

DOING BUSINESS IN THE PHILIPPINES

Introduction

The Philippines is an archipelagic nation made up of 7,107 islands spanning 1,840 kilometers from north to south. Its main islands are Luzon in the north and Mindanao in the south. Central Philippines is composed of the various islands of the Visayas.

The country is strategically located in the eastern rim of the Asia-Pacific Region, a natural gateway to the highly progressive East-Asian economies. It lies at the crossroads of Asia's commerce and transportation – enabling it to play a significant role in international affairs. It also serves as a bastion of democracy and a vital and convenient link between the blossoming East and the industrial West.



Ample natural and human resources abound in the country – including arable, irrigated lands, rich and expansive ocean fishing grounds, extensive timber and mineral reserves, and abundant able-bodied manpower supply.

Climate

The country's climate is tropical, with average temperature varying from 75°F to 87°F (24°C to 31°C). The northern half of the country has a pleasant, cool weather from November to February; a hot, dry season from March through May or June; and rainy weather from July to October when storms visit the area. The southern half of the country has a less changeable climate and is seldom affected by tropical storms. Humidity is high, ranging from 71% in March to 85% in September. Average rainfall is 305 centimeters (120 inches).

Time Zone

Philippine time is eight hours ahead of Greenwich Mean Time (GMT) and 13 hours ahead of US Eastern Standard Time (EST). The Philippines does not practice Daylight Saving Time (DST).

Population

The population of the Philippines as of August 1, 2015 was 100,981,437, based on the 2015 Census of Population (POPCEN 2015) with a mixture of Indo-Malay, Chinese and Spanish descent. Sixty-seven percent of the population is of working age (15 to 64) years old. There are slightly more females than males.

Language

The Philippines takes pride in its claim that it is the world's third largest English-speaking country after the United States and the United Kingdom. Pilipino – which is largely based on one of the local dialects – Tagalog (literally means those who come from the [Pasig] river – thus Taga-ilog) – is the official national language. English however, is used for commercial and legal transactions – as well as in school, and in court proceedings.

Of the 87 languages spoken throughout the Philippines, the major ones are Ilocano, Tagalog, Bicolano, Ilonggo and Cebuano. The popularity and usