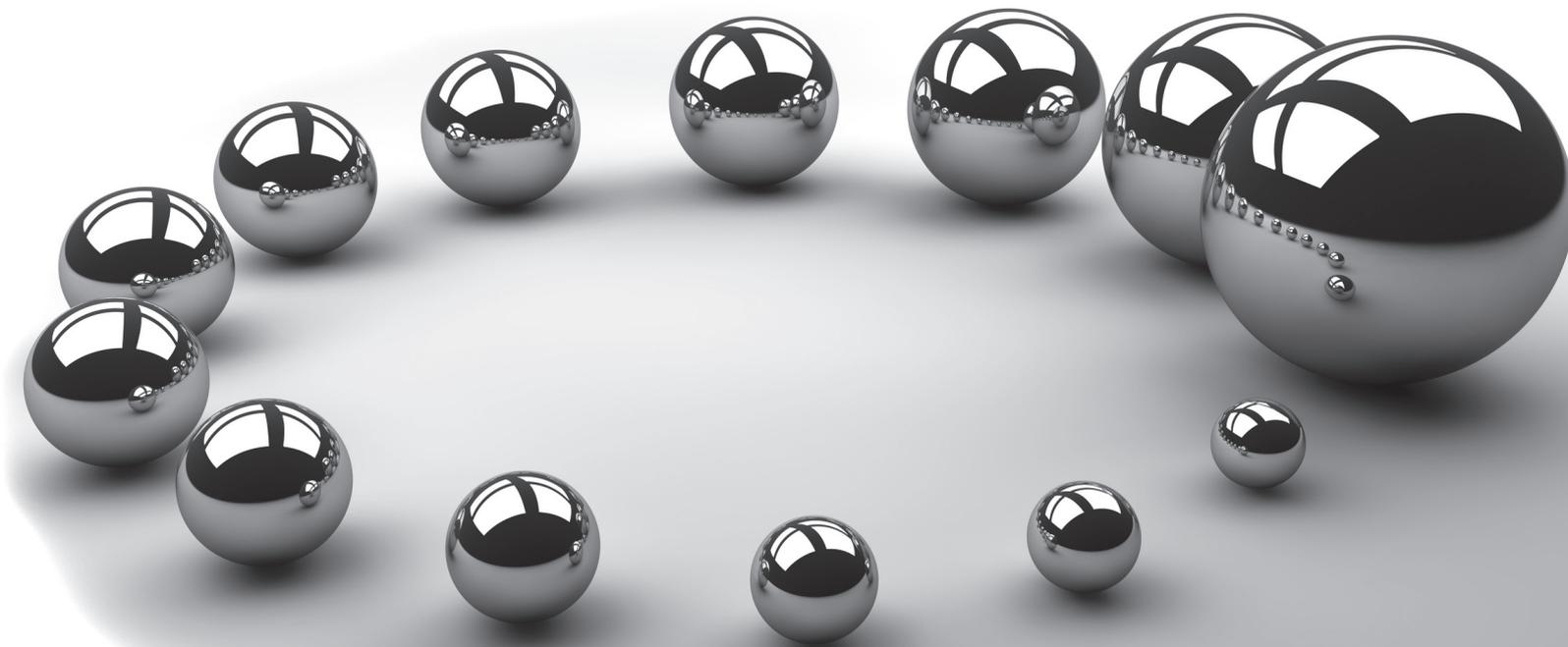




# Doing Business in the Philippines

2013



## **Baker & McKenzie Locations**

### **Asia Pacific**

Bangkok  
Beijing  
Hanoi  
Ho Chi Minh City  
Hong Kong  
Jakarta  
Kuala Lumpur  
Manila  
Melbourne  
Seoul  
Shanghai  
Singapore  
Sydney  
Taipei  
Tokyo

### **Europe, Middle East & Africa**

Abu Dhabi  
Almaty  
Amsterdam  
Antwerp  
Bahrain  
Baku  
Barcelona  
Berlin  
Brussels  
Budapest  
Cairo  
Casablanca  
Doha  
Dubai  
Düsseldorf  
Frankfurt  
Geneva  
Istanbul  
Johannesburg  
Kyiv  
London  
Luxembourg  
Madrid  
Milan  
Moscow  
Munich  
Paris  
Prague  
Riyadh  
Rome  
St. Petersburg  
Stockholm  
Vienna  
Warsaw  
Zurich

### **North and Latin America**

Bogotá  
Brasília  
Buenos Aires  
Caracas  
Chicago  
Dallas  
Guadalajara  
Houston  
Juarez  
Lima  
Mexico City  
Miami  
Monterrey  
New York  
Palo Alto  
Porto Alegre  
Rio de Janeiro  
San Francisco  
Santiago  
São Paulo  
Tijuana  
Toronto  
Valencia  
Washington, D.C.

The material in this publication has been prepared by Quisumbing Torres to provide general information only. It is not offered as advice on any particular matter, whether it be legal, procedural, commercial or otherwise, and should not be taken as such. For this reason, the information contained in this publication should not form the basis of any decision as to a particular course of action; neither should it be relied upon as legal advice nor regarded as a substitute for detailed advice in individual cases. The authors expressly disclaim all liability to any person in respect of consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this publication.

This publication is copyrighted. No part of this publication may be reproduced or transmitted by any process or means without the prior permission of Quisumbing Torres.

The law is stated as of December 2012.

# Table of Contents

Introduction.....	1
The Philippines.....	1
Quisumbing Torres.....	2
I.    Foreign Investments in the Philippines.....	3
1. Extent of Foreign Equity.....	3
2. Anti-Dummy Law.....	6
3. Forms of Investment Vehicle.....	7
4. Domestic Corporation versus Branch.....	7
5. Other Types of Corporate Vehicle.....	8
5.1. Representative Office.....	8
5.2. Regional or Area Headquarters.....	8
5.3. Regional Operating Headquarters (ROHQ).....	8
5.4. Regional Warehouses.....	9
5.5. Offshore Banking Unit (OBU).....	9
6. Post-Registration Requirements.....	10
II.   Taxation.....	10
1. Tax Treaties.....	10
2. National Taxes.....	10
2.1. Corporate Income Tax.....	10
2.2. Individual Income Tax.....	11
2.3. Withholding of Taxes.....	11
2.4. Fringe Benefits Tax.....	12
2.5. Business Taxes.....	12
2.6. Other Imposts of the National Government.....	13
3. Local and Real Property Taxes.....	13
III.  Incentives Under Special Registrations.....	14
1. Enterprises Registered Under the Omnibus Investments Code (OIC).....	14
1.1. Tax Incentives.....	17
1.2. Non-tax Incentives.....	18
1.3. Additional Incentives.....	18
2. Enterprises Registered with the Philippine Economic Zone Authority (PEZA).....	19
2.1. Tax and Other Incentives.....	20
3. Enterprises Registered with the Subic Bay Metropolitan Authority (SBMA).....	20
4. Enterprises Located in the Clark Special Economic Zone.....	21
IV.   Lease of Private Land.....	21
V.    Environmental Regulation.....	22
1. Specific Areas of Regulation.....	23
VI.   Intellectual Property Protection.....	23
VII.  Border Control Measures.....	24

VIII.	Technology Transfer Arrangements .....	24
IX.	Labor Law .....	25
1.	Labor Standards .....	25
1.1.	Work Hours.....	25
1.2.	Wages.....	26
1.3.	Other Compulsory Benefits .....	26
1.4.	Rule on Non-Diminution of Employment Benefits .....	26
2.	Labor Relations.....	26
3.	Welfare Legislation.....	27
4.	Classification of Employment.....	27
5.	Termination of Employment.....	27
6.	Contract of Employment.....	28
X.	Immigration .....	28
1.	Entry to the Philippines.....	28
2.	Work/Employment Requirements .....	28
2.1.	Short-Term Assignments (Three to Six Months).....	29
2.2.	Long-Term Expatriates, and/or Local Transfer .....	29
3.	Special Resident Visas .....	31
4.	Others	
XI.	Privacy Laws in the Philippines.....	31
1.	Overview.....	31
1.1.	Privacy of Communications.....	32
1.2.	Data Privacy.....	32



## Introduction

### The Philippines

The Philippine economy's resilience has earned for the country new titles such as "Rising Tiger<sup>1</sup>," "Diamond of the Region<sup>2</sup>," and the "Comeback Economy<sup>3</sup>" in Asia. The Philippines was the highest performer among members of the Association of Southeast Asian Nations (ASEAN) as it posted a gross domestic product growth rate of 7.8 percent in the first quarter of 2013<sup>4</sup>. It now enjoys the status of lender, shifting from borrower position, following its contribution to World Bank loans last year. International credit rating agencies Fitch Ratings and Standard & Poor's have awarded the country its first and second investment grade ratings. These achievements under the current administration position the Philippines strategically in the way of investors looking for profitable investment destinations.

Tourism, business process outsourcing (BPO), electronics, housing and real estate, agribusiness and forest-based products, logistics, and shipbuilding are key priority sectors receiving focus from the government this year<sup>5</sup>. Capital inflows are also expected to surge given a stronger confidence in the economy<sup>6</sup>.

As a key enabler of inclusive growth, the government has allocated PHP409.8 billion for infrastructure development in 2013<sup>7</sup>. The PPP Center, the main government agency mandated to implement PPP projects in the country<sup>8</sup>, urges implementing agencies to move up the scale and take on "more ambitious projects" or explore ways to expand the use of PPPs beyond the usual roads, ports, and public utilities to urban resettlement, tourism through the restoration of heritage structures<sup>9</sup>, and social infrastructure projects such as schools and hospitals<sup>10</sup>.

<sup>1</sup> [http://neda8.ph/index.php?option=com\\_content&task=view&id=1060&Itemid=71](http://neda8.ph/index.php?option=com_content&task=view&id=1060&Itemid=71). Accessed 11 June 2013.

<sup>2</sup> <http://www.bbc.co.uk/news/business-20521862>. Accessed 11 June 2013.

<sup>3</sup> <http://www.bpap.org/media-room/it-bpo-industry-news/435-the-philippine-economy-on-the-comeback->. Accessed 11 June 2013.

<sup>4</sup> [http://www.neda.gov.ph/ads/press\\_releases/pr.asp?ID=1467](http://www.neda.gov.ph/ads/press_releases/pr.asp?ID=1467). Accessed 11 June 2013

<sup>5</sup> <http://www.iro.ph/article/details.php?articleid=880&catid=4>. Accessed 5 April 2013.

<sup>6</sup> <http://in.reuters.com/article/2013/03/27/philippines-economy-fitch-upgrade-idINDEE92Q02Y20130327>. Accessed 5 April 2013.

<sup>7</sup> <http://www.gov.ph/2012/07/24/2013-budget-message-of-president-aquino/>. Accessed 5 April 2013.

<sup>8</sup> [http://ppp.gov.ph/?page\\_id=683](http://ppp.gov.ph/?page_id=683). Accessed 5 April 2013.

<sup>9</sup> <http://ppp.gov.ph/?p=12845>. Accessed 5 April 2013.

<sup>10</sup> <http://ppp.gov.ph/?tag=ppp-projects>. Accessed 5 April 2013.

## Quisumbing Torres

*“Quisumbing Torres’ clients remain steadfast in praise of the firm, citing its... principled approach as recurring reasons for their continued support and inflow of work.”*

- IFLR1000 2012

The approaching integration of the 10-member-strong Association of Southeast Asian Nations (ASEAN) into a competitive ASEAN Economic Community in 2015 promises the free flow of goods, services, people, capital, and investment. As a founding member of the ASEAN, the Philippines is set to join the league of growing economies in Asia. Quisumbing Torres (QT), Baker & McKenzie International’s first member firm in Asia Pacific, helps organizations take advantage of the opportunities and navigate the challenges presented by the changing market landscape.

Having been on the ground in the Philippines for five decades, QT helps leading multinational and domestic organizations grow their business on a local, regional, and global scale. Working in seamless collaboration with Baker & McKenzie’s 4000-plus-strong network of culturally diverse, locally qualified, and internationally experienced lawyers in over 70 offices in more than 40 countries, QT’s team gives clients access to local advice with a global perspective.

First established in 1963 as Collas & Guerrero, the firm later became known as Quisumbing Torres & Evangelista. In 1998, we became Quisumbing Torres.

QT provides topnotch counsel in the areas of Banking and Finance, Corporate and Commercial, Dispute Resolution, Employment, Intellectual Property and Information Technology, and Tax. Fluent in the nuances of the country’s legal, social, and political systems, our lawyers have helped draft laws resulting in meaningful changes in the Philippine labor and tax codes; regulations covering the mining, media and communications, and oil and gas industries; rules on clean air and hazardous waste management; and IP law enforcement.

We tailor our value-based solutions to your commercial objectives and align with your priority needs. Well-versed in various local industries, QT lawyers take the lead role in the advancement of the Philippines’ key business segments. With half a century of practice, our lawyers are prepared to offer seasoned industry-specific advice in, among others:

- Alcohol and Tobacco
- Automotive
- Aviation, Aerospace, and Defense
- Chemicals and Plastics
- Construction and Building Materials
- Consumer Goods and Retail
- Energy and Utilities
- Financial Services
- Food and Beverage
- Infrastructure
- Insurance
- Manufacturing and Wholesale
- Media and Entertainment
- Mining and Metals
- Oil, Gas, and Petrochemicals
- Pharmaceuticals and Healthcare
- Real Estate (including REITs)
- Services

## I. Foreign Investments in the Philippines

The law that governs the participation of foreign entities in economic and commercial activities in the Philippines is Republic Act No. 7042 (“RA 7042”), as amended, otherwise known as the Foreign Investments Act of 1991 (“FIA”). As stated in the FIA, it is the policy of the state to attract, promote, and welcome productive investments from foreign individuals, partnerships, corporations, and governments, including their political subdivisions, in activities that significantly contribute to national industrialization and socio-economic development to the extent that foreign investment is allowed in such activity by the Philippine Constitution (“Constitution”) and relevant laws.

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

Foreigners may own and hold interests in corporations, partnerships, and other entities in the Philippines, provided that such corporations, partnerships, and other entities are not engaged in an activity that is reserved by law only to Philippine citizens or to entities that are wholly owned by Philippine citizens. The maximum amount of foreign equity or interest that is allowed in a company depends on the type of activity that the company is engaged in.

### 1. Extent of Foreign Equity

The FIA provides for the issuance of a Foreign Investment Negative List (“Negative List”) – a list of economic activities where foreign equity is either prohibited or limited to a certain percentage. The Negative List has two component lists: List A and List B. List A contains areas of investment where foreign ownership is limited by mandate of the Constitution or by specific laws. List B contains areas of investment where foreign ownership is limited for reasons of security, defense, risk to health and morals, or protection of local small- and medium-sized enterprises. The Negative List is issued every two years. A new Negative List is prospective in application and will not affect foreign investment that already exists on the date of its publication. Except with respect to activities where restrictions on foreign equity are imposed under the Constitution or statutes, the President of the Philippines may amend the Negative List.

A non-Philippine national (please see the definition of “Philippine national” below) may invest in a domestic enterprise or an export enterprise (as these terms are defined below) in the Philippines to the extent of 100 percent of the domestic enterprise’s or the export enterprise’s capital, provided that the following conditions are complied with:

- a. It is investing in a domestic market enterprise or an export enterprise that is engaged in an activity that is not on the Negative List.

A domestic market enterprise is an enterprise that produces goods for sale or renders services to the domestic market entirely or, if exporting a portion of its output, fails to consistently export at least 60 percent thereof. An export enterprise is a manufacturer, processor, or service (including tourism) enterprise that exports 60 percent or more of its output, or a trader that purchases products domestically and exports 60 percent or more of such purchases.

- b. The country or state of the non-Philippine national must also allow Filipino citizens and corporations to do business therein.
- c. If the non-Philippine national is investing in a domestic market enterprise, the enterprise must have a paid-in capital of the peso equivalent of at least USD200,000. (An export enterprise is not required to comply with this minimum capitalization requirement). The capitalization

requirements of a domestic market enterprise may be reduced to the peso equivalent of USD100,000 if: (i) its activity involves advanced technology as determined and certified by the Department of Science and Technology; or (ii) it employs at least 50 direct employees as certified by the appropriate regional office of the Department of Labor and Employment (DOLE).

A non-Philippine national is a person, corporation, partnership, or association that is not considered a “Philippine national” under the FIA. A “Philippine national,” as defined under the FIA, is any of the following:

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

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

**Some of the activities that are included in the Ninth Negative List (which took effect on 29 October 2012 and is the current Negative List) are as follows:**

No Foreign Equity

- Mass media, except recording
- Except in cases prescribed by law, the practice of all professions, including, but not limited to, engineering, medicine, accountancy, architecture, customs brokerage, geology, and agriculture
- Retail trade enterprises with a paid-up capital of less than USD2.5 million
- Cooperatives
- Private security agencies
- Small-scale mining
- Utilization of marine resources in archipelagic waters, territorial sea, and exclusive economic zones as well as small-scale utilization of natural resources in rivers, lakes, bays, and lagoons
- Ownership, operation, and management of cockpits

- Manufacture, repair, stockpiling, and/or distribution of nuclear weapons, biological, chemical, and radiological weapons, and anti-personnel mines
- Manufacture of firecrackers and other pyrotechnic devices

Up to 20 percent Foreign Equity

- Private radio communications network

Up to 25 percent Foreign Equity

- Private recruitment companies, whether for local or overseas employment
- Contracts for the construction and repair of locally funded public works, except infrastructure/development projects covered by Republic Act No. 7718 (“RA 7718”) and projects that are foreign-funded or assisted, and required to undergo international competitive bidding
- Contracts for the construction of defense-related structures

Up to 30 percent Foreign Equity

- Advertising

Up to 40 percent Foreign Equity

- Exploration, development, and utilization of natural resources
- Ownership of private lands
- Operation and management of public utilities
- Ownership, establishment, and administration of educational institutions
- Contracts for the supply of materials, goods, and commodities to government-owned or controlled corporations, companies, agencies, or municipal corporations
- Culture, production, milling, processing, trading (except retailing), and acquisition of rice and corn and the byproducts thereof
- Acting as project proponent and facility operator of a build-operate-transfer project requiring a public utilities franchise
- Ownership of condominium units where the common areas of the condominium project are co-owned by owners of the separate units or owned by a corporation
- Operation of deep sea commercial fishing vessels
- Adjustment companies
- Domestic market enterprises (i.e., entities that do not export 60 percent or more of their output) with a paid-in equity capital of less than the equivalent of USD200,000

Up to 49 percent Foreign Equity

- Lending companies

Up to 60 percent Foreign Equity

- Financing of companies regulated by the SEC
- Investment houses regulated by the SEC

Persons that will engage in construction activities in the Philippines are also required to obtain a license from the Philippine Contractors Accreditation Board (PCAB). Under the rules of the PCAB, the license is reserved for and issued only to Filipino sole proprietorships or partnerships/corporations with at least 60 percent Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.

The foregoing is a non-exhaustive enumeration of the sectors/activities that are subject to foreign equity limitations.

### **Recent developments relating to activities that are governed by nationality restrictions**

The basis for the inclusion of the operation and management of public utilities in the Negative List is Article XII of the Constitution, which provides that a franchise for the operation of a public utility shall be granted only to Filipinos, or to corporations organized under the laws of the Philippines at least 60 percent of whose capital is owned by Filipinos.

In a recent landmark decision (“Gamboa Case”)<sup>11</sup>, the Philippine Supreme Court (“Supreme Court”) defined “capital,” as used in Article XII of the Constitution, as referring to “shares of stock entitled to vote in the election of directors,” coupled with full beneficial ownership of the stocks of the public utility operator. The Supreme Court further held that, to ensure that effective control of public utilities is held by Filipinos, the 60 percent Filipino ownership requirement shall apply separately to each class of shares of the public utility operator, whether common, preferred non-voting, preferred voting, or any other class of share.

Because the Constitution uses similar language in defining the foreign equity restrictions that apply to an operator of a public utility, as it does for other activities that are subject to nationality restrictions under the Constitution, the aforementioned ruling in the Gamboa Case may be interpreted as applicable to corporations that are engaged in other activities that are also subject to nationality restrictions under the Constitution.

To implement the ruling and principles laid down in the Gamboa Case, the SEC is in the process of formulating a set of guidelines, rules and regulations (“SEC Guidelines”). As of this writing, however, the SEC Guidelines have yet to be finalized, and are being refined by the SEC in consultation with various agencies and bodies representing both the public and private sectors.

## **2. Anti-Dummy Law**

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

<sup>11</sup> *Heirs of Wilson P. Gamboa v. Finance Secretary Margarito Teves, et al.*, G.R. No. 176579, 9 October 2012, which became final on 24 October 2012.

Under the Anti-Dummy Law, a person who has in his name or under his control a right, franchise, privilege, property, or business, the exercise or enjoyment of which is expressly reserved by law to Philippine citizens or to corporations or associations where at least 60 percent of the capital is owned by such citizens, is prohibited from (a) permitting or allowing the use, exploitation, or enjoyment of such right, franchise, privilege, property, or business by a person, corporation, or association not possessing the qualifications prescribed by law; or (b) in any manner permitting or allowing any person not so qualified to intervene in the management, operation, administration, or control of such right, franchise, privilege, property, or business, whether as an officer, employee, or laborer, with or without remuneration (except technical personnel whose employment may be specifically authorized by the Secretary of Justice). However, foreign nationals may serve as members of the board or governing body of corporations engaged in partially nationalized activities in a number proportionate to their actual and allowable equity in the company.

### **3. Forms of Investment Vehicle**

There are three general forms of business organizations in the Philippines: sole proprietorship, partnership, and corporation (domestic or foreign).

A sole proprietorship is a business owned and operated by a single natural person. The liability of the sole proprietor is unlimited, and the personality of the business enterprise is not distinct and separate from that of the owner.

A partnership is created by virtue of a contract whereby two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves. The partnership has a juridical personality separate and distinct from that of each of the partners. However, generally, all partners are liable pro rata, with all their property and after all the partnership assets have been exhausted, for the contracts that may be entered into in the name and for the account of the partnership.

Subject to nationality requirements pertaining to the intended activity, Philippine law allows foreign investors to establish and incorporate a domestic corporation, and foreign corporations to transact business in the Philippines as a branch or a representative office.

A domestic corporation may be a joint venture or a wholly owned subsidiary.

A branch and a representative office of a foreign corporation are mere extensions of their head offices.

A foreign investor may also invest as a limited or general partner in a partnership.

For reasons relating to the exercise of management powers and the extent of liability, among others, the corporation is generally the most preferred vehicle for investments in the Philippines among the various forms of business organizations. Foreign investors that wish to engage in a business that is not subject to nationality restrictions generally choose between establishing a Philippine subsidiary and establishing a Philippine branch office.

### **4. Domestic Corporation versus Branch**

Assuming that the proposed activity is not subject to any foreign equity limitation, a foreign investor may set up a wholly owned domestic corporation or a branch of a foreign corporation in the Philippines. These two types of corporate vehicles have their relative advantages and disadvantages relating to, among others, the extent of liability of the parent company/head office, taxation, and the administrative costs of maintaining the same.

If the proposed activity is subject to foreign equity limitations, a foreign investor will have to set up a domestic corporation with a qualified Philippine partner as a joint venture partner.

Generally, corporations that are more than 40 percent foreign-owned, as well as branches of foreign corporations that are considered domestic market enterprises, must have a paid-in capital of at least USD200,000. The paid-in capital requirement is reduced to USD100,000 for domestic market enterprises whose activities involve advanced technology or which employ at least 50 direct employees.

Entities that qualify as export enterprises (enterprises that export 60 percent or more of their output) are generally not subject to any minimum paid-in capital requirement.

## **5. Other Types of Corporate Vehicle**

### **5.1. Representative Office**

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

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

### **5.2. Regional or Area Headquarters**

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

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

Its expenses must be financed by the head office or parent company from external sources in an acceptable foreign currency. To fund its operations in the Philippines, its head office or parent company must initially remit into the Philippines at least USD50,000 and, thereafter, USD50,000 annually.

