the property to the creditor and waive the debtor's right of redemption upon receiving the excess from the creditor.
- The liquidator may sell the property and satisfy the secured creditor's entire claim from the proceeds of the sale.
- The secured creditor may enforce the lien or foreclose on the property pursuant to applicable laws.

## LIQUIDATION PLAN

Within three months from assumption into office, the liquidator must submit a Liquidation Plan to the court. The Liquidation Plan must, as a minimum, enumerate all the assets of the debtor, all the claims against the debtor and a schedule of liquidation of the assets and payment of the claims.

The liquidator must implement the Liquidation Plan as approved by the court. Payments must be made to creditors only in accordance with the provisions of the Liquidation Plan. But if the debtor and creditor are mutually debtor and creditor of each other, one may be set off against the other. If there is any balance, then the balance may be claimed in the liquidation proceedings.

## CONCURRENCE AND PREFERENCE OF CREDITS

The Liquidation Plan must ensure that the concurrence and preference of credits as enumerated in the Civil Code and other relevant laws will be observed, unless a preferred creditor voluntarily waives his or her preferred right. Credits for services rendered by employees or laborers to the debtor shall enjoy first preference, unless the claims constitute legal liens under relevant provisions of the Civil Code.

Certain types of credits enjoy preference with respect to specific movable or immovable properties (**Special Preferred Credits**).

Among the Special Preferred Credits, taxes and assessments due upon the property to which the claims relate enjoy absolute preference. All the remaining classes of Special Preferred Credits with respect to specific movable or immovable property (e.g., credits secured by a pledge or mortgage) do not enjoy priority among themselves, but must be paid concurrently and pro rata, i.e., in proportion to the amount of the respective credits.

Credits that do not enjoy any preference with respect to specific property are satisfied in the order established in Article 2244 of the Civil Code. Article 2244 provides for the preference of certain claims and credits which, without special privilege, appear in: (i) a public instrument (i.e., the instrument is notarized); or (ii) a final judgment. These credits have preference among themselves in the order of priority of the dates of the instruments and of the judgments, respectively.

## CLAW-BACK PROVISIONS

Any transaction occurring prior to the issuance of the Liquidation Order or, in case of the conversion of the rehabilitation proceedings, prior to the commencement date, entered into by the debtor or involving its assets, may be rescinded or declared null and void on the ground that the same was executed with intent to defraud a creditor/s or which constitute undue preference of creditors.

The liquidator or, with his or her conformity, a creditor may initiate and prosecute any action to rescind, or declare null and void, any transaction described in the immediately preceding paragraph.

## CROSS-BORDER INSOLVENCY PROCEEDINGS

The FRIA provides for recognition of foreign insolvency proceedings and adopts the Model Law on Cross-Border Insolvency of the UNCITRAL, subject to the FRIA Rules.

- The FRIA Rules apply when assistance is sought before a Philippine court by a foreign court or a foreign representative in connection with a foreign proceeding.
- Assistance is sought in a foreign State in connection with a proceeding governed by the FRIA and the FRIA Rules.
- A foreign proceeding and a proceeding governed by the FRIA and the FRIA Rules are concurrently taking place.
- Creditors in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under the FRIA Rules for court-supervised rehabilitation, pre-negotiated rehabilitation or OCRA.

Foreign creditors are accorded the same rights as creditors in the Philippines in proceedings involving court-supervised rehabilitation, pre-negotiated rehabilitation and OCRA governed by the FRIA Rules.

However, courts must refuse to take any action in any cross-border insolvency proceeding where: (a) the action would be manifestly contrary to the public policy of the Philippines; and (b) the court finds that the country where the foreign rehabilitation proceeding is taking place does not extend recognition to a Philippine rehabilitation proceeding, or that the country of which the petitioner-foreign creditor is a national does not grant the same rights to a Philippine creditor in a manner substantially in accordance with the FRIA Rules.



# SCHEDULE A

**MALACAÑAN PALACE  
MANILA  
BY THE PRESIDENT OF THE PHILIPPINES  
EXECUTIVE ORDER NO. 184**

### **PROMULGATING THE TENTH REGULAR FOREIGN INVESTMENT NEGATIVE LIST**

WHEREAS, Republic Act (RA) No. 7042, also known as the “Foreign Investments Act of 1991,” as amended by RA No. 8179, provides for the formulation of a Regular Foreign Investment Negative List, covering investment areas/activities which are open to foreign investors and/or reserved to Filipino nationals; and

WHEREAS, there is a need to formulate the Tenth Regular Foreign Investment Negative List, replacing the Ninth Regular Foreign Investment Negative List, to reflect changes to List A, pursuant to existing laws.

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

**SECTION 1.** Tenth Regular Foreign Investment Negative List. Only the investment areas and/or activities listed in the Annex hereof shall be reserved to Philippine nationals, and hereafter shall be referred to as the Tenth Regular Foreign Investment Negative List. The extent of foreign equity participation in these areas shall be limited to the percentages indicated in the List.

**SECTION 2.** Amendments. Amendments to List A may be made at any time to reflect changes instituted in specific laws while amendments to List B shall not be made more often than once every two years, pursuant to Section 8 of RA No. 7042, as amended, and its revised implementing rules and regulations.

**SECTION 3.** Repeal. All issuances, orders, rules and regulations, or parts thereof, which are inconsistent with this Order are hereby repealed, amended or modified accordingly.

**SECTION 4.** Separability. If any provision of this Order is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

**SECTION 5.** Effectivity. This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

DONE, in the City of Manila, this 29th day of May, in the year of our Lord Two Thousand and Fifteen.

By the President:

(signed)

PAQUITO N. OCHOA, JR.

