THE 2016 PHILIPPINE INVESTMENT GUIDE

OCAMPO & SURALVO
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I. PHILIPPINE ECONOMY

The Philippines has enjoyed robust economic growth the past 5 years and analysts expect the growth to be sustained in the coming years.

In 2013, the country's Gross Domestic Product (GDP) grew by 7.2%. GDP expansion slowed to 6.1% in 2014, but this was good enough compared to the other Asia Pacific economies—only China recorded a higher growth rate than the Philippines.

As of late 2015, GDP growth is forecast to be within the range of 5.5% to 5.9% amidst the slump in the global economy brought about by a slowdown in China's growth. GDP growth within this range will still put the Philippine economy among the top 3 highest growing economies in Asia Pacific. For 2016, the consensus growth projection is from 6.0% to 6.3%.

The high economic growth, rising tax collections, and overall prudent economic management by the Philippine government has led to successive upgrades of the country's credit ratings by the top global rating agencies. In October 2015, Standard and Poor's cited the Philippines as the world's strongest emerging market. As of late 2015, the Philippines has received the following credit ratings from the top global rating agencies:

AGENCY	RATINGS	
Standard & Poor's	BBB	stable
Moody's	Baa2	stable
Fitch	BBB-	positive
Japan Credit Ratings Agency	BBB+	stable

2016 is a crucial year for the Philippines as it undergoes another round of national and local elections. As of December 2015, it appears that all of the candidates for president who have ranked within the top 4 in national electoral surveys have affirmed their resolve to continue the policies that have contributed to the growth of the economy: a liberal economy, prudent fiscal governance and deficit reduction, wider engagement with the global economy, and continued infrastructure privatization.

Among the top drivers of the Philippine economy is the massive foreign currency remittance of overseas Filipino workers (OFW). In 2014, OFWs remitted US$26.97 billion. The 2015 remittances will likely exceed US$27 billion and will

continue to support the steady increase in national consumer spending.

The Philippines' service sector dominates the economy. Close to 60% of the country's GDP is attributable to services. One key contributor of the service sector is the information technology and business process outsourcing (IT-BPO) industry which is projected to enjoy an average 16% year-on-year growth in the next few years. In 2014, the IT-BPOs brought in US$18 billion in revenues. 2015 revenue is projected to be US$21 billion.

The manufacturing sector is also on the rebound as foreign companies rush to establish their facilities in the country's many special economic zones which reward exporters with preferential tax rates and attractive non-fiscal incentives. This has contributed to a growth in the value and volume of Philippine exports, more than 50% of which are electronic products and machinery.

II. FOREIGN INVESTMENTS

A. Policy on Foreign Investments

Foreign investments are highly encouraged in the Philippines.

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

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

B. Foreign Equity and Participation

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

The law governing foreign participation in the economy is Republic Act No. 7042 or the Foreign Investments Act of 1991 (FIA), which includes the Foreign Investment Negative List.

The FINL delineates:

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

List A may be amended any time to reflect changes in the law on foreign equity participation in any specific area of economic activity. Amendments to List B may be not be made more often than once every 2 years. The current FINL, promulgated on May 29, 2015, is set forth in Table 1.

TABLE 1. TENTH FOREIGN INVESTMENT NEGATIVE LIST
[Promulgated under Executive Order No. 184 on May 29, 2015]

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

No Foreign Equity

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

Up to Twenty Percent (20%) Foreign Equity

12. Private radio communications network

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

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

Up to Thirty Percent (30%) Foreign Equity

16. Advertising

Up to Forty Percent (40%) Foreign Equity

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

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

Up to Forty Percent (40%) Foreign Equity

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

C. Investment Vehicles

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

- Branch,
- Subsidiary,
- Representative office, and
- Regional/area headquarters or regional operating headquarters.

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

1. Branch

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

To establish a branch in the Philippines, a foreign company must apply for registration and secure a license to do business from the Securities and Exchange Commission (SEC).

If the branch office is considered a domestic market enterprise, the foreign parent must assign a minimum of US$200,000 as the capital of the branch.[1] For an export market enterprise, the minimum required capital is ₱5,000.

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

- Basic filing fee of 1% of the actual inward remittance of the corporation converted into Philippine currency but not less than ₱2,000; and
- Legal research fee (LRF) of 1% of the basic filing fee.

2. Subsidiary

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

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

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

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

The minimum capital requirements are summarized as follows:

- A corporation with more than 40% foreign equity and which is considered a domestic market enterprise has a minimum paid-up capital requirement of US$200,000. However:
  - that minimum paid-up capital requirement is reduced to US$100,000 if its activities involve advanced technology or it employs at least 50 direct employees;
  - if the corporation is an export enterprise, the minimum paid-up capital is P5,000; and
  - in certain cases, a higher minimum paid-up capital is required by law (e.g., retail trade), and this must be followed.
- If the foreign equity of the domestic corporation is less than 40%, it is required to have paid-up capital of at least ₱5,000 except in industries where the law requires a higher amount of capital.

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

- Basic filing fee of ⅕ of 1% of the authorized capital stock or the subscribed capital stock, whichever is higher but not less than ₱1,000;
- LRF of 1% of the basic filing fee; and
- Other nominal fees.

3. Representative office

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

In the course of the SEC application for a license to do business in the Philippines, the foreign company must show that it has inwardly remitted at least US$30,000 to cover the representative office expenses.