The regional headquarters is not subject to income tax, value-added tax, and all local licenses, fees, and charges, except real property tax on land improvements and equipment. It enjoys tax- and duty-free importation of equipment and materials necessary for training and conferences.

### **5.3. Regional Operating Headquarters (ROHQ)**

A multinational company may establish an ROHQ in the Philippines to service its own affiliates, subsidiaries, or branches in the Philippines or in the Asia Pacific Region and other foreign markets.

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

- a. General administration and planning
- b. Business planning and coordination
- c. Sourcing/procurement of raw materials and components
- d. Corporate finance advisory services

- e. Marketing control and sales promotion
- f. Training and personnel management
- g. Logistics services
- h. Research and development services, and product development
- i. Technical support and maintenance
- j. Data processing and communication
- k. Business development

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

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

#### 5.4. Regional Warehouses

A multinational company organized and existing under any laws other than those of the Philippines that is engaged in international trade and supplies spare parts, components, semi-finished products, and raw materials to its distributors or markets in the Asia Pacific area and other foreign areas, and which has established or will simultaneously establish a regional or area headquarters and/or ROHQ in the Philippines, may also establish a regional warehouse or warehouses in Special Economic Zones (“Ecozones”) in the Philippines after securing a license therefore from the Philippine Economic Zone Authority (PEZA). With respect to regional warehouses located or to be located in Ecozones with special charters, such license shall be secured from the concerned Ecozone authorities. (Please refer to our discussion below on Ecozones.) For existing regional warehouses, said license shall be secured from the Board of Investments (BOI) unless they choose to relocate inside Ecozones. The activities of the regional warehouse shall be limited to:

- a. 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
- b. 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.

#### 5.5. Offshore Banking Unit (OBU)

A foreign bank may operate an OBU in the Philippines. The OBU may be a branch, subsidiary, or affiliate of a foreign banking corporation authorized by the Bangko Sentral ng Pilipinas (BSP), which is the Philippine Central Bank, to conduct business with funds from external sources.

## 6. Post-Registration Requirements

Upon incorporation/registration with the SEC, the newly incorporated/registered entity must comply with certain basic registration and licensing requirements with different government agencies. These post-registration requirements include obtaining from certain government agencies and local government offices tax, employee-welfare-related, and commencement-of-operations permits, licenses, and registrations.

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

## II. Taxation

Philippine taxes are imposed by both the national government and the local government units.

### 1. Tax Treaties

The Philippines has tax treaties with the following countries:

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

### 2. National Taxes

#### 2.1. Corporate Income Tax

A domestic corporation is taxed on its net income (gross income less allowable deductions) from all sources at the rate of 30 percent.

A resident foreign corporation, such as a branch, is taxed only on its net income from Philippine sources at the same rate as a domestic corporation.

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

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

The 30 percent corporate income tax rate was 35 percent prior to 1 January 2009.

### **Income Subject to Different Tax Treatment**

- Interest and Royalties Interest
- Dividends
- Branch Profits
- Gains from Sale of Real Property
- Capital Gains from Sale or Exchange of Stock
- Tax on Initial Public Offer of Shares of Stock

### **Income Taxation for Specific Industries**

- Foreign International Carrier
- Non-Resident Cinematographic Film Owner/Lessor/Distributor
- Non-Resident Lessor of Aircraft or Machinery and Other Equipment
- Non-Resident Owner of Chartered Vessel
- Foreign Currency Transactions of Offshore Banking Units (OBUs)
- Minimum Corporate Income Tax
- Tax on Improperly Accumulated Earnings

## **2.2. Individual Income Tax**

A resident citizen is taxed on income from all sources at progressive rates ranging from 5 percent to 32 percent of net taxable income.

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

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

## **2.3. Withholding of Taxes**

Taxes due on the income of a non-resident alien and a non-resident foreign corporation are withheld at source.

The salary and certain other income receipts of residents, such as interest and rent income, are also subject to withholding tax.

## 2.4. Fringe Benefits Tax

A final tax of 32 percent is imposed on the grossed-up monetary value of fringe benefits furnished or granted to an employee (except rank-and-file) by the employer.

Fringe benefits tax is not imposed if the fringe benefit is required by the nature of, or necessary to, the trade, business, or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer.

## 2.5. Business Taxes

### a. Value-Added Tax (VAT)

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

A person becomes subject to the 12 percent VAT when his gross sales or receipts for the past 12 months exceed PHP1,919,500.

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

### b. Excise Taxes

In addition to VAT, excise taxes apply to goods produced in the Philippines for domestic sale or consumption or for any other disposition, and to things imported.

Excise taxes that are based on the weight or volume capacity or any other physical unit of measurement of the goods are called specific taxes.

Excise taxes that are imposed and based on the selling price or other specified value of the goods are referred to as *ad valorem* taxes.

#### **The following are subject to excise taxes:**

- Distilled spirits, wines, and fermented liquor
- Tobacco products, cigars, and cigarettes
- Manufactured oils and other fuels
- Fireworks
- Cinematographic films
- Saccharine
- Automobiles
- Non-essential goods (such as jewelry, perfumes, and toilet water)
- Yachts and other vessels intended for pleasure or sports
- Mineral products and quarry resources

Excise taxes paid on locally produced goods that are exported without return to the Philippines, whether in their original state or as ingredients or parts of any manufactured goods or products, are credited or refunded upon submission of proof of actual exportation and receipt of the corresponding foreign exchange payment.

### c. Percentage Taxes

Certain persons are subject to percentage taxes at rates ranging from 1 percent to 30 percent. Percentage taxes are normally imposed on gross receipts.

**Among those subject to percentage taxes are the following:**

- Keepers of garages and common carriers by land, air, or water for the transport of passengers
- Entities engaged in the life insurance business
- Overseas dispatches, messages, or conversations transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless, and other communication equipment services
- Banks and non-bank financial intermediaries

Persons or entities subject to percentage taxes are exempt from VAT. Business establishments whose gross annual sales or receipts do not exceed PHP1,919,500 are exempt from VAT but are subject to percentage tax of 3 percent, unless they elect to pay the 12 percent VAT.

## d. Documentary Stamp Taxes

Documentary stamp taxes must be affixed to certain documents, instruments, and papers evidencing business transactions, such as:

- |  |  |
|--|--|
| • Bonds  | • Annuity policies                                   |
| • Debentures   | • Indemnity bonds                                    |
| • Certificates of indebtedness   | • Certificates issued by certain officers            |
| • Certificates of stock  | • Warehousing receipts                               |
| • Certificates of profits or of interests in property or accumulations | • <i>Jai-alai</i> and horse race tickets             |
| • Bank checks  | • Bills of lading                                    |
| • Drafts   | • Proxies  |
| • Certificates of deposit  | • Powers of attorney                                 |
| • Promissory notes   | • Leases of real property                            |
| • Bills of exchange  | • Mortgages  |
| • Letters of credit  | • Pledges  |
| • Insurance policies   | • Deeds of sale of real property and charter parties |
| • Fidelity bonds   |  |

**2.6. Other Imposts of the National Government**

In addition to the 12 percent VAT and any applicable excise tax, importations are generally subject to customs duties.

The Tariff and Customs Code provides for the imposition of anti-dumping duty, countervailing duty, marking duty, and discriminating duty under special circumstances.

**3. Local and Real Property Taxes**

Local government units, such as provinces, cities, municipalities, and barangays, may levy taxes and impose local license fees pursuant to the Local Government Code.

Furthermore, real property tax applied solely to the lands, buildings, and other improvements thereon is levied on the assessed value of the real property.

### III. Incentives Under Special Registrations

Qualified enterprises may register with the BOI under the Omnibus Investments Code (OIC) or with the PEZA to avail themselves of certain incentives. Investment opportunities in the Philippines have also been created by the Philippine government's conversion plan covering Clark Air Base, Subic Naval Base, Camp John Hay in Baguio City, and other former US military reservations as well as their extensions into Ecozones.