Executive Secretary

## ANNEX

### TENTH REGULAR FOREIGN INVESTMENT NEGATIVE LIST

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

##### No Foreign Equity

1. Mass media except recording (Art. XVI, Sec. 11 of the Constitution; Presidential Memorandum dated 05 May 1994)
2. Practice of professions<sup>1</sup> (Art. XII, Sec. 14 of the Constitution, Sec 1 of RA 5181 Sec. 7.j of RA 8981)
  - a. Pharmacy (RA 5921)
  - b. Radiologic and x-ray technology (RA 7431)
  - c. Criminology (RA 6506)
  - d. Forestry (RA 6239)
  - e. Law (Art. VIII, Section 5 of the Constitution; Rule 138, Sec. 2 of the Rules of Court of the Philippines)
3. Retail trade enterprises with paid-up capital of less than US\$2,500,000 (Sec. 5 of RA 8762)<sup>2</sup>
4. Cooperatives (Ch. III, Art. 26 of RA 6938)
5. Private security agencies (Sec. 4 of RA 5487)
6. Small-scale mining (Sec. 3 of RA 7076)
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 (Art. XII, Sec. 2 of the Constitution)
8. Ownership, operation and management of cockpits (Sec. 5 of PD 449)
9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons (Art. II, Sec. 8 of the Constitution)<sup>3</sup>
10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines (various treaties to which the Philippines is a signatory and conventions supported by the Philippines)<sup>3</sup>
11. Manufacture of firecrackers and other pyrotechnic devices (Sec. 5 of RA 7183)

##### Up to Twenty Percent (20%) Foreign Equity

12. Private radio communications network (RA 3846)

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

13. Private recruitment, whether for local or overseas employment (Art. 27 of PD 442)
14. Contracts for the construction and repair of locally-funded public works (Sec. 1 of Commonwealth Act No. 541, Letter of Instruction No. 630) 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 (Sec. 2(a) of RA 7718)

<sup>1</sup> Foreigners are allowed to practice the following professions provided their country allows Filipinos to be admitted to the practice of these professions: aeronautical engineering, agricultural engineering, chemical engineering, civil engineering, electrical engineering, electronics engineering, electronics technician, geodetic engineering, mechanical engineering, metallurgical engineering, mining engineering, naval architecture and marine engineering, sanitary engineering, medicine, medical technology, dentistry, midwifery, nursing, nutrition and dietetics, optometry, physical and occupational therapy, veterinary medicine, accountancy, architecture, chemistry, customs brokerage, environmental planning, geology, landscape architecture, librarianship, marine deck officers, marine engine officers, master plumbing, sugar technology, social work, teaching, agriculture, fisheries, guidance counseling, real estate service (real estate consultant, real estate appraiser, real estate assessor, real estate broker and real estate salesperson), respiratory therapy, psychology and interior

design. Architecture, chemistry, electronics engineering, environmental planning, guidance counseling, landscape architecture, metallurgical engineering, naval architecture and marine engineering, psychology, real estate service (real estate consultant, real estate appraiser, real estate assessor, real estate broker and real estate salesperson), sanitary engineering and interior design allow corporate practice by Filipinos.

<sup>2</sup> Full foreign participation is allowed for retail trade enterprises: (a) with paid-up capital of US\$2,500,000 or more provided that investments for establishing a store is not less than US\$830,000; or (b) specializing in high end or luxury products, provided that the paid-up capital per store is not less than US\$250,000 (Sec. 5 of RA 8762).

<sup>3</sup> Domestic investments are also prohibited (Art. II, Sec. 8 of the Constitution; Conventions/Treaties to which the Philippines is a signatory).

15. Contracts for the construction of defense-related structures (Sec. 1 of CA 541)

##### Up to Thirty Percent (30%) Foreign Equity

16. Advertising (Art. XVI, Sec. 11 of the Constitution)

##### Up to Forty Percent (40%) Foreign Equity<sup>4</sup>

17. Exploration, development and utilization of natural resources (Art. XII, Sec. 2 of the Constitution)<sup>5</sup>
18. Ownership of private lands (Art. XII, Sec. 7 of the Constitution; Ch. 5 Sec. 22 of CA 141; Sec 4 of RA 9182)
19. Operation of public utilities (Art. XII, Sec. 11 of the Constitution; Sec. 16 of CA 146)<sup>6,7</sup>
20. Educational institutions other than those established by religious groups and mission boards (Art. XIV, Sec. 4 of the Constitution)<sup>8</sup>
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 (Sec. 5 of PD 194)<sup>9</sup>
22. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation (Sec. 1 of RA 5183)
23. Facility operator of an infrastructure or a development facility requiring a public utility franchise (Art. XII, Sec. 11 of the Constitution; Sec. 2(a) of RA 7718)
24. Operation of deep sea commercial fishing vessels (Sec. 27 of RA 8550)
25. Adjustment companies (Sec. 332 of RA 10607 amending PD 612)
26. Ownership of condominium units (Sec. 5 of RA 4726)

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

##### 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. Ingredients used in making explosives
    - i. Chlorates of potassium and sodium
    - ii. Nitrates of ammonium, potassium, sodium barium, copper (11), lead (11). calcium and cuprite
    - iii. Nitric acid
    - iv. Nitrocellulose

<sup>4</sup> Lending companies regulated by SEC are allowed to have up to 49% foreign equity participation (Sec.6 of RA 9474). Financing companies and investment houses regulated by SEC are allowed to have up to 60% foreign equity participation (Sec. 6 of RA 5980 as amended by RA 8556; PD 129 as amended by RA 8366).

<sup>5</sup> Full foreign participation is allowed through financial or technical assistance agreement with the President (Art. XII, Sec. 2 of the Constitution).