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

- Basic filing fee of 1⁄10 of 1% of the actual inward remittance of the corporation converted into Philippine currency but not less than ₱2,000 is required;
- LRF of 1% of the basic filing fee; and
- Other nominal fees.

4. Regional headquarters

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

a. Regional area headquarters

Multinational companies may establish regional or area headquarters (RHQ) in the Philippines.

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

An RHQ is licensed by the SEC upon the favorable recommendation of the BOI.

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

Since an RHQ is not allowed to earn income from any source within the Philippines, its operations must be fully subsidized by way of inward remittances from its head office. For this purpose, the law requires an inward remittance of not less than US$50,000 a year, or its equivalent in other acceptable foreign currency.

The SEC filing fees are:

- Basic filing of ₱5,000 for each application to obtain an RHQ license; and
- LRF of 1% of the basic filing fee.

b. Regional operating headquarters

A foreign business entity may also set up a regional operating headquarters (ROHQ) in the Philippines to service its own affiliates, subsidiaries, or branches in the Philippines, in the Asia-Pacific region, and

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

other foreign markets. Unlike an RHQ, an ROHQ is allowed to derive income by performing qualifying services to its affiliates, branches, or subsidiaries (such as general administration and planning, corporate finance advisory services, and business development).

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

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

The applicant foreign company is required to initially remit at least US$200,000 or its equivalent in other acceptable foreign currency, to cover its ROHQ operations in the Philippines.

The SEC filing fees are:

- Basic filing fee is 1% of the actual remittance but not less than 1% of the peso equivalent of US$200,000 at the time of remittance; and
- LRF of 1% of the basic filing fee.

III. BUSINESS ORGANIZATION

The legal structures available for setting up a business in the Philippines are: corporation, partnership (general or limited), and sole proprietorship.

A. Corporation

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

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

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

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

- At incorporation, at least 25% of the authorized capital stock of the corporation must be subscribed and at least 25% of the subscription must be paid up;
- The corporate name must not be confusing, deceptive, illegal, or identical or similar to an existing business or corporate name;
- The number and qualifications of incorporators are as follows: at least 5 but not more than 15 natural persons, all of legal age and majority being Philippine residents; each incorporator is a subscriber to at least 1 share of stock;
- The number and qualifications of directors are as follows: at least 5 but not more than 15 directors, each of whom must own at least 1 share in the capital stock; majority must be residents of the Philippines; and
- For corporate officers: the corporation must have a president who must also be a director, a treasurer (required by SEC policy to be a resident), and a secretary who must be a resident and citizen of the Philippines.

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

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

A corporation may be dissolved with SEC approval.

B. Partnerships

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

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

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

- A public instrument is necessary where immovable property or real rights are contributed to the partnership; and
- Where the partnership capital is ₱3,000 or more, the partnership contract must appear in a public instrument, which must be recorded in the SEC.

C. Sole Proprietorships

Sole proprietorships are businesses owned or managed by a single individual. Control of the business belongs only to the owner who is unrestrained by the formalities and requirements generally required of partnerships and corporations. This form of business organization however comes with the disadvantage of not having the limited liability protection provided by the company.

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


RECIPES

IV. REGULATORY ENVIRONMENT

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

Some enterprises by the nature of their operations are required to secure special clearances, licenses, or permits from other government agencies such as the Department of Health-Bureau of Food and Drugs for food, chemicals, and health-related businesses; the Department of Agriculture for certain businesses dealing with fisheries and aquatics; the Department of Labor and Employment-Philippine Overseas Employment Administration for recruitment agencies; and so on.

In general, the typical post-registration process would involve the steps discussed below.

A. Post-Registration Requirements

1. Tax registration

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

2. Local business permits and licenses

Permits and licenses must also be obtained from the local government units where the business is located. Local government units levy and collect taxes and other fees from businesses operating within their jurisdiction.

3. Registration under employee-welfare and related laws

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

B. Reportorial Requirements

General information sheet (GIS). The SEC requires all registered enterprises (including foreign corporations, e.g., branch offices, representative offices, regional headquarters, or regional operating headquarters) to annually submit a GIS.

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

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

The following are required to be audited by an independent certified public accountant (CPA):

- Stock corporations with paid-up capital of ₱50,000 or more;
- Non-stock corporations with annual gross receipts of ₱100,000 or more or total assets of ₱500,000 or more;
- Branch office of a stock foreign corporation with assigned capital of ₱50,000 or more;

- Branch office of a non-stock foreign corporation, with total assets of ₱500,000 or more;
- Representative office of a foreign corporation with total assets of ₱500,000 or more; and
- An ROHQ with assigned capital of ₱50,000 or more or an RHQ with total assets of ₱500,000 or more.

If the above thresholds are not met, the FS may be certified under oath by the treasurer of the corporation.

C. Exchange Controls and Foreign Investment

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

D. Audit/Financial Reporting

Under the National Internal Revenue Code, all corporations, partnerships, or persons whose gross quarterly sales, earnings, receipts, or output exceed ₱150,000 must have their books of account audited and examined yearly by independent CPAs.

E. Land Ownership and Lease

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

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

Foreigners or foreign-owned corporations may generally enter into leases of private lands for a maximum period of 25 years, renewable for another 25-year period.