#### 1. Enterprises Registered Under the Omnibus Investments Code (OIC)

The OIC, through tax incentives and other benefits, encourages investments in preferred areas of economic activity specified in the Investment Priorities Plan (IPP).

To qualify for registration and obtain incentives under the OIC, the following qualifications must be met:

- a. The applicant, if a natural person, must be a citizen of the Philippines or, in case of a partnership or any other association, organized under Philippine laws with at least 60 percent of its capital being owned and controlled by citizens of the Philippines, or, in case of a corporation or a cooperative, organized under Philippine laws with at least 60 percent of its capital stock outstanding and entitled to vote being owned and held by Philippine nationals, and at least 60 percent of its board of directors consisting of citizens of the Philippines. If the applicant does not possess the required degree of ownership by Philippine nationals, the following circumstances must be satisfactorily established:
  - i. It proposes to engage in pioneer projects (please refer to the definition below), which, considering the nature and extent of capital requirements, processes, technical skills, and relative business risks involved, are, in the opinion of the BOI, of such a nature that the available measured capacity thereof cannot be readily and adequately filled by Philippine nationals; or where the applicant is exporting at least 70 percent of its total production.
  - ii. It obligates itself to attain the status of a Philippine national within 30 years from the date of registration or within such longer period as the BOI may require, taking into account the export potential of the project. A registered enterprise that exports 100 percent of its total production need not comply with this requirement.
  - iii. The pioneer area it will engage in is one that is not within the activities reserved by the Constitution or other laws of the Philippines to Philippine citizens or corporations owned and controlled by Philippine citizens.
- b. The applicant is proposing to engage in a preferred project listed or authorized in the current IPP within a reasonable time to be fixed by the BOI or, if not so listed, at least 50 percent of its total production is for export or it is an existing producer that will export part of production under such conditions and/or limited incentives as the BOI may determine; or the enterprise is engaged or proposing to engage in the sale abroad of export products bought by it from one or more export producers; or the enterprise is engaged or proposing to engage in rendering technical, professional, or other services or in exporting television and motion pictures, and musical recordings made or produced in the Philippines, either directly or through a registered trader.
- c. The applicant is capable of operating on a sound and efficient basis of contributing to the national development of the preferred area in particular and of the national economy in general.

- d. The equity of the project sought to be registered is 25 percent of the project cost, except for the following: (i) projects of an applicant with good track record in implementing registered projects; (ii) projects of publicly-listed companies; or (iii) projects not entitled to income tax holiday. For large projects with a gestation period of more than one year, the 25 percent equity requirement shall be based on the annual capital requirement of the project, provided that the 25 percent total equity requirement is complied with on the first year of availment of the income tax holiday.

Under the 2012 IPP, the extent of a project's entitlement to incentives shall be based on the project's net value-added, job generation, multiplier effect, and measured capacity.

Under Article 17 of the OIC, an enterprise may apply for registration either as a pioneer or non-pioneer enterprise. A "pioneer enterprise" is a registered enterprise: (i) engaged in the manufacture, processing, or production, and not merely in the assembly or packaging of goods, products, commodities, or raw materials that have not been or are not being produced in the Philippines on a commercial scale; or (ii) using a design, formula, scheme, method, process, or system of production or transformation of any element, substance, or raw materials into another raw material or finished goods that are new and untried in the Philippines; or (iii) engaged in the pursuit of agricultural, forestry, and mining activities and/or services, including the industrial aspects of food processing whenever appropriate, predetermined by the BOI, in consultation with the appropriate department, to be feasible and highly essential to the attainment of the national goal, in relation to a declared specific national food and agricultural program for self-sufficiency and other social benefits of the project; or (iv) producing nonconventional fuels or manufacturing equipment that utilizes nonconventional sources of energy or using or converting to coal or other nonconventional fuels or sources of energy in its production, manufacturing, or processing operations. Provided that, the final product in any of the foregoing instances involves or will involve substantial use and processing of domestic raw materials, whenever available, taking into account the risks and magnitude of investment.

The 2012 IPP provides the specific areas of activity and qualifications for projects that may be entitled to a pioneer status of registration. For example, hotel projects, apartment hotels, serviced apartments, or condotels classified as first class or deluxe by the Philippine Department of Tourism and which cost at least the Philippine peso equivalent of USD100,000 per room may qualify for pioneer status.

The 2012 IPP provides for the following preferred areas of investments that may be entitled to incentives:

- A. Preferred Activities
1. Agriculture/Agribusiness and Fishery
  2. Creative Industries/Knowledge-Based Services
  3. Shipbuilding
  4. Mass Housing
  5. Iron and Steel
  6. Energy
  7. Infrastructure
  8. Research and Development

9. Green Projects
10. Motor Vehicles
11. Strategic Projects
12. Hospital/Medical Services
13. Disaster Prevention, Mitigation and Recovery Projects

**B. Mandatory List**

This covers activities that require their inclusion in the IPP as provided under existing laws, as follows:

1. Revised Forestry Code of the Philippines
2. Philippine Mining Act of 1995
3. Book Publishing Industry Development Act
4. Downstream Oil Industry Deregulation Act of 1998
5. Ecological Solid Waste Management Act of 2001
6. Philippine Clean Water Act of 2004
7. Magna Carta for Persons with Disability
8. Renewable Energy Act of 2008
9. Tourism Act of 2009

**C. Export Activities**

This covers the following:

1. Manufacture of Export Products
2. Export Services
3. Activities in Support of Exporters

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

This covers preferred areas of investments in the ARMM:

1. Export Activities
  - a. Export Trade and Service Exporters
  - b. Support Activities for Exporters
2. Agriculture, Agribusiness/Aquaculture & 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-AGA) Trade and Investment Enterprises
10. Tourism
11. Health and Education Services and Facilities
12. *Halal* Industry

An enterprise registered with the BOI enjoys the following tax and non-tax special incentives:

### 1.1. Tax Incentives

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

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

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

- b. Exemption from taxes and duties on spare parts and consumable supplies imported by a registered enterprise with a customs bonded manufacturing warehouse and exporting at least 70 percent of its production
- c. Exemption from taxes and duties on machinery, equipment, spare parts, and accessories imported by new and expanding registered enterprises
- d. For the first five years from registration, an additional deduction from taxable income of 50 percent of the wages of additional skilled and unskilled workers in the direct labor force. This incentive is granted only if the registered enterprise meets a prescribed capital to labor ratio.
- e. Exemptions from taxes and duties on the importation of breeding stocks and genetic materials within 10 years from the date of registration or commercial operation
- f. Tax credit for taxes and duties on raw materials, supplies, and semi-manufactured products used for the manufacture of export products and forming part thereof

- g. For registered enterprises with bonded manufacturing warehouses, exemption from taxes and duties on the importation of supplies and spare parts for imported equipment and consigned equipment
- h. Exemption from wharfage duties and any export tax, duty, impost, and fees on exports by a registered enterprise of its nontraditional export products
- i. Exemption from local taxes for six years from the date of registration for pioneer enterprises, and four years for non-pioneer enterprises

Applications covering new and expansion projects that will be located in Metro Manila are no longer entitled to income tax holiday, except in the case of:

- a. projects in governmental industrial estates, resettlement areas, or National Housing Authority (NHA) sites;
- b. service-type projects and trading projects with no manufacturing facilities;
- c. expansion of export-oriented projects, under certain conditions;
- d. modernization projects; and
- e. Strategic Activities, as defined under the 2012 IPP.

The BOI may completely or partially deny incentives to enterprises dealing in traditional export products.

### 1.2. Non-tax Incentives

- a. Simplified customs procedures for the importation of equipment, spare parts, raw materials, and supplies, and the export of processed products
- b. No restriction on the use of consigned equipment, but re-export bond is required
- c. Employment of foreign nationals in supervisory, technical, or advisory positions for five years from registration, extendible for limited periods (the president, general manager, and treasurer [or their equivalent] of foreign-owned registered firms are not subject to the foregoing limitations)
- d. The privilege to operate bonded manufacturing/trading warehouses, subject to customs rules and regulations

### 1.3. Additional Incentives

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

- a. Double deduction from taxable income of 50 percent of the wages corresponding to the increment in the number of direct labor
- b. Deduction of the cost of necessary and major infrastructure works constructed

## 2. Enterprises Registered with the Philippine Economic Zone Authority (PEZA)

To disperse industry and generate employment in non-urban areas, the government has established several Special Economic Zones (“Ecozones”).