<sup>6</sup> The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines (Article XII, Section II of the Constitution).

<sup>7</sup> A "public utility" is a business or service engaged in regularly supplying the public with some commodity or service of consequence such as electricity, gas, water, transportation, telephone or telegraph service (Supreme Court ruling on JG Summit Holdings vs. Court of Appeals, et al., September 24, 2003). Power generation and the supply of electricity to the contestable market are not considered as public utility operation (Sec. 6 and Sec. 29, respectively, of RA 9136).

<sup>8</sup> Control and administration of educational institutions shall be vested in citizens of the Philippines (Art. XIV, Sec. 4(2) of the Constitution).

<sup>9</sup> Full foreign participation is allowed provided that within the 30-year period from start of operation the foreign investor shall divest a minimum of 60% of their equity to Filipino citizens (Sec. 5 of PD 194; NFA Council Resolution No. 193 s. 1998).



- v. Perchlorates of ammonium, potassium and sodium
  - vi. Dinitrocellulose
  - vii. Glycerol
  - viii. Amorphous phosphorus
  - ix. Hydrogen peroxide
  - x. Strontium nitrate powder
  - xi. Toluene
- f. Telescopic sights, sniper scope and other similar devices

However, the manufacture or repair of these items may be authorized by the Chief of the PNP to non Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance (RA 7042 as amended by RA 8179).

2. Manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) clearance:

- a. Guns and ammunition for warfare
- b. Military ordnance 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 systems
- 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

However, the manufacture or repair of these items may be authorized by the Secretary of National Defense to non-Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance (RA 7042 as amended by RA 8179).

3. Manufacture and distribution of dangerous drugs (RA 7042 as amended by RA 8179)

4. Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks posed to public health and morals (RA 7042 as amended by RA 8179)

5. All forms of gambling (RA 7042 as amended by RA 8179) except those covered by investment agreements with PAGCOR (PD 1869 as amended by RA 9487)

6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000 (RA 7042 as amended by RA 8179)

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 (RA 7042 as amended by RA 8179)

**MALACAÑAN PALACE  
MANILA  
MEMORANDUM ORDER NO. 12  
APPROVING THE 2017 INVESTMENT PRIORITIES PLAN**

Pursuant to Article 29 of Executive Order No. 226 (s. 1987) or the Omnibus Investments Code of 1987, as amended, the attached 2017 Investment Priorities Plan (IPP) is hereby APPROVED.

Upon effectivity of the IPP, all government agencies and entities are enjoined to issue the necessary regulations to ensure its implementation in a synchronized and integrated manner. No government body shall adopt any policy or take any course of action contrary to, or inconsistent with, the IPP.

The Chairman of the Board of Investments shall render an annual report to the President on the accomplishments and implementation of the IPP.

This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation as required under Article 31 of the Omnibus Investments Code of 1987.

DONE, in the City of Manila this 28th day of February, in the year of our Lord, Two Thousand and Seventeen.

By the President:

(signed)

SALVADOR C. MEDIALDEA

Executive Secretary

## I. PREFERRED ACTIVITIES FOR INVESTMENT

### A. Preferred Activities

#### 1. All Qualified Manufacturing Activities including Agro-Processing

This covers the manufacture of industrial goods and processing of agricultural and fishery products, including Halal and Kosher food, into (a) semi-finished/intermediate goods for use as inputs in the production of other goods, or (b) finished products or consumer goods for final consumption.

This also covers the manufacture of modular housing components and machinery and equipment including parts and components.

Except for modernization projects, only projects located outside Metro Manila may qualify for registration.

#### 2. Agriculture, Fishery and Forestry

This covers commercial production of agricultural, fishery and forestry products.

This also covers production of seeds and seedlings, and establishment of nurseries and hatcheries, and support services and infrastructures, such as, facilities for drying, cold chain storage, blast freezing, bulk handling and storage; harvesting, plowing, and spraying/dusting; packing houses, trading centers, ice plants in Less Developed Areas, AAA slaughterhouse, 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<sup>1</sup>

##### a. IC Design

This covers all logic and circuit design techniques required to design integrated circuits (ICs).

##### b. Creative Industries/Knowledge-Based Services

This covers IT-BPM services for the domestic market (e.g., contact centers, data analytics), and those that involve original content such as animation, software development, game development, health information management systems, and engineering design.

This also covers digital or technological start-ups/activities.

##### c. Maintenance, Repair, and Overhaul (MRO) of aircraft

This covers the MRO of all types of aircraft.

##### d. Charging/Refueling Stations for Alternative Energy Vehicles

This covers the establishment of charging/refueling stations for alternative energy vehicles except LPG-run vehicles.

##### e. Industrial Waste Treatment

This covers the establishment of treatment facilities for toxic and hazardous wastes (THW) from an industrial operation.

##### f. Telecommunications

This covers the establishment of connectivity facilities for fixed and mobile broadband services.

Only new players may qualify for registration.

##### g. State-of-the-art Engineering, Procurement, and Construction

This covers engineering design, procurement, and construction for industrial plants and infrastructure.

#### 4. Healthcare Services including Drug Rehabilitation Centers<sup>2</sup>

This covers the establishment and operation of general and specialty hospitals, and other medical/healthcare facilities including drug rehabilitation centers.

#### 5. Mass Housing

This covers the development of mass housing units based on a price ceiling of Php2.0 Million.

<sup>1</sup> Subject to the criteria on the qualification for registration of projects to be defined and clarified by the Board in the implementing guidelines.

<sup>2</sup> Subject to positive list of location as endorsed by the DOH.

This also covers in-city low-cost housing projects for lease.

Except for in-city low-cost housing for lease, only projects located outside Metro Manila may qualify for registration.