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

1. The leased area shall be used solely for the purpose of the investment upon the mutual agreement of the parties;
2. The leased premises shall comprise such area as may reasonably be required for the purpose of the investment, subject, however to the Comprehensive Agrarian Reform Law and the Local Government Code.

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

F. Capital Markets

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

The SEC is mandated to administer the SRC. In the Philippines, the SEC-registered and organized marketplace that brings together buyers and sellers and executes trade of securities and/or commodities is the Philippine Stock Exchange (PSE). The PSE is a self-regulatory organization, mandated to make and enforce its own rules which have been approved by the SEC, its members, and participants. The PSE has a regulatory arm called the Capital Markets Integrity Corporation, which ensures that the integrity of the market is maintained and the interest of the investing public is protected.

At present, the PSE has 2 trading floors, one located at the Ortigas Center and one at the Makati Central Business District. Trading in the PSE is a continuous session from 9:30 a.m. to 3:30 p.m. daily, with a recess from 12:00 p.m. to 1:30 p.m., Mondays to Fridays (except legal holidays and days when the BSP clearing office is closed).

Listing of securities in the Stock Exchange. Equity securities may be listed either in the Main Board or the Small, Medium, and Emerging (SME) Board. The PSE has set the criteria for listing in the Main or SME Boards.

V. TAXATION

A. Tax Authority and Administration

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

The national government derives tax revenue from 2 main sources, the National Internal Revenue Code (NIRC) and the Tariff and Customs Code (TCC). The NIRC imposes income taxes, estate and donor's taxes, value-added tax, other percentage taxes, excise taxes, documentary stamp taxes, and such other taxes as may be imposed and collected by the Bureau of Internal Revenue. The TCC, administered by the Bureau of Customs, imposes taxes and duties on exports and imports.

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

B. Internal Revenue Taxes

1. Income tax

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

a. Corporations

Corporate income tax

In general, corporate income tax is imposed as follows:

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

Passive income (royalties, interest, and others) received by domestic and resident foreign corporations are subject to various specified tax rates. Dividends received by a domestic or resident foreign corporation from a domestic corporation (inter-corporate dividends) are not taxable.

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

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

- Interest income of FCDUs and OBUs from foreign currency loans granted to residents other than FCDUs and OBUs are subject only to a final tax of 10%.

Branch profits remittance tax (BPRT)

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

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

Minimum corporate income tax (MCIT)

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

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

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

Improperly accumulated earnings tax

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

b. Individuals

Individual income tax

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

- A resident citizen is taxed on compensation, business, and other income derived from all sources;
- Nonresident citizens (including those working and deriving income from abroad such as overseas contract workers and seamen who derive compensation for services rendered abroad as members of a complement of vessels engaged exclusively in international trade) are taxed only on income derived from sources within the Philippines;
- Resident aliens are taxed only on income from sources within the Philippines;
- Nonresident aliens engaged in trade or business in the Philippines are taxed like citizens and resident aliens but only on Philippine-source income; and
- Nonresident aliens not engaged in trade or business in the Philippines are taxed on gross amount of Philippine-source income.

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

Generally, the graduated tax rates of 5% to 32% apply to resident citizens, nonresident citizens, resident aliens, and nonresident aliens engaged in trade or business. However, nonresident aliens not engaged in trade or business in the Philippines are subject to the flat income tax rate of 25% on gross income.

Personal exemptions

- Individual citizens and individual resident aliens are allowed a basic personal exemption of ₱50,000 and an additional exemption[3] of ₱25,000 for each qualified dependent not exceeding 4.
- A nonresident alien engaged in trade or business in the Philippines is entitled to personal exemptions (but not to additional exemptions) equal in amount to exemptions allowed by his country to Filipino citizens not residing therein.

c. Withholding taxes

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

[3] The additional tax exemption for each dependent may be claimed by only one of the spouses in case of married individuals.

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

d. Application of tax treaties

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

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

The Philippines has tax treaties with the following countries:

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

e. Thin capitalization and transfer pricing

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

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

The regulations are largely based on the arm's length methodologies of the Organisation for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines. They explicitly adopt the arm's length pricing methodologies without specific preference for any one method. A 3-step approach in applying the arm's length principle is provided, as follows:

Step 1. Conduct a comparability analysis;

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

Step 3. Determine the arm's length results.

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

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

The regulations state that the BIR shall issue separate guidelines on the application of APAs. While these APA guidelines are yet to be issued, they are accorded top priority by the tax authority. In a circular issued early 2015, the BIR included in its list of Priority Programs for 2015 its Transfer Pricing Program which explicitly includes the crafting or finalization of issuances on transfer pricing, specifically Revenue Regulations on APAs, as well as Revenue Memorandum Orders on transfer pricing documentation and transfer pricing risk-assessment.

2. Value-added tax (VAT)

The Philippines imposes a VAT on the sale, barter, exchange, or lease of goods and properties, importation of goods, and sale or performance of services in the course of trade or business within the Philippines.[4]

The standard VAT rate is 12%.

There are transactions (mainly export sales) subject to the VAT zero rate. There are also transactions exempt from VAT (e.g., sale of agricultural and marine food products in their original state, sale of fertilizer, and livestock).

The registration threshold for VAT purposes is ₱1,919,500 in gross sales or receipts over a 12-month period.

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

3. Other business taxes

Other internal revenue taxes of interest to investors include:

Excise tax.[5] The Philippines imposes excise taxes on certain goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, as well as on certain imported goods. Excisable goods include alcohol products, tobacco products, petroleum products, mineral products, motor vehicles, and non-essential goods such as jewelry.