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

- Export Manufacturing Enterprise
- Information Technology (IT) Service Export Enterprise
- Tourism Enterprise
- Medical Tourism Enterprise
- Agro-industrial Export Manufacturing Enterprise
- Agro-industrial Biofuel Manufacturing Enterprise
- Logistics and Warehousing Services Enterprise
- Economic Zone Development and Operation, such as:
  - Manufacturing Economic Zone
  - IT Park
  - Tourism Economic Zone
  - Medical Tourism Economic Zone
  - Agro-Industrial Economic Zone
  - Retirement Economic Zone
- Facilities Providers, such as
  - Facilities for Manufacturing Enterprises
  - Facilities for IT Enterprises
  - Retirement Facilities
- Establishment, operation, and maintenance of light and power systems, and water supply and distribution systems inside Ecozones

An Ecozone Manufacturing Enterprise is an entity engaged in the assembly, manufacturing, or processing activities resulting in the exportation of at least 70 percent of its production.

“Manufacturing or processing” is the process by which raw materials or semi-finished materials are converted into a new product through a change in their physical, mechanical, or electromagnetic characteristics and/or chemical properties. “Assembly” is the process by which semi-finished parts or

materials are put together or combined to form a distinct product without substantially changing their physical or mechanical characteristics or electromagnetic and/or chemical properties.

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

## 2.1. Tax and Other Incentives

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

Upon expiry of the income tax holiday, an Ecozone Enterprise becomes entitled to a preferential rate of 5 percent of gross income in lieu of all national and local taxes.

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

- a. VAT zero rating of local purchases of goods and services
- b. Exemption from duties and taxes on importation of merchandise, raw materials, and supplies of equipment and machineries, including importation of capital equipment, construction materials, specialized office equipment and furniture, specialized vehicles and other transportation equipment, professional instruments, and household effects
- c. Tax credit for import substitution
- d. Exemption from wharfage dues, export tax, impost, or fee
- e. Additional deduction for training expenses
- f. Tax credit on domestic capital equipment, breeding stocks, and genetic materials (as applicable)
- g. Additional deduction for labor expense
- h. Unrestricted use of consigned equipment
- i. Employment of foreign nationals in executive, supervisory, technical, and advisory positions, provided that the total number of foreign nationals employed by an Ecozone Enterprise does not, at any time, exceed 5 percent of its workforce

## 3. Enterprises Registered with the Subic Bay Metropolitan Authority (SBMA)

The Subic Special Economic Zone (SSEZ) and Subic Free Port Zone (SFZ) were established by the Philippine government with the aim of developing the area into a self-sustaining industrial,

commercial, financial, and investment center in the Philippines. In addition, the SFZ was established to be operated and managed as a separate customs territory, ensuring the free flow or movement of raw materials, capital, equipment, and consumer items within, into, and exported out of the SFZ.

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

A business enterprise may register as an Ecozone Enterprise in the SSEZ or a Freeport Enterprise in the SFZ with the SBMA.

An SSEZ enterprise is a business entity located within the SSEZ that is duly registered with the SBMA to operate any lawful economic activity within the SSEZ. An SFZ enterprise is a business entity located within the SFZ that is duly registered with the SBMA.

Registration as an SSEZ/SFZ enterprise is open to any business enterprise in any area of economic activity, subject only to limitations under the Constitution.

- a. As provided under the Rules and Regulations to Implement Republic Act No. 9400 (“RA 9400”), an SSEZ enterprise shall be entitled to the 5 percent special tax on gross income earned, in lieu of national and local taxes, while an SFZ enterprise shall be entitled to: (i) tax- and duty-free importation within the SFZ, and (ii) 5 percent special tax on gross income earned, in lieu of national and local taxes.

#### **4. Enterprises Located in the Clark Special Economic Zone**

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

In 2007, RA 9400 converted a portion of the CSEZ into a freeport zone called the Clark Freeport Zone. The Clark Freeport Zone is operated and managed as a separate customs territory, with the following incentives available to registered business enterprises located therein: (i) tax rate of 5 percent on gross income earned, in lieu of national and local taxes; and (ii) tax- and duty-free importation of raw materials and capital equipment. The government agency that registers enterprises and grants, as well as administers incentives to those enterprises is the Bases Conversion and Development Authority (BCDA), with the Clark Development Corporation (CDC) as its implementing arm.

Under the Rules and Regulations to Implement RA 9400, PEZA Ecozones may be created within the CSEZ. PEZA-registered enterprises located in PEZA Ecozones within the CSEZ are entitled to the same tax and duty incentives available to PEZA-registered enterprises located in other PEZA Ecozones. The government agency that registers enterprises and grants, as well as administers incentives to those enterprises located in PEZA Ecozones within the CSEZ is the PEZA. The agency in charge of the development, operation, management, and maintenance of the infrastructure, facilities, and utilities in those PEZA Ecozones is the BCDA, with the CDC as its implementing arm.

## **IV. Lease of Private Land**

A long-term lease by foreign nationals of private lands is regulated by either one of two laws: Presidential Decree No. 471 (“PD 471”) or Republic Act 7652, otherwise known as the Investors’ Lease Act.

Pursuant to PD 471, as a rule, the maximum term of leases of private lands to foreign corporations is 25 years, renewable for another period of 25 years upon the mutual agreement of the parties.

On the other hand, under the Investors' Lease Act, foreign investors may lease private lands that will be used exclusively for investments for a period of up to 50 years, renewable once for a period of 25 years. The lease must be registered with the BOI under the Investors' Lease Act. The long-term lease will be subject to the following conditions, among others: (a) the leased area shall be used solely for the purpose of the investment upon the mutual agreement of the parties; (b) 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; and (c) the lease agreement must incorporate certain mandatory conditions.

Foreigners investing at least USD5 million in tourism projects may lease private lands for the project for the same period.

## V. Environmental Regulation

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

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

Therefore, the environmental law applicable to a particular business concern depends largely on the activities of that business concern.

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

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

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

PD 1586 requires proponents of environmentally critical projects (ECP) and projects within environmentally critical areas (ECA) to obtain an environmental compliance certificate (ECC) prior to the commencement of the project.

The ECC is a document certifying that, based on the representations of the proponent, the proposed project or undertaking will not cause significant negative environmental impact. The ECC also certifies that the proponent has complied with all the requirements of the EIS System and has committed to implementing its approved Environmental Management Plan. The ECC contains specific measures and conditions that the project proponent has to undertake.

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. An ECP is a project or program that has high potential for significant negative environmental impact.

The EMB of the DENR, together with the EIA Review Committee, is the government agency that implements the EIS System.

## 1. Specific Areas of Regulation

Presidential Decree No. 984 (“PD 984”), otherwise known as the National Pollution Control Decree of 1976, is the general legislation on pollution prevention and control that is being enforced by the government.

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

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

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

The Philippine Clean Water Act of 2004 requires the DENR to implement a comprehensive water quality management program to guarantee effective water utilization and conservation. The Clean Water Act applies to water quality management in all water bodies. However, it primarily applies to the abatement and control of pollution from land-based sources.

## VI. Intellectual Property Protection

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

The Intellectual Property Office (IPO) processes applications for patents, trademarks, service marks, and trade names, as well as issues the corresponding certificates of registration.

Trademarks, trade names, and service marks owned by persons, corporations, partnerships, or associations domiciled in the Philippines or in any foreign country may be registered with the IPO.

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

Trademark registration is valid for 10 years, provided the registrant files with the IPO a declaration of use/justifiable non-use within one year following the fifth anniversary of the date of the registration or renewal. The registration is renewable at the end of each 10th year from registration so long as the mark is still in commercial use.

The Philippines acceded to Madrid Agreement Concerning the International Registration of Marks (“Madrid Protocol”) in 2012. Thus, international registration of trademarks under the Madrid Protocol may now be coursed through the Philippine IPO.