#### 6. Infrastructure and Logistics including LGU-PPPs

This covers the establishment and operation of physical infrastructures vital to the country's economic development and prosperity such as, but not limited to: airports, seaports, (air, land and water) transport, LNG storage and regasification facilities, pipeline projects for oil and gas, bulk water treatment and supply, training facilities, testing laboratories, and domestic industrial zones.

This also covers PPP projects including those initiated and/or implemented by Local Government Units (LGUs).

#### 7. Innovation Drivers

This covers research and development (R&D) activities, conduct of clinical trials (including drug trials) and the establishment of Centers of Excellence, innovation centers, business incubation hubs, and fabrication laboratories (fablabs)/co-working spaces.

This also covers commercialization of new and emerging technologies and products of DOST or government-funded R&D, such as, but not limited to:

- Agricultural biotechnology tools
- Disaster mitigation/prevention hardware or software
- Hardware or software for increasing agricultural productivity
- Mechanized means for natural resources conservation
- Portable technologies - innovation on existing bulky or heavy device to make it portable, or a new device or service that can be brought virtually anywhere
- Hardware or software for the prevention of disease outbreaks
- Remote monitoring devices or systems
- Professional services for remote sensing
- Hardware or software for the upgrading of local industries
- Photonics and Nanotechnology
- Natural health products

#### 8. Inclusive Business (IB) Models

This covers business activities of medium and large enterprises (MLEs) in the agribusiness and tourism sectors that provide business opportunities to micro and small enterprises (MSEs) as part of their value chains.

IB projects may qualify for Pioneer status.

#### 9. Environment or Climate Change-Related Projects

This covers manufacture/assembly of goods and the establishment of energy efficiency-related facilities where either utilization of which would significantly lead to either the efficient use of energy, natural resources or raw materials; minimize/prevent pollution; or reduce greenhouse gas emissions.

This also covers green ship recycling based on international standards, and the establishment of privately-owned materials recovery facility.

#### 10. Energy

This covers power generation projects utilizing conventional fuels (i.e., coal, diesel, bunker, natural gas, and geothermal), waste heat and other wastes, and the establishment of battery energy storage systems.

### B. Export Activities

1. Production and manufacture of export products
2. Services Exports<sup>3</sup>
3. Activities in support of exporters

<sup>3</sup> Contact centers and non-voice business processing activities that will be located in Metro Manila may no longer be qualified for incentives availment with the Board of Investments under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended, by year 2020.

## C. Special Laws

This covers activities where inclusion in the IPP is mandated for purposes of incentives, as follows:

1. Industrial Tree Plantation (P.D. 705);
2. Mining (R.A. 7942) (limited to capital equipment incentive);
3. Publication or Printing of Books/Textbooks (R.A. 8047);
4. Refining, Storage, Marketing and Distribution of Petroleum Products (R.A. 8479);
5. Rehabilitation, Self-Development and Self-Reliance of Persons with Disability (R.A. 7277);
6. Renewable Energy (R.A. 9513); and
7. Tourism (RA. 9593).

## II. ARMM LIST

The 2017-2019 ARMM List contains the following priority investment areas:

### A. EXPORT ACTIVITIES

1. Export Trader and Service Exporters
2. Support Activities for Exporters

### B. AGRICULTURE, AGRIBUSINESS, AQUACULTURE and FISHERY

#### B.1. Agriculture and Agribusiness

This covers all types of agricultural production, farming, plantation, processing or manufacturing, as long as, the land or the agricultural production, plantation, processing or manufacturing is based in ARMM. It includes value-chain, value-adding, logistical and supply chain agribusiness activities based in or involving ARMM agricultural products or the farmers of the region, such as silo storage and drying facilities.

#### B.2. Aquaculture and Fishery

This covers the aquamarine industry; inland water resources; seaweeds; fishing; fish pond including other marine, inland and brackish water farming, such as abalone farms, shrimp farming or crab fattening; the establishment of hatcheries or breeding of fingerlings and processing of such marine and inland water resources.

### C. BASIC INDUSTRIES

This covers the production of pharmaceuticals such as antibiotics; traditional or herbal medicines and related activities such as bio-prospecting; textile or garments; water supply and treatment; ice plant or refrigeration; traditional craft like boat building; production of inorganic and organic fertilizer; all types of heavy industries, such as the steel industry, petrochemical industry, shipbuilding, ship breaking, ship repair and servicing; dredging for industrial purposes and landfill; cement production and concrete aggregates.

### D. INFRASTRUCTURE AND SERVICES

This covers strategic infrastructure projects such as railways, bridges, tollways, flood control and support industries like sand and gravel, batching plant and pre-mixing of cements; air, land and water transportation; telecommunications to include the construction and operation of international gateway facilities both satellite-linked or linked by terrestrial and submarine cables for internet connectivity, so long as these are based in ARMM and are holding ARMM franchise, or servicing ARMM areas including to and from ARMM in order to increase inter-connectivity and support regional or national integration.

### E. INDUSTRIAL SERVICE FACILITIES

This covers industrial centers or industrial estates to include testing and quality control laboratories; manpower training and demonstration centers; vocational and technical skills services and facilities; call centers and Information Technology related enterprises such as business process outsourcing; tool and dye shops and similar facilities; metal casting and metal working; furniture and fixtures; ceramics and tile-making; petrochemical complex and industrial gases.

## F. ENGINEERING INDUSTRIES

This covers engineering products; electronics and telecommunication products; and fabrication of construction materials including pre-fabricated construction materials using new technologies (e.g. 3D printing) or indigenously sourced materials.