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

Included under percentage taxes are the Stock Transaction Tax (STT) and the Initial Public Offering (IPO) Tax. The STT is imposed on the sale or disposition of shares listed and traded through the Philippine Stock Exchange (PSE) other than the sale by a dealer in securities. The STT rate is ½ of 1% of the gross selling price or gross value in money of the shares disposed. The IPO Tax is imposed on the sale or disposition through an IPO of shares of stock in closely held corporations.[6]

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

Up to 25%	4%
Over 25% but not over 33.33%	2%
Over 33.33%	1%

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

[5]If based on weight or volume capacity or other physical unit of measurement of goods, the excise tax is called a specific tax. Excise taxes based on the selling price or other value of the goods are referred to as *ad valorem* taxes.
[6]A closely held corporation is any corporation of which at least 50% in value of the outstanding capital stock or at least 50% of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than 20 individuals.

VI. INCENTIVES

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

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

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

A. BOI-Registered Enterprises

The Omnibus Investments Code provides incentives to enterprises engaged in activities falling under the government's priority or preferred areas of investment, as well as those which export a certain minimum percentage of their production. Preferred areas of investment are listed under the Investment Priorities Plan (IPP), the overall plan prepared by BOI and submitted to the President for approval yearly. The most recent IPP is shown here in Table 2.

TABLE 2. THE 2014 IPP PREFERRED AREAS OF INVESTMENT
I. Preferred List of Activities 1. Manufacturing a. Motor vehicle and motor vehicle parts and components b. Shipbuilding including parts and components c. Aerospace parts and components d. Chemicals e. Virgin paper pulp f. Copper wires and copper wire rods g. Basic iron and steel products, steel grinding balls, long steel products (billets and reinforcing steel bars), and flat hot/cold-rolled products h. Tool and die
2. Agribusiness and Fishery a. Commercial production b. Commercial processing c. Production of animal and aqua feeds excluding those for game animals, fowls, and other species for pet/leisure purposes d. Production of fertilizers and pesticides e. Modernization of sugar mills f. Mechanized agriculture support services, e.g., harvesting, plowing, and spraying/dusting g. Agriculture support infrastructures
3. Services a. Integrated circuit design b. Creative industries/knowledge-based services c. Ship repair d. Charging stations for e-vehicles e. Maintenance, repair, and overhaul (MRO) of aircraft f. Industrial waste treatment

4. Economic and low-cost housing (horizontal and vertical)
5. Hospitals
6. Energy
7. Public infrastructure and logistics
8. PPP projects

II. Export Activities

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

III. Special Laws

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

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

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

1. Export activities
2. Agriculture, agribusiness/aquaculture, and fishery
3. Basic industries
4. Consumer manufactures
5. Infrastructure and services
6. Industrial service facilities
7. Engineering industries
8. Logistics
9. Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area (BIMP-EAGA) trade and investment enterprises
10. Tourism
11. Health and education services and facilities
12. Halal industry

Investors that engage in priority areas of investment under the IPP may avail of the incentives under the Omnibus Investments Code upon registration with the BOI.

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

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

Fiscal incentives

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

Non-fiscal incentives

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

B. Philippine Economic Zone Authority (PEZA) Enterprises

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

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

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

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

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

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

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

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

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

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

VII. EMPLOYMENT

A. Labor Laws

1. Policies

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

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

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

2. Labor standards

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

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

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

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

Holidays and holiday pay. National holidays in the Philippines are classified as either regular or special.

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

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

TABLE 3. OFFICIAL PHILIPPINE HOLIDAYS		
New Year's Day	Regular holiday	January 1
Additional special non-working day	Special non-working day	January 2
Chinese New Year	Special non-working day	Movable date
Maundy Thursday	Regular holiday	Movable date
Good Friday	Regular holiday	Movable date
Black Saturday	Special non-working day	Movable date
Araw ng Kagitingan	Regular holiday	April 9
Labor Day	Regular holiday	May 1
Independence Day	Regular holiday	June 12
Ninoy Aquino Day	Special non-working holiday	August 21
National Heroes Day	Regular holiday	August 31
All Saints' day	Special non-working day	November 1
Bonifacio Day	Regular holiday	November 30
Additional special non-working day	Special non-working day	December 24
Christmas Day	Regular holiday	December 25
Rizal Day	Regular holiday	December 30
Last day of the year	Special non-working day	December 31
Eid'l Fitr	Regular holiday	Movable date
Eidul Adha	Regular holiday	Movable date

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

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

a. The demand for living wages;
b. Wage adjustment vis-à-vis the consumer price index;
c. The cost of living and changes or increases therein;
d. The needs of workers and their families;
e. The need to induce industries to invest in the countryside;
f. Improvements in standards of living;
g. The prevailing wage levels;
h. Fair return of the capital invested and capacity to pay of employers;
i. Effects on employment generation and family income; and
j. The equitable distribution of income and wealth along the imperatives of economic and social development.

A summary of the current daily minimum wage rates per region as of May 2015 is provided in Table 4.