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

A patent registration for an invention is valid for 20 years from the date of filing the application. A patent for a utility model is valid for seven years from the date of filing the application and automatically expires at the end of the period. The term of registration of an industrial design is five years from the date of filing and may be renewed for two consecutive periods of five years each.

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

Copyrights endure for the lifetime of the creator and for 50 years after his death.

Republic Act No. 10372 (“RA 10372”) or An Act Amending Certain Provisions of the Intellectual Property Code of the Philippines (“IP Code”), created a Bureau of Copyright and Other Related Rights to hear copyright disputes and oversee copyright policy, copyright licensing, and other related copyright matters. Also, the definition of copyright infringement has been expanded to include contributory infringement, among others.

## VII. Border Control Measures

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

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

The application for recordal serves as the consent of the IP owner for the BOC to conduct physical inspection of imports suspected to be infringing.

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

## VIII. Technology Transfer Arrangements

A technology transfer arrangement (TTA) refers to a contract or an agreement involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or the rendering of a service, including management contracts.

A TTA also refers to an agreement to transfer, assign, or license all forms of intellectual property rights, including the licensing of computer software, except computer software developed for the mass market.

There are no restrictions regarding the amount or rate of royalty that may be charged. The parties are free to negotiate the amount or the rate of royalties to be paid under the TTA. However, the IPO has quasi-judicial jurisdiction to settle disputes regarding technology transfer payments, including the fixing of the appropriate amount or rate of royalty.

TTAs should not contain certain prohibited clauses and should contain certain mandatory provisions. Nonconformity to the prohibited and mandatory clauses will automatically render the TTA unenforceable. However, there are exceptional cases where exemptions from the prohibited and/or mandatory clauses may be allowed.

A TTA that conforms to the prohibited and mandatory clauses need not be registered with the IPO. However, there are practical benefits to registering a compliant TTA, particularly for license agreements. These are as follows:

- The registration will serve as evidence that the agreements are compliant with the IP Code and are enforceable in this respect. Philippine courts generally lend great weight to findings of administrative agencies like the Documentation Information and Technology Transfer Bureau (DITTB). In the event of litigation over the Agreement, the DITTB ruling may be used as evidence of the enforceability of the Agreement.
- If the Licensor intends to avail itself of tax treaty relief with respect to royalty income derived under the agreements, a DITTB registration or certificate of compliance must be submitted to the Philippine Bureau of Internal Revenue (BIR) in support of an application for tax treaty relief.
- If the agreement involves the licensing of a trademark, the registration will facilitate the recordal of the Agreement against the Philippine trademark applications or registrations for the licensed marks. Under the IP Code, a trademark license agreement that is not recorded will have no effect against third parties. Thus, non-recordation of a trademark license may render the registration of the mark(s) covered by the license vulnerable to cancellation actions by third parties due to non-use. The IP Code specifically provides that a trademark registration may be cancelled any time if the registered owner of the mark, without legitimate reason, fails to use the mark in the Philippines or fails to cause it to be used in the Philippines under license during an uninterrupted period of three years or longer.

## IX. Labor Law

Philippine labor law recognizes the rights of both workers and management.

Thus, labor law recognizes the workers' right to a just share in the fruits of production and management's right to a reasonable return on investments.

### 1. Labor Standards

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

#### 1.1. Work Hours

- **Normal Hours of Work.** The normal hours of work should not exceed eight hours in a work day. Employees are entitled to at least 60 minutes time off from work for their regular meals.
- **Overtime Pay.** Any work done in excess of eight hours in a work day must be paid an overtime rate based on the applicable basic rate. The Labor Code enumerates the specific instances when an employee may be required to render overtime work and the corresponding overtime pay rate. These overtime pay rates may vary depending on whether the overtime work is rendered on a regular work day, holiday, or rest day, or during a night shift.
- **Night Shift Differential.** An employee must be paid a night shift differential equivalent to a certain rate of his regular wage for work done between 10 p.m. and 6 a.m.
- **Premium Pay for Rest Day or Holiday Work.** All employees are generally entitled to a rest period of not less than 24 consecutive hours for every six consecutive normal working days.

For work done on rest days and holidays, the Labor Code requires the employer to pay a certain amount as additional compensation based on the regular wage of the employee.

The rules on work hours are not applicable to managerial employees, among others.

## 1.2. Wages

Under the minimum wage law in the Philippines, minimum wages vary according to the location of the business.

The minimum wage rate in each region of the country varies and is prescribed by the Regional Tripartite Wages and Productivity Boards.

Wages are generally paid in cash at least twice a month (usually on the 15th and the last day of every month).

## 1.3. Other Compulsory Benefits

- Holiday Pay
- Service Incentive Leave
- Thirteenth Month Pay
- Retirement Benefits
- Military Training Leave
- Maternity Leave
- Paternity Leave
- Parental Leave
- Leave Due to Domestic Violence
- Leave Following Surgery Caused by Gynecological Disorders

## 1.4. Rule on Non-Diminution of Employment Benefits

If an employee benefit has been granted by reason of employer practice or policy, the benefit becomes part of the terms and conditions of employment and cannot be unilaterally withdrawn or discontinued by the employer, despite the absence of a legal or contractual requirement to grant the said benefit.

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

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

## 2. Labor Relations

As a general rule, employees have the right to form and join unions and to engage in concerted activities for their collective protection. Certain classes of employees, however, such as managerial and confidential employees, may not form or become members of labor unions. A labor union has to be registered with the DOLE for it to enjoy all the rights granted by law to labor unions. It may register as an independent labor union or as a charter of a federation or national union.

Employees, through their union representatives, may negotiate and enter into collective bargaining agreements (CBAs) with their employers. The employees negotiate the terms and conditions of their employment in CBAs.

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

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

### **3. Welfare Legislation**

- a. Employee's Compensation and State Insurance Fund (ECSIF) - This provides for the benefits in case of work-related illness or injury.
- b. National Health Insurance Act (NHIA) - This provides for the benefits in case of non-work related illness.
- c. Social Security Law - This provides employees in the private sector a more comprehensive benefits program, which includes sickness, disability, retirement, and funeral benefits.
- d. Pag-IBIG Fund - This provides housing loans to employees in the private sector.

Under the foregoing welfare legislation, the employer is required to register itself and its employees with the Social Security System (SSS; SSS also administers the ECSIF), the Philippine Health Insurance Corporation ("PhilHealth"; PhilHealth administers the NHIA), and the Pag-IBIG Fund.

The employer and the employee both contribute to the common fund from which the benefits are sourced. The employer is required to deduct the employee's contribution and remit the same to the SSS, PhilHealth and Pag-IBIG Fund, together with the employer's contribution. The contributions are based on the salary of the employee.

Contributions to the ECSIF are shouldered by the employer alone.

There are other special laws in the Philippines that govern specific sectors of Philippine labor, such as the Migrant Workers' and Overseas Filipinos Act of 1995, as amended.

### **4. Classification of Employment**

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

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

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

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

### **5. Termination of Employment**

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

The employees' right to security of tenure demands that they be removed only for any of the just or authorized causes defined under the Labor Code (called "substantive due process") and only after the employer has observed procedural due process.

In the Philippines, a dismissed employee has the right to question the validity of his dismissal. Once questioned before the proper labor authorities, the employer must establish the validity of the dismissal by proving that the termination was due to a just and/or authorized cause and that the termination was done after complying with procedural due process.

An employee who is dismissed from work without a legally defined cause is entitled to the following:

- a. Reinstatement without loss of seniority rights and other privileges
- b. Payment of full back wages, including allowances and other benefits, or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement

Even if there may have been a just or authorized cause for termination, an employee who is dismissed without procedural due process is entitled to nominal damages, the amount of which is subject to the discretion of the court. For this purpose, the court will take into consideration the relevant circumstances of each case, particularly the gravity of the employer's failure to follow due process requirements. The nominal damages serve as a penalty on the employer for its failure to comply with the requirements of procedural due process for terminating employment.

## **6. Contract of Employment**

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

It is also advisable for the employer to have an employment handbook, which contains the rules and regulations that will govern the employment relation.