## G. LOGISTICS

This covers the logistics, supply chain and logistics network industry; shipping, hauling and trucking; cargo shippers and forwarders; bulk carrier; warehousing and depots; storage; and other logistics facilities principally based in ARMM including transshipment hubs and services using ARMM ports, airports or located near its special economic zones. This also contemplates the ports industry and allied industry in the ARMM and ancillary services, such as arrastre and stevedoring, because the ARMM needs to attract more port industry players.

## H. BIMP - EAGA RELATED INVESTMENT ENTERPRISES

This covers enterprises using the BIMP-EAGA framework on trade and investments and who are located or have their base of operations in the BIMP-EAGA namely, Brunei; Sabah and Sarawak in Malaysia; Maluku, Sulawesi, Kalimantan and Irian Jaya in Indonesia; and Mindanao and Palawan in the Philippines, who shall invest and engage in economic activity in the ARMM including traditional cross-border trade and the age-old barter trading to encourage the formalization of peripheral shadow economies.

## I. TOURISM

This covers the establishment of tourism-related facilities and attractions; tourism-related services; hotel and restaurants catering to ARMM tourists; Halal-based tourism; tourist accommodation facilities; tourist transport facilities and development of retirement villages, which shall include health or medical facilities and other amenities.

## J. HEALTH AND EDUCATION SERVICES AND FACILITIES

The ARMM has some of the lowest indicators in the country regarding health and education as reflected in the Human Development Index. For this purpose, there is a need for incentives to be given to investors in the health and educational sectors such as putting-up of private hospitals, medical clinics, wellness centers, primary education, secondary education, tertiary education (colleges, universities and vocational-technical schools) and ancillary or support services such as teacher training centers.

## K. HALAL INDUSTRY

The 2004-2010 MTPDP envisioned that ARMM shall be the production and processing center for the Halal industry. ARMM being the only Muslim region in the country has a comparative advantage in the Halal industry since majority of Halal consumers are in the region. Any Halal related business enterprises that obtain the necessary Halal certification or is operating under Islamic (Shariah) law principles shall be covered. Halal refers to the permissible products and services under Islamic Law.

## L. BANKING, NON-BANK FINANCIAL INSTITUTIONS AND FACILITIES

Aside from conventional banking and finance, microfinance and cooperative financing, this includes Islamic banking and finance; and Islamic microfinance and pawnshop operations, since the ARMM is the most unbanked region in the country and there is a need for financial inclusivity in accordance with the provisions of the Organic Act (Sec. 7, Art. IX, R.A. No. 9054). This also includes remittance centers to cater to remittances of Overseas Filipino Workers. Guidelines for this purpose may be issued by the RBOI after consultation with the relevant stakeholders and institutions engaged in financial access and financial inclusivity programs and activities.

## M. ENERGY

More energy investments are needed in the ARMM considering that the household electrification rate in the ARMM is the most dismal in the country with only 34% as compared with the national rate of 74%. This covers energy investments in upstream and downstream industries such as power generation, transmission and distribution. Off-grid and Small Power Utilities Group or SPUG areas shall be prioritized for investments and giving of incentives considering that these are stranded markets for electricity. It covers not only energy but also ancillary services and in the context of ARMM, this means the construction of substations and transmission and distribution towers considering that there are also frequent power outages due to disruption of such facilities from man made and natural disaster causes.