TABLE 4. CURRENT DAILY MINIMUM WAGE RATES PER REGION				
REGION	DATE OF EFFECTIVITY	NON-AGRICULTURE IN PESOS	AGRICULTURE IN PESOS	
			PLANTATION	NON-PLANTATION
NCR	04 April 2015	444.00-481.00	444.00	444.00
CAR	03 February 2014	263.00-280.00	247.00-268.00	247.00-268.00
I	05 February 2014	213.00-253.00	233.00	213.00
II	05 January 2014	247.00-255.00	235.00-243.00	235.00-243.00
III	30 November 2014	298.00-349.00	283.00-319.00	217.00-303.00
IV-A	01 May 2014	261.00-362.50	216.00-337.50	255.00-317.50
IV-B	01 February 2013	205.00-275.00	215.00-225.00	215.00-225.00
V	10 January 2014	236.00-260.00	236.00	236.00
VI	02 May 2015	256.50-298.50	266.50	256.50
VII	14 December 2014	295.00-340.00	275.00-322.00	275.00-322.00
VIII	30 March 2015	260.00	235.00-241.00	228.00
IX	10 June 2013	280.00	255.00	235.00
X	20 June 2013	291.00-306.00	279.00-294.00	279.00-294.00
XI	01 June 2014	317.00	307.00	307.00
XII	01 August 2014	275.00	257.00	257.00
XIII	14 February 2015	268.00	268.00	248.00
ARMM	01 February 2014	250.00	250.00	250.00

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

13th month pay. Under Presidential Decree No. 851, all employers must grant a 13th month pay to all their employees. The payment of the 13th month pay must be made not later than December 24 of every year.

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

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

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

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

- The employee must have given the required notification to the SSS through her employer;
- The employer must have paid at least 3 monthly contributions to the SSS within the 12-month period immediately before the date of the delivery or miscarriage;
- The full payment shall be advanced by the employer within 30 days from the filing of the maternity leave application; and
- The maternity benefits shall be paid only for the first 4 deliveries or miscarriages.

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

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

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

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

Employment of night workers under Republic Act No. 10151. A night worker is any employed person whose work covers the period from 10 p.m. to 6 a.m. the following morning, provided the worker works for not less than 7 consecutive hours.

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

a. Before taking up an assignment as a night worker;
b. At regular intervals during such an assignment; and
c. If they experience health problems during such an assignment.

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

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

Separation from employment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Labor relations

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

4. Social welfare legislation

Other welfare legislation include the Social Security Law, Employees' Compensation and State Insurance Fund, Home Development Mutual Fund, and National Health Insurance Act.

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

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

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

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

VIII. IMMIGRATION

A. Entry into the Philippines

Non-immigrants or temporary visitors fall into either of 2 categories—unrestricted foreign nationals or restricted foreign nationals.

Unrestricted foreign nationals are from countries with visa-free privileges as enumerated under immigration law and regulations. Unrestricted foreign nationals may enter the Philippines under a visa waiver of 30 days, extendible for another 29 days. In general, an unrestricted foreign national must, upon entry, present a passport with validity of not less than 6 months beyond the period of stay as well as a valid return ticket. Restricted nationals are nationals of countries required to obtain a temporary visitor's visa [under Section 9(a) of the Philippine Immigration Act] from a Philippine Consulate in their home country or place of legal residence prior to entering the Philippines. They are typically granted visas for an initial stay of 59 days.

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

B. Work Permits

Alien employment permit (AEP). An employer wishing to hire a nonresident foreign national is required to secure an AEP from the DOLE. The DOLE issues the AEP after it determines that there is no person in the Philippines able, willing, and competent at the time of application to perform the services for which the alien is desired. The AEP is usually valid for a minimum period of 1 year from its issuance.

Special Work permit (SWP) for short-term assignments. Foreign nationals intending to work in the Philippines for not more than 6 months must obtain an SWP. An SWP is issued with an initial 3-month validity, extendible for another 3 months.

C. Work/Investor Visas

Pre-arranged Employment Visa [9(g) Visa]. Foreign nationals wishing to be employed in the Philippines in a technical, managerial, or confidential capacity must secure this regular working visa. To obtain it, the applicant must file a petition with the Bureau of Immigration (BI). The foreigner's spouse and unmarried children below 21 years old may apply for the same visa.

An AEP from the DOLE (as discussed above) is required to process this visa and must be procured prior to the visa process.

Treaty Trader or Treaty Investor Visa [9(d) Visa]. Under Section 9(d) of the Philippine Immigration Act, a foreign investor is entitled to enter the Philippines as a treaty trader if he is a national of a country with which the Philippines has a treaty of commerce and navigation. The foreign investor in this case is entering the country solely to carry on substantial trade principally between the Philippines and the foreign state of which he is a national and solely to develop and direct the operations of an enterprise in which he shall invest a substantial amount of capital. Under current rules, "substantial trade" refers to a non-nationalized business in which an investment of at least US$120,000 has been made.

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

D. Other Special Non-Immigrant Visas

Special Non-immigrant Visa under Sec. 47(a)(2) of the Philippine Immigration Act. For public interest or policy considerations, a special non-immigrant visa may be issued upon approval of the Secretary of Justice. Foreign nationals employed by enterprises registered with the PEZA and BOI may apply for this type of visa. Examples of industries invested with public interest are companies engaged in oil exploration, power generation, and infrastructure.

