
Overview

The Philippine Construction Accreditation Board (PCAB) licensing rules under Rule 3.1 of the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 4566 otherwise known as the Contractors' License Law, as amended by Presidential Decree No. 1846, impose discriminatory restrictions on fully foreign-owned contractors.

Only construction firms with at least 60% Filipino ownership can obtain regular licenses. Fully foreign-owned firms can only apply for special licenses, which are limited to single, specific projects.

Foreign contractors face higher financial requirements, with a PHP 1 billion net worth threshold for a Quadruple A (AAAA) license, compared to PHP 180 million for local firms. This unequal treatment discourages foreign participation, restricts competition, and increases costs for infrastructure projects in the Philippines.

Department of Justice (DOJ) and Philippine Competition Commission (PCC) Positions: Legal and Competition Concerns

Both the Department of Justice (DOJ) and the Philippine Competition Commission (PCC) have questioned the legal basis and economic impact of these licensing restrictions.

- DOJ Opinion (2011) – The DOJ ruled that no Philippine law explicitly mandates nationality-based restrictions on contractor licensing. PCAB's rules lack a clear legal foundation and may exceed its regulatory authority.¹
- PCC Report (2017) – The PCC found that foreign firms pay twelve times more in licensing fees than local firms, creating an anti-competitive environment that raises costs and limits market efficiency.²

These findings reinforce that the PCAB licensing restrictions unfairly distort competition and create unnecessary regulatory barriers for foreign firms.

Impact on the European Union (EU)-Philippines Free Trade Agreement (FTA) Negotiations

The ongoing EU-Philippines FTA negotiations seek to promote open markets, fair competition, and transparent investment rules. However, the PCAB licensing issue presents a serious challenge to these goals.

- **Contradiction with FTA Principles** – EU trade agreements emphasize equal market access and non-discriminatory treatment. The PCAB licensing restrictions undermine these commitments and could be a sticking point in negotiations.

¹ DOJ LML M-21111-622 dated 21 September 2011

² Philippine Competition Commission (2017). Anti-Competitive Effects of Regulatory Restrictions: The Case of the Construction Sector (01-2017). Retrieved from https://www.phcc.gov.ph/wp-content/uploads/2017/03/PolicyNote_20170316-1.pdf

- **Deterrent to EU Investment** – The Philippines is positioning itself as an attractive investment destination, yet restrictive licensing rules signal protectionism, discouraging EU construction firms from entering the market.
- **Potential Trade Disputes** – If an FTA is concluded with investment liberalization provisions, the EU could formally challenge the PCAB rules as unfair trade barriers, leading to delays in ratification or possible disputes.

The Need for Reform

To ensure a successful and mutually beneficial EU-Philippines FTA, the PCAB licensing framework must be revised. Specifically:

- Amend Rule 3.1 of R.A. 4566 to allow fully foreign-owned contractors to obtain regular licenses under the same conditions as local firms;
- Lower financial barriers for foreign firms to align with local requirements and encourage more competition;
- Ensure consistency between Philippine regulatory policies and its trade commitments to avoid conflicts during FTA negotiations.

Conclusion

If the Philippines is steadfast to advancing its FTA negotiations with the EU, demonstrating a strong commitment to fair competition and investment liberalization will be essential. Amending PCAB licensing rules presents an opportunity to strengthen investor confidence, unlock infrastructure investments, and further enhance the Philippines' economic partnership with the EU. Greater competition in the infrastructure sector is expected to create positive ripple effects across the broader economy, attracting more foreign direct investment and reinforcing the message that the Philippines is open for business.

ANNEX

From the ECCP 2024 Advocacy Papers

Level the playing field in the construction industry for fully foreign-owned and local contractors alike by amending Rule 3.1 of the IRR of R.A. 4566 to allow foreign contractors to be issued regular licenses under the same conditions as those posed to domestic players

The European Chamber of Commerce of the Philippines (ECCP), through its Infrastructure Committee, wishes to reiterate its position regarding the licensing of foreign and local contractors in the Philippines. Specifically, we propose an amendment to Rule 3.1 of the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 4566 otherwise known as the Contractors' License Law, as amended by Presidential Decree No. 1846, to allow foreign contractors to be issued regular licenses under the same conditions as those posed to domestic players.