# LIST OF ACRONYMS

**ABS** - Asset-Backed Securities

**ADR Act** - Alternative Dispute Resolution Act of 2004

**AEP** - Alien Employment Permit

**ARMM** – Autonomous Region of Muslim Mindanao

**ASEAN** - Association of Southeast Nations

**BCDA** - Bases Conversion and Development Authority

**BIMP-EAGA** – Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area

**BIR** – Bureau of Internal Revenue

**BOC** – Bureau of Customs

**BOI** – Board of Investments

**BOT** - Build-Operate and Transfer

**BSP** - Bangko Sentral ng Pilipinas (Central Bank of the Philippines)

**CAM** - Court-Annexed Mediation

**CBA** - Collective Bargaining Agreement

**CDC** - Clark Development Corporation

**CIAC** - Construction Industry Arbitration Commission

**CPE** – Customer Premises Equipment

**CRO** - Contract Research Organizations

**CSEZ** - Clark Special Economic Zone

**DENR** - Department of Environment and Natural Resources

**DOE** – Department of Energy

**DOJ** - Department of Justice

**DOLE** – Department of Labor and Employment

**DPA** - Data Privacy Act

**DTI** - Department of Trade and Industry

**EC** - Employees' Compensation

**ECC** - Environmental Compliance Certificate

**EFTA** - European Free Trade Association

**EIA** - Environmental Impact Assessment

**EIS** - Environmental Impact Statement

**EMB** - Environmental Management Bureau

**EP** – Exploration Permit

**EPIRA** - Electric Power Industry Reform Act of 2001

**ERC** – Energy Regulatory Commission

**FDA** - Food and Drug Administration

**FIA** – Foreign Investments Act of 1991

**FIA IRR** – Foreign Investments Act Implementing Rules and Regulation

**FLSP** - Financial Liquidation and Suspension of Payments

**FRIA** - Financial Rehabilitation and Insolvency Act

**FTA** – Free Trade Agreement

**FTAA** - Financial or Technical Assistance Agreement

**GDRP** - General Data Protection Regulation

**GSP+** - Generalized System of Preferences Plus

**HDMF** - Home Development Mutual Fund

**IB** – Inclusive Business models

**IC** - Insurance Commission

**IC** – Integrated Circuits

**IEE** - Initial Environmental Examination

**IP Code** - Intellectual Property Code of the Philippines

**IPO** - Intellectual Property Office

**IPP** - Investments Priorities Plan

**IRR** – Implementing Rules and Regulations

**IT** – Information Technology

**JDR** - Judicial Dispute Resolution

**JVA** - Joint Venture Agreements

**LGU** – Local Government Unit

**LTO** – License to Operate

**M&A** - Mergers and Acquisitions

**MCTC** - Municipal Circuit Trial Courts

**Med-Arb** - Mediation-Arbitration

**MeTC** – Metropolitan Trial Courts

**MORFXT** - Manual of Regulations on Foreign Exchange Transactions

**MPP** - Mineral Processing Permit

**MPSA** – Mineral Production Sharing Agreement

**MRO** - Maintenance, Repair, and Overhaul

**MTC** – Municipal Trial Courts

**MTCC** - Municipal Trial Courts in Cities

**NGCP** - National Grid Corporation of the Philippines

**NPC** - National Privacy Commission

**NREB** - National Renewable Energy Board

**NTC** - National Telecommunications Commission

**OCRA** - Out-of-Court Restructuring Agreements

**OIC** - Omnibus Investments Code

**PA** – Provisional Authority

**PCA** - Philippine Competition Act

**PCBA** – Philippine Contractors Accreditation Board

**PCC** - Philippine Competition Commission

**PD** – Presidential Decree

**PDRCI** - Philippine Dispute Resolution Center, Inc.

**PEZA** - Philippine Economic Zone Authority

**PhilHealth** - Philippine Health Insurance Corporation

**PHP** – Philippine Peso

**PHREB** - Philippine Health Research Ethics Board

**PNHRS** - Philippine National Health Research System

**PPP** – Public Private Partnership

**PRA** – Philippine Retirement Authority

**PTE** - Public Telecommunications Entity

**RA** – Republic Act

**RE Act** - Renewable Energy Act of 2008

**RHQ** – Regional Headquarters

**ROHQ** - Regional Operating Headquarters

**SBMA** - Subic Bay Metropolitan Authority

**SEC** – Securities and Exchange Commission

**SRC** - Securities Regulation Code

**SSS** - Social Security System

**SFZ** - Subic Freeport Zone

**SIRV** - Special Investor's Resident Visa

**SPE** - Special Purpose Entity

**SRRV** – Special Resident Retiree's Visa

**SSEZ** - Subic Special Economic Zone

**SWP** - Special Work Permit

**TRANSCO** - National Transmission Corporation

**TRIPS** - Trade Related Aspects of Intellectual Property Rights

**TTA** - technology transfer arrangement

**UITF** – Unit Investment Trust Fund

**UNCITRAL** - United Nations Commission on International Trade Law

**VAS** – Value Added Services

**VAT** – Value Added Tax

**VoIP** – Voice-Over Internet Protocol

# DIRECTORY OF CONTACTS



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## KEY GOVERNMENT AGENCIES

### Department of Agrarian Reform

www.dar.gov.ph  
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### Department of Agriculture

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### Department of Budget and Management

www.dbm.gov.ph  
Boncodin Hall, General Solano St.,  
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### Department of Education

www.deped.gov.ph  
DepEd Complex, Meralco Avenue,  
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(+632) 636 1663 / 633 1942  
action@deped.gov.ph

### Department of Energy

www.doe.gov.ph  
Energy Center, Rizal Drive,  
Bonifacio Global City, Taguig City  
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<https://www.doe.gov.ph/doe-help-desk>

### Department of Environment and Natural Resources

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Visayas Avenue, Diliman, Quezon City  
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### Department of Finance

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### Department of Foreign Affairs

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### Department of Health

www.doh.gov.ph  
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### Department of Information and Communication Technology

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### Department of the Interior and Local Government

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### Department of Labor and Employment

www.dole.gov.ph  
Muralla Wing cor. General Luna St.,  
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### Department of Public Works and Highways

www.dpwh.gov.ph  
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### Department of Science and Technology

www.dost.gov.ph  
DOST Building, Gen. Santos Ave.,  
Bicutan, Taguig City  
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<http://helpdesk.dost.gov.ph/alldirectory>

### Department of Tourism

www.tourism.gov.ph  
351 Senator Gil Puyat Ave., Makati City  
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webmaster@tourism.gov.ph

### Department of Transportation

<http://dotr.gov.ph>  
The Columbia Tower, Bgy. Wack-Wack,  
Ortigas Avenue, Mandaluyong City  
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### Department of Trade and Industry

www.dti.gov.ph  
Trade & Industry Building,  
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ask@dti.gov.ph  
<http://www.dti.gov.ph/contact#trade-and-investments-promotion-group-tipg>

**Board of Investments (BOI)**

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 385 Sen. Gil Puyat Ave., Makati City  
 (+632) 897-6682  
 Investment Assistance Center (IAC)  
 http://investphilippines.gov.ph  
 (+632) 895-3640 / 895-3641 / 895-3657  
 / 895-8322 DL  
 bossac@boi.gov.ph

**Philippine Economic Zone Authority**

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 info@peza.gov.ph

**Tourism Infrastructure and Enterprise Zone Authority**

http://tieza.gov.ph  
 142 Amorsolo St., Legaspi Village,  
 Makati City  
 (+632) 824-1708  
 http://tieza.gov.ph/contact-us/  
 directory-of-officials/

**Bureau of Immigration**

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 Magallanes Drive, Manila (HO)  
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 xinfo@immigration.gov.ph  
 http://www.immigration.gov.ph/  
 contact-us/main-office

**Bureau of Internal Revenue**

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**Bureau of Customs**

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 info@customs.gov.ph

**Bureau of Treasury**

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**Philippine Government Electronic Procurement System**

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**Philippine Export-Import Credit Agency**

www.philexim.gov.ph  
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 Makati City  
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**Insurance Commission**

www.insurance.gov.ph  
 1071 United Nations Ave., Ermita,  
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 pubassist@insurance.gov.ph