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

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

Visa for Foreign Investor or Personnel in Special Economic Zones. An investor within the Subic Special Economic Zone (SSEZ) whose continuing investment shall not be less than US$250,000, his/her spouse, and dependent children under 21 years old shall be granted permanent resident status within the SSEZ. Foreign executives or other foreign nationals possessing highly technical skills which no Filipino within the zone possesses, as certified by the DOLE, may be granted this visa. This visa is renewable every 2 years.

The Special Clark Investor's Visa (SCIV) and Special Clark Working Visa (SCWV) are visas that may be issued to foreigners who shall perform line functions or assume jobs and responsibilities necessary to operate the business of a registered enterprise in the Clark Special Economic Zone (CSEZ). The SCIV has an indefinite period of validity. It is subject to the grantee's continuing investment within the CSEZ in an amount equivalent to not less than US$250,000. Holders of the SCIV have multiple-entry privilege and exemption from Exit Clearance Certificate, Re-entry Permit, and Special Return Certificate. The SCWV has a maximum validity of 2 years (renewable).

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

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

E. Special Resident Visas

Special Investors' Resident Visa. Certain investors may qualify for the Special Investors' Resident Visa (SIRV) issued under the Omnibus Investments Code. An investor qualifying for an SIRV is given the privilege of residing in the Philippines as long as the investments and the required qualifications exist. To qualify for the SIRV, investors must remit at least US$75,000 into the country and invest in viable economic activities.

Special Resident Retiree's Visa. The Special Resident Retiree's Visa (SRRV) is given to foreign nationals intending to make the Philippines a retirement place. It entitles the holder to multiple-entry privileges with the right to stay permanently or indefinitely in the Philippines.

IX. INTELLECTUAL PROPERTY

Investors may rely on an established legal framework for intellectual property rights protection in the Philippines.

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

In 1947, the Philippines passed 2 laws protecting patents and trademarks. Over the years, additional laws were passed and regulations promulgated. The state policy to protect and secure intellectual property was later on enshrined in the 1973 and the 1987 Constitutions.

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

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

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

The Intellectual Property Code was amended most recently by Republic Act No. 10372 which created a Bureau of Copyright and other Related Rights to resolve copyright disputes and provide copyright and related rights services. The Philippines is a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and the Paris Convention for the Protection of Industrial Property.

Following the Philippines' accession in 2012 to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, international registration of marks may thereafter be done in this territory. The Madrid Protocol is an international procedure that allows trademark holders to secure protection in multiple jurisdictions following a single procedure.

X. ENVIRONMENT

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

Under the EIS System, no person, partnership, or corporation may undertake or operate an environmentally critical project (ECP) or projects in environmentally critical areas (ECAs) without first securing an Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR).

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

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

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

IX. SPECIAL SECTORS AND ISSUES

A. Power Industry

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

Overview of the electric power industry

Regulation of the electric power industry resides in the Energy Regulatory Commission (ERC). One of the mandates of the ERC is to promote true market competition and prevent harmful monopoly and market power abuse. The electric power industry is divided into 4 sectors—generation, transmission, distribution, and supply.

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

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

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

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

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

Electricity market

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

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

As of June 2015, the transfer from the AGMO to the IMO has not yet transpired.

Retail competition and open access

Retail Competition and Open Access (RCOA) commenced on December 26, 2012. The RCOA allows qualified electricity end-users to choose their supplier. PEMC was designated as the Central Registration Body for, and to oversee, the operation of the RCOA.

Renewable energy

Renewable energy is included in the 2014 Investment Priorities Plan.

In 2008, the legislature passed Republic Act No. 9513 or the Renewable Energy Act of 2008.

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

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

1. *Income tax holiday (ITH) for the first 7 years of its commercial operations.* The duly-registered RE developer shall be exempt from income taxes levied by the national government.
2. *Duty-free importation.* There shall be duty-free importation within the first 10 years upon the issuance of a certification of an RE developer of RE machinery, equipment, and materials that will be directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy. The DOE certification must be obtained before the importation of such machinery, equipment, materials, and parts are made.
3. *Special realty tax rates on equipment and machinery.* Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a registered RE developer actually and exclusively used for RE facilities shall not exceed 1.5% of their original cost less accumulated normal depreciation or net book value.
4. *Net operating loss carry-over (NOLCO).* The NOLCO of the RE developer during the first 3 years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next 7 consecutive taxable years immediately following the year of such loss.
5. *Corporate tax rate of 10% on net taxable income.* After 7 years of ITH, RE developers shall pay a corporate tax of 10%. The RE developer shall pass on the savings to the end-users in the form of lower power rates.
6. *Accelerated depreciation.* If, and only if, an RE project fails to receive an ITH before full operation, it may apply for accelerated depreciation in its tax books and be taxed based on such.
7. *Zero-percent VAT rate.* The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to zero-percent VAT. All RE developers shall be entitled to zero-rated VAT on their purchases of local supply of goods, properties, and services needed for the development, construction, and installation of their plant facilities. This shall also apply to the whole process of exploring and developing RE sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

8. *Cash incentive of RE developers for missionary electrification.* An RE developer, established after the effectivity of the RE Law, shall be entitled to a cash generation-based incentive per kilowatt hour rate generated, equivalent to 50% of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification.
9. *Tax exemption of carbon credits.* All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes.
10. *Tax credit on domestic capital equipment and services.* A tax credit equivalent to 100% of the value of the VAT and customs duties that would have been paid on the RE machinery, equipment, materials, and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer. Prior approval by the DOE must be obtained by the local manufacturer. The acquisition of such machinery, equipment, materials, and parts must be made within the validity of the RE operating contract.