Rule 3.1 of the IRR of R.A. 4566 introduces a distinction between regular and special licenses, with regular licenses being reserved for domestic construction firms or corporations with at least 60% Filipino equity. On the other hand, a special license may be issued to a joint venture, a consortium, a foreign contractor, or a project owner, provided the licensee will engage only in the construction of a single, specific project/undertaking.

We acknowledge the efforts made by the Philippine Construction Accreditation Board (PCAB) to accommodate foreign contractors through Board Resolution No. 333, s. 2013, which created a Quadruple A or "AAAA" category under the PCAB regular license for contractors with a net worth of at least PHP 1 billion, allowing foreign contractors to be licensed under this category. However, we believe that the required investment amount for this category is disproportionately high compared to that of the domestic firms of PHP 180 million minimum stockholders' equity, thus creating an unfair advantage.

Furthermore, the distinction between foreign and domestic contractors in the licensing process lacks a legal basis. R.A. 4566 does not provide for any nationality criteria but only for minimum requirements related to the technical capacity of the contractor. Additionally, Article 48 of the Omnibus Investments Code, as cited in the PCAB IRR, has since been amended and can no longer be used as the basis for Rule 3.1. The Department of Justice opined in 2011³ that no law prescribes the restrictions made to the regular licensing of foreign contractors as stipulated in the IRR of R.A. 4566.

We emphasise that the current licensing restrictions for foreign contractors are not conducive to fair market competition. According to the Philippine Competition Commission (PCC), foreign firms would have to pay twelve times more in application fees compared to local ones.⁴ Such a nationality distinction limits the ability of foreign contractors to enter the market and compete with domestic competitors based on a level playing field. Not only do foreign contractors feel the

³ DOJ LML M-21111-622 dated 21 September 2011

⁴ Philippine Competition Commission (2017). Anti-Competitive Effects of Regulatory Restrictions: The Case of the Construction Sector (01-2017). Retrieved from https://www.phcc.gov.ph/wp-content/uploads/2017/03/PolicyNote_20170316-1.pdf

repercussions; importantly, this also creates detrimental effects on much-needed infrastructure development and the wider Philippine economy.

The lifting of these restrictions and promoting fair competition will bring positive economic benefits, including increased private construction activities estimated at PHP 210 billion by the PCC. It will also foster infrastructure development, employment generation, innovation, knowledge transfer, and technology advancements.

Therefore, we propose that the PCAB evaluates and amends Rule 3.1 of the IRR of R.A. 4566 to allow foreign contractors to be issued regular licenses under the same conditions as domestic players. This amendment will align the contractor licensing procedure with the principles of fair competition and transparent market practices, in accordance with R.A. 4566, the Foreign Investment Negative List, and the State's investment rationalisation policy.

In any event, foreign contractors must also abide by the Building Code regulations of the Philippines as promulgated by the Department of Public Works and Highways (DPWH). Foreign contractors engaged in government projects are enjoined to R.A. 11981 or the *Tatak Pinoy* Act which is coherent with R.A. 912, whereby in the case of Philippine government-funded projects, contractors are currently required to use Philippine-made products in public works construction, whether done directly by the government or awarded through contracts. In relation to this, we underline that sustainability should be integrated into these efforts. The ECCP Infrastructure Committee recommends that products used in construction, whether for government-funded projects or private ventures, should prioritise sustainability criteria, including factors such as the environmental impact of materials as well as the social responsibility of suppliers.

We believe that increased competition in the infrastructure sector will have a positive spillover effect on the wider economy and will attract more foreign direct investment in the Philippines, conveying the message that the country is open for business. Please refer to the table below for our comments and inputs based on the expertise and insights of the ECCP members.