**Securities and Exchange Commission**

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 SEC Bldg., EDSA, Greenhills,  
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**Food & Drug Administration Philippines**

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 City, Alabang, Muntinlupa City  
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 info@fda.gov.ph

**National Economic and Development Authority**

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**Natural Resources Development Corporation**

http://nrdc.denr.gov.ph  
 9th Floor, DENR By The Bay Building,  
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 nrdcweb@denr.gov.ph

**Maritime Industry Authority**

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**Metropolitan Waterworks and Sewerage System**

http://mwss.gov.ph  
 MWSS Compound, Katipunan Road,  
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 info@mwss.gov.ph

**Mindanao Development Authority**

http://www.minda.gov.ph  
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 info@minda.gov.ph

**Public-Private Partnership Center**

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**Austrian Embassy Manila**

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**Royal Danish Embassy**

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**Business France Philippines**

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**Embassy of the Federal Republic of Germany**

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**Embassy of Greece**

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**Embassy of Hungary**

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**Embassy of the Kingdom of the Netherlands**

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**Embassy of Spain**

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**British Embassy Manila**

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**Consulate General of the Republic of Latvia**

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**Consulate of the Republic of Lithuania**

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 527-9721 to 24 / 527-1603  
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**Consulate of the Republic of Portugal**

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**Consulate of Slovakia**

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**Consulate of Slovenia**

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## EU CHAMBERS OF COMMERCE

**European Chamber of Commerce of the Philippines**

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**Belgian-Filipino Business Club**

http://belphil.org  
 c/o Belgian Trade Offices,  
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**British Chamber of Commerce in the Philippines**

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## KEY BUSINESS ORGANIZATIONS

**Philippine Chamber of Commerce and Industry**

http://philippinechamber.com  
 PCCI Secretariat Office  
 3F Commerce and Industry Plaza,  
 1030 Campus Ave. cor. Park Ave.,  
 McKinley Town Center, Fort Bonifacio,  
 Taguig City  
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 secretariat@philippinechamber.com

**Chamber of Automotive Manufacturers of the Philippines**

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 campi@globelines.com.ph

**French Chamber of Commerce & Industry in the Philippines (CCI France Philippines)**

www.cci-france-philippines.org  
 Suite 2901, 88 Corporate Center,  
 Sedenor cor. Valero St.,  
 Salcedo Village, Makati City  
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**German-Philippine Chamber of Commerce & Industry**

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 info@gpcci.org

**Italian Chamber of Commerce in the Philippines, Inc.**

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 0279  
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**Bankers Association of the Philippines**

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 19CD, 19F Citi Tower,  
 8741 Paseo de Roxas, Makati City  
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 bapmail@bap.org.ph

**Philippine Chamber of Food Manufacturers Inc.**

www.foodchamber.ph  
 12th Floor, Unit 1216,  
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 H.V dela Costa St. Salcedo Village,  
 Makati City  
 (+632) 893-3893 / 359-2953  
 foodchamber@gmail.com

**Nordic Chamber of Commerce of the Philippines**

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**The Spanish Chamber of Commerce in the Philippines (La Cámara)**

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 (+632) 831-6374 loc. 110, +63 917  
 302-2939  
 frances@pnbc-ph.org

**Philippine Food Processors and Exporters Organization, Inc.**

www.philfoodex.org.ph  
 Unit 1209, 12th Floor,  
 Tycoon Centre Condominium,  
 Pearl Drive, Ortigas Center, Pasig City  
 (+632) 949-4054  
 secretariat@philfoodex.org.ph

**Philippine Retailers Association**

www.philretailers.com  
 Unit 2607 Jollibee Plaza,  
 F. Ortigas Jr. Road,  
 Ortigas Center, Pasig City  
 (+632) 687-4985 / 687-4180 / 687-4181  
 philretailers@gmail.com /  
 philretailers@yahoo.com



**Direct Selling Association of the Philippines**

www.dsap.ph  
Unit 606 Cityland Shaw Tower,  
Shaw Blvd. cor. St. Francis St.,  
Mandaluyong City  
(+632) 638-3089  
info@dsap.ph

**Computer Manufacturers, Distributors & Dealers Association of the Philippines**

http://www.comddap.org  
7/F, SEDCCO I Bldg., Rada St.,  
Legaspi Village, Makati City  
(+632) 557-4589  
info@comddap.org

**IT and Business Processing Association of the Philippines**

www.ibpap.org  
5th Floor, C2 Building, High Street  
Central,  
30th Street cor. 7th Ave.,  
Bonifacio Global City, Taguig City  
(+632) 817-2727  
info@ibpap.org

**Cement Manufacturers Association of the Philippines**

http://cemap.org.ph  
Corporal Cruz St. cor. E. Rodriguez Jr.  
Ave.,  
Bagong Ilog, Pasig City  
(+632) 671-7585 / 671-7586  
cementinfo@cemap.org.ph

**Philippine Constructors Association, Inc.**

www.philconstruct.com  
3/F Padilla Bldg., Francisco Ortigas Jr.  
Ave.,  
Ortigas Center, Pasig City  
(+632) 631-2778 / 631-3135  
info@philconstruct.com

**Pharmaceutical and Healthcare Association of the Philippines**

www.phap.org.ph  
Unit 502, One Corporate Plaza,  
845 Pasay Road, Makati City  
(+632) 865-5600  
phap7346@phap.org.ph

**Philippine Independent Power Producers Association**

http://pippaonline.org  
Unit 2408 24th Flr. Prestige Tower,  
F. Ortigas, Jr. Road,  
Ortigas Center, Pasig City  
(+632) 633-3844  
info@pippaonline.org