B. Banking

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

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

Under the law, banks are classified into:

a. Universal banks;
b. Commercial banks;
c. Thrift banks, composed of (1) savings and mortgage banks, (2) stock savings and loan associations, and (3) private development banks, as defined in the Thrift Banks Act;
d. Rural banks, as defined in the Rural Banks Act;
e. Cooperative banks, as defined in the Cooperative Code;
f. Islamic banks as defined in Republic Act No. 6848, otherwise known as the Charter of Al Amanah Islamic Investment Bank of the Philippines; and
g. Other classifications of banks as determined by the Monetary Board of the BSP.

Foreign banks in the Philippines

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

1. By acquiring, purchasing, or owning up to 100% of the voting stock of an existing bank;
2. By investing in up to 100% of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; and
3. By establishing branches with full banking authority.

Capital requirements for foreign banks

1. *Locally incorporated subsidiaries.* The minimum capital shall be equal to that prescribed by the Monetary Board for domestic banks of the same category.
2. *Branches of foreign banks.* Foreign banks shall permanently assign capital of an amount not less than the minimum capital required for domestic banks of the same category, which amount shall be inwardly remitted and converted into Philippine currency.

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

1. Ensure geographic representation and complementation;
2. Consider strategic trade and investment relationships between the Philippines and the country of incorporation of the foreign bank;
3. Study the demonstrated capacity, global reputation for financial innovations, and stability in a competitive environment of the applicant;
4. See to it that reciprocity rights are enjoyed by Philippine banks in the applicant's country; and
5. Consider willingness to fully share their technology.

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

1. Only established, reputable, and financially sound foreign banks shall be allowed entry.
2. The foreign bank applicant must be widely owned and publicly listed in its country of origin, unless the foreign bank applicant is owned and controlled by the government of its country of origin.
3. Measures are adopted to ensure that the control of at least 60% of the resources or assets of the entire banking system is held by domestic banks which are majority owned by Filipinos.

C. Public-Private Partnership

On September 9, 2010, President Benigno S. Aquino III signed Executive Order No. 8, reorganizing and renaming the Build-Operate and Transfer (BOT) Center to the Public-Private Partnership (PPP) Center and putting it henceforth under the supervision of the National Economic and Development Authority (NEDA).

PPP projects are included in the National Government's Investment Priorities Plan and are therefore entitled to fiscal incentives.

The PPP Center covers all the PPP programs and projects, including all the variants or arrangements under the BOT Law and Joint Venture Agreements, and has the following powers and functions:

1. Conduct project facilitation and assistance to the national implementing agencies, including government corporations and LGUs, in addressing impediments or bottlenecks in the implementation of PPP project preparation and development;
2. Provide advisory services, technical assistance, trainings, and capacity development to agencies/LGUs in PPP project preparation and development;
3. Recommend plans, policies, and implementation guidelines related to PPP in consultation with appropriate oversight committees, implementing agencies, LGUs, and the private sectors;
4. Manage and administer the Project Development and Monitoring Facility, which shall be used for the conduct of business case, pre-feasibility and feasibility studies, and tender documents of PPP programs and projects in a timely manner, and ensure effective monitoring of PPP project implementation;
5. Monitor and facilitate the implementation of the priority PPP programs and projects of the agencies/ LGUs which shall be formulated by the respective agencies/LGUs in coordination with the NEDA secretariat;
6. Establish and manage a central database system of PPP programs and projects;
7. Recommend improvements to timelines in processing PPP programs and project proposals and monitor compliance of all agencies/LGUs;
8. Prepare reports on the implementation of the PPP programs and projects of the government for submission to the President at the end of each year; and
9. Perform functions which will be critical in expediting and implementing effectively the PPP programs and projects of the government.

While the PPP Center is funded by the National Government, it may receive contributions, grants, or other funds from government agencies and corporations, LGUs, local and foreign donors, development partners, and private sector institutions subject to existing laws, rules, and regulations.

Under the Executive Order, processing of all qualified solicited PPP proposals shall be completed within a period of 6 months.

D. Philippine Competition Policy

2015 saw the enactment of the landmark Philippine Competition Act (Republic Act No. 10667).

The passage of this law affirms the Philippines' commitment to the Association of Southeast Asian Nations (ASEAN) and the establishment of an ASEAN Economic Community (AEC). Under the AEC Economic Blueprint adopted by ASEAN member countries in 2007 and the resulting Regional Guidelines on Competition Policy, all ASEAN member countries committed to introduce competition policy by 2015.

The Philippines was the last of the 5 founding members of the ASEAN to pass an integrated, comprehensive competition statute, although, prior to that, it did have a competition policy set forth in provisions of various laws and regulations. The Philippine Constitution disallows unfair competition and combinations in restraint of trade and mandates the regulation or prohibition of monopolies when the public interest requires. The Revised Penal Code punishes combinations in restraint of trade and unlawful monopolizations. Other statutes prohibit the manipulation of prices that restrict competition, for instance in the trade of medicines, as well as in the downstream oil industry. Unfair practices and anti-competitive acts are proscribed under the Electric Power Industry Reform Act and the Consumer Act.