## **X. Immigration**

### **1. Entry to the Philippines**

A foreign national, who is not a "restricted" national<sup>12</sup>, may enter the Philippines without obtaining an entry (9[a]) business visa from the Philippine Embassy from the country of origin. However, the said unrestricted foreign national must, upon entry, (a) have a passport valid for not less than six months beyond the contemplated period of stay, and (b) hold a valid return ticket. Upon arrival in the Philippines, the foreign national will be granted a 9(a) visa valid for 21, 14, or seven days, depending on his nationality.

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

### **2. Work/Employment Requirements**

All foreign nationals who intend to work in the Philippines are required to obtain proper work visa and/or permit, through a local petitioner or sponsor. The local petitioner or sponsor may be a domestic corporation (incorporated in the Philippines) or a foreign corporation registered and licensed to do

<sup>12</sup> The Department of Foreign Affairs (DFA) Advisory enumerates the countries whose nationals are not required to obtain an entry or 9(a) visa from the Philippine Embassy/Consulate abroad before entering the country. These nationals are called "unrestricted" nationals. Nationals of countries not appearing in the DFA Advisory are called "restricted" nationals and are required to obtain a 9(a) visa from the relevant Philippine Embassy/Consulate prior to entering the Philippines. For further information, please visit the DFA's website at [www.dfa.gov.ph](http://www.dfa.gov.ph).

business in the Philippines. As a practical matter, the work visa and/or permit applications are usually filed upon the arrival of the foreign national in the Philippines. Applications may also be filed when the foreign national is not yet in the Philippines but the process would take a longer period.

## 2.1. Short-Term Assignments (Three to Six Months)

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

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

### Alien Employment Permit

A foreign national, either an expatriate or a local transfer, who intends to work in the Philippines beyond six months is required to obtain an Alien Employment Permit (AEP) and a work visa from the relevant government agencies.

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

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

Under an existing memorandum between the BI and the DOLE, the AEP application, once accepted for filing by the DOLE, will constitute a provisional authority for the foreign national to commence work with the Philippine employer during the pendency of the work visa and AEP applications.

### Work Visas

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

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

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

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

- b. *Treaty Trader's/Investor or 9(d) visa* - A foreigner is entitled to a treaty trader or investor visa only if he is a national of the US, Germany, or Japan, countries with which the Philippines has concluded a reciprocal agreement for the admission of treaty traders or investors. The local petitioning company must be majority-owned by US, German, or Japanese interests. The nationality of the foreigner and the majority of the shareholders of the employer company must be the same.

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

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

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

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

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

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

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

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

**Special types of work visas are:**

- a. *Offshore Banking Unit (OBU) or PD1034 visa* - This visa is granted under Section 7 of Presidential Decree No. 1034, which allows foreign personnel to be assigned by any foreign bank to work in its offshore banking unit in the Philippines. Such foreign personnel, as well as their spouses and unmarried children under 21 years of age, shall be granted a multiple entry special visa, valid for a period of one year.
- b. *Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouse or RA8756 Visa* - This visa is granted under Section 5, Art. 60 of Republic Act No. 8756, which allows foreign personnel of regional or area headquarters and ROHQ 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, shall be issued a multiple entry special visa, which shall be valid for a period of three years. Please note, however, that the validity period of the visa may be shorter depending on the contract of the foreign personnel.
- c. *Subic Free Port Zone Work Visa* - A foreign national who possesses executive or highly technical skills, which no Filipino citizen within the SFZ possesses, as certified by the DOLE, may apply for this visa with the SBMA.
- d. *Clark Special Economic Zone Work Visa* - Foreign nationals who possess executive or highly technical skills, which no Filipino citizen within the CSEZ possesses, may apply for this type of work visa with the Clark Development Authority.

### 3. Special Resident Visas

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

The following are the different types of special resident visas:

- a. *Special Resident Retiree's Visa (SRRV)* - The SRRV program is available to foreigners and former Filipinos at least 35 years of age, who deposit the minimum amount required by law with a bank accredited by the Philippine Retirement Authority (PRA).

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

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

- b. *Special Investor's Resident Visa (SIRV)* - The SIRV is a program offered by the Philippine government to alien investors wanting to obtain a special resident status with multiple entries for as long as the required investment subsists.

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

- c. *SIRV for Investors in Tourist-Related Projects and Tourist Establishments* - A foreigner who invests an amount of at least USD50,000 in a qualified tourist-related project or tourism establishment, as determined by a governmental committee, shall be entitled to an SIRV.
- d. *Subic Free Port Zone Residency Visas for Retirees* - This visa requires the applicant to be over 60 years old, of good moral character, with no previous conviction of a crime involving moral turpitude, no longer employed or not self-employed, and receiving a pension or passive income, exceeding USD50,000 per year.

### 4. Others

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

## XI. Privacy Laws in the Philippines

### 1. Overview

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

The Philippines also recently enacted a Data Privacy Act, which was modeled after the European Union Data Protection Directive and the Asia-Pacific Economic Cooperation Privacy Framework.

## 1.1. Privacy of Communications

Privacy of Communications is a recognized right in the Philippines and is in fact found in Article III, Section 3 (1) of the Constitution, as follows:

“Section 3(1) The privacy of communications and correspondence shall be inviolable except upon lawful order of the court or when public safety or Order requires otherwise as prescribed by law. (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.”

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

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

## 1.2. Data Privacy

Republic Act No. 10173, or the Data Privacy Act of 2012 ("RA 10173"), applies to the processing of all types of personal information/data and to any natural and/or juridical person involved in personal information processing, including those personal information controllers and processors who, although not found or established in the Philippines, use equipment that are located in the Philippines, or those who maintain an office, branch, or agency in the Philippines.

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

The Act contains provisions that govern the processing of personal information, the rights of data subjects (e.g., notice, access, and data portability), the security of personal information (which includes a breach notification requirement), and the obligations of personal information controllers and processors. In addition, the Act creates the National Privacy Commission (NPC), which is tasked with administering and implementing the provisions of the Act, as well as with monitoring and ensuring compliance with international standards for data protection. (Note: The NPC has not been created yet and the Implementing Rules and Regulations has yet to be drafted and/or promulgated.)

The law sets forth a detailed schedule of penalties for violations of Act, which include both imprisonment and fines.

On the other hand, processing of sensitive personal information is only allowed if: (a) the employee has given his consent; (b) the processing is provided for by existing law, in case the employee's consent is not required by such law; (c) it is necessary to protect the life and health of the employee or another person, and the employee is not legally or physically able to express his consent prior to the processing; (d) it is necessary to achieve the lawful and noncommercial objectives of public organizations and associations, provided that the same is limited only to their members and prior consent was obtained; (e) it is carried out by a medical practitioner or a medical treatment institution and necessary for purposes of medical treatment; (f) it is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise, or defense of legal claims, or when provided to government or public authority. [Section 13]

In view of the foregoing, it is essential that employees are appropriately advised of the purpose, use, and possible transfer of their personal data and that they have signified their consent thereto. As it has become a norm for companies to engage third-party suppliers/service providers to provide company benefits (e.g., health service providers, insurance, among others) or to administer company records, we recommend adding these provisions to advise employees that the company may share their information to such providers.

Further, we also included a provision that allows the company to share personal information, should the company be compelled to do so pursuant to law, regulation, court orders, or subpoenas that the company may receive.

In this connection, please note that RA 10173 provides for criminal penalties (including imprisonment and fines) for specific violations of the law, e.g., unauthorized processing, accessing due to negligence, improper disposal, processing for unauthorized purposes, unauthorized access or intentional breach, concealment of security breaches, malicious disclosure, and unauthorized disclosure of personal information and sensitive personal information.

**Contact:**

**Ramon J. Quisumbing**

Managing Partner

Head, Dispute Resolution Practice Group

Direct: +63 2 819 4911/+63 2 577 6204

Mobile: +63 917 819 4911

ramon.quisumbing@bakermckenzie.com

**Quisumbing Torres**

12th Floor, Net One Center

26th Street Corner 3rd Avenue

Crescent Park West, Bonifacio Global City

Taguig City, Philippines 1634

Tel.: +63 2 819 4700

Fax: +63 2 816 0080

Quisumbing Torres is a member firm of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.