**Philippine Iron and Steel Institute**

http://philippineironsteel.org  
Suite 509 Cityland Shaw Tower,  
Shaw Blvd., Mandaluyong City  
(+632) 636-5263  
pisisteel@yahoo.com.ph

**Philippine Travel Agencies Association**

www.ptaa.org.ph  
GV Center, No.104 Makaturing St.,  
Barangay Barangka Itaas, Mandaluyong  
City  
(+632) 997-2063 / 846 8373 / 831 0124  
ptaa@ptaa.org.ph

**Chamber of Real Estate and Builders' Associations (CREBA)**

www.creba.ph  
3/F CREBA Center, Don Alejandro  
Roces Ave.  
cor. South A Street, Quezon City  
(+632) 373.2270 to 75  
creba\_national@yahoo.com

**Philippine Association of Water Districts**

http://pawd.org.ph  
2/F LWUA Building, Katipunan Road,  
Balara, Quezon City  
(+632) 920-5453 / 927-5053

**MULTILATERAL INSTITUTIONS****Asian Development Bank**

www.adb.org  
6 ADB Avenue, Mandaluyong City  
(+632) 632-4444

**The World Bank in the Philippines**

www.worldbank.org/en/country/  
philippines  
26th Floor, One Global Place,  
5th Ave. cor. 25th St., Bonifacio Global  
City, Taguig City  
(+632) 465-2500  
comphilippines@worldbank.org

**United Nations Development Programme in the Philippines**

www.ph.undp.org  
30th Floor Yuchengco Tower, RCBC  
Plaza,  
6819 Ayala Ave. cor. Sen. Gil J. Puyat  
Ave.,  
Makati City  
(+632) 901-0100  
registry.ph@undp.org

**ILO Country Office for the Philippines (CO-Manila)**

www.ilo.org/manila  
19th Floor, Yuchengco Tower, RCBC  
Plaza,  
6819 Ayala Avenue, Makati City  
MANILA@ilo.org

**INTERNATIONAL SCHOOLS****The British School Manila**

www.britishschoolmanila.org  
36th Street, University Park,  
Bonifacio Global City, Taguig City  
(+632) 860-4800  
enquiries@britishschoolmanila.org

**Brent International School Manila**

http://brent.edu.ph  
Brentville Subdivision, Barangay  
Mamplasan,  
Biñan, Laguna, 4024 Philippines  
(+632) 779-5140, +63 (49) 511-4330  
to 4333,  
+63 (49) 544-5100  
admissionsdirector@brent.edu.ph

**Enderun Colleges**

www.enderuncolleges.com  
1100 Campus Avenue  
McKinley Hill, Fort Bonifacio, Taguig  
City  
(+632) 856-5000  
admissions@enderuncolleges.com

**German European School Manila**

European International School  
www.gesm.org  
75 Swaziland Street,  
Better Living Subdivision, Parañaque  
City  
(+632) 776-1000  
secretariat@gesm.org

**Lycée Français de Manille**

www.lfmanille.ph  
75 Swaziland Street,  
Better Living Subdivision, Parañaque  
City  
(+632) 776-1000  
contact@lfmanille.ph /  
communication@lfmanille.ph

**International School Manila**

www.ismanila.org  
University Parkway,  
Fort Bonifacio Global City, Taguig City  
(+632) 840-8400  
superintendent@ismanila.org

**The King's School Manila**

https://kings.org.ph  
Bradco Ave., Aseana Business Park,  
Paranaque City  
(+632) 519-5799  
admissions@kings.org.ph





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## Main Areas of practice

**Banking and Finance:** The firm handles project development and financing, asset and balance sheet financing, finance lease, security creation, securitization, insurance regulatory and bancassurance matters.

**Corporate & Commercial:** QT's corporate and commercial team has extensive experience in cross-border transactions and multijurisdictional work, involving complex M&A, capital restructuring, establishment of joint ventures, divestitures and other types of reorganizations. The team is experienced in preparing and negotiating a broad range of commercial agreements and has lawyers with in-depth knowledge in major industries. The group's focus areas include: M&A, private equity, competition and antitrust compliance, capital markets, real estate, hotels, resorts and tourism, infrastructure, energy and utilities, mining and metals and natural resources, pharmaceuticals and healthcare, trade and commerce.

**Dispute Resolution:** QT provides legal assistance in all forms of dispute resolution, from negotiation and mediation to arbitration and commercial, civil, criminal and administrative litigation. The firm has represented foreign and domestic clients in relation to disputes and involving commercial, construction, energy, tort, customs, environment, product liability, tax and regulatory issues.

**Employment:** QT represents international and domestic companies in various industries, such as, BPO, IT and telecommunications, financial services, pharmaceuticals and healthcare, and

manufacturing. The team provides advice on collective bargaining agreements, discrimination and sexual harassment, trade union recognition procedures, executive termination and employment litigation, among other general employment matters.

**Immigration:** QT provides legal services, advice and representation to clients on all aspects of Philippine immigration, including obtaining all kinds of visas and immigration permits for expatriates. The team works closely with the Philippine Bureau of Immigration, Department of Justice, Department of Labor and Employment, Philippine Economic Zone Authority, Board of Investments, Philippine Retirement Authority and other relevant government agencies.

**Intellectual Property:** QT offers legal services on a range of IP matters, from counselling on registrability, conducting trade mark and patent searches, IP, copyright and domain name registration and maintenance, to IP commercialization, protection and enforcement, including customs recordation and border control actions. The firm advises on various areas of intellectual property law, such as licensing and franchising, technology transfer, IP prosecution, IP litigation and enforcement actions, as well as data privacy and cybercrime.

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