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

Anti-competitive agreements

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

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

Abuse of dominant position

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

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

- Imposing barriers to entry or committing acts that prevent competition from growing within the market in an anti-competitive manner except as a result of superior product, process, business acumen, or legal rights;
- Making a transaction subject to acceptance by the other parties of other obligations which by their nature or by commercial usage have no connection with the transaction;
- Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services;
- Imposing restrictions on the lease or contract for sale or trade of goods or services, concerning where, to whom, or in what forms goods or services may be sold or traded;
- Directly or indirectly imposing unfairly low purchase prices for the goods or services of marginalized producers and providers;
- Directly or indirectly imposing unfair purchase or selling prices on competitors, customers, suppliers, or consumers; and
- Limiting production, markets, or technical development to the prejudice of consumers except as a result of superior product, process, business acumen, or legal rights.

Mergers and acquisitions

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

Parties to mergers or acquisitions where the value of the transaction exceeds ₱1 billion are prohibited from consummating their agreement until 30 days after notifying the PCC (in the form and containing the information specified in regulations yet to be issued by the PCC).

An agreement consummated in violation of this compulsory notification requirement shall be considered void and shall subject the parties to an administrative fine of 1% to 5% of the value of the transaction.

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

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

In the case of banks, trust companies, insurance companies, public utilities, educational institutions, and other corporations governed by special laws, a favorable ruling by the PCC shall not be construed as dispensing of the Corporation Code requirement for a favorable recommendation by the appropriate government agency.

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

- The concentration has brought about or is likely to bring about gains in efficiency greater than the effects of any limitation on competition; or
- A party to the merger or acquisition is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement.

Enforcement and penalties

The PCC shall exercise broad powers and functions, including:

- Conducting inquiry, investigating, hearing, and deciding violations of the Philippine Competition Act and other competition laws;
- Reviewing proposed mergers and acquisitions;
- Monitoring and undertaking consultation with stakeholders and agencies to understand market behavior;
- Conducting administrative proceedings, imposing sanctions, fines, and penalties for noncompliance;
- Issuing subpoena *duces tecum* and subpoena *ad testificandum*;
- Issuing advisory opinions and guidelines on competition matters for effective enforcement of the Act; and
- Monitoring compliance by the person or entity concerned with the cease and desist order or consent judgment.

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

- First offense: a fine of up to ₱100 million; and
- Second offense: a fine of not less than ₱100 million but not more than ₱250 million.

Moreover, criminal penalties are imposed where an entity enters into any anti-competitive agreement. Each and every violation is punished by imprisonment from 2 to 7 years and a fine of not less than ₱50 million but not more than ₱250 million. The penalty of imprisonment shall be imposed on the responsible officers and directors of the entity.

ABOUT OCAMPO & SURALVO LAW OFFICES

Ocampo & Suralvo Law Offices (OS Law) is a commercial and tax law firm comprised of Philippine attorneys with decades of collective legal experience. OS Law assists in all aspects of Philippine corporate and commercial legal practice across the spectrum of clients' business concerns, including foreign direct investments, mergers and acquisitions, employment law, and taxation.

OS Law enables clients to thrive in the global economy as it collaborates with DFDL, a leading international firm in emerging Asian markets. This collaboration allows Philippine companies an opportunity to expand their reach in the ASEAN region.

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Jude holds a master of laws degree from Harvard University and a Master of Business Administration degree (Finance and Supply Chain Management) from the UNC Chapel Hill's Kenan-Flagler Business School. He is a graduate of and a former lecturer at the University of the Philippines College of Law. A corporate and tax lawyer with 15 years of experience in the Philippines and abroad, he was a tax lawyer at Sycip Gorres Velayo & Co. (Ernst & Young Philippines), an international tax director with Ernst & Young (Hungary), a tax principal at KPMG Manabat San Agustin & Co. (Philippines), and a partner in the tax and legal department of Deloitte (Commonwealth of Independent States). He was most recently a regional tax director and deputy head of regional tax of DFDL, an international law firm focusing on high-growth Asian markets. He specializes in mergers and acquisitions, international corporate structuring, and international tax. Jude has assisted a number of global and ASEAN multinationals in multi-jurisdictional reorganizations. He also served in the Philippine government. From 2004 to 2005, he was Assistant Secretary for Legal Affairs of the Republic's Trade and Industry Department and Finance Department.

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Tina was admitted to the Philippine bar in 2001, placing 10th in the bar examinations. She is an alumna of the University of the Philippines College of Law. Tina honed her expertise in corporate, commercial, and tax law as an associate at the De Borja Medialdea Bello Guevarra and Gerodias law firm, and later on as a tax lawyer at Sycip Gorres Velayo & Co. (Ernst & Young Philippines). She advises and assists domestic and foreign clients at various stages of their business existence and on a range of legal and tax issues, also handling company registration and compliance involving various government agencies. Tina also gained substantial experience as a legal officer with the Philippine Stock Exchange and as Deputy Enforcement and Compliance Officer of the Philippine Electricity Market Corporation.

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Karen is experienced in corporate law and taxation, having worked as an associate at Castillo Laman Tan Pantaleon & San Jose, and as a tax lawyer at Sycip Gorres Velayo & Co. (Ernst & Young Philippines). She has assisted clients with a wide range of commercial and transactional matters including mergers and acquisitions, but her distinctive strength lies in taxation. Her tax law experience is strengthened by a truly international perspective, having worked as a tax manager for Big 4 accounting firms abroad. She is an alumna of the University of the Philippines College of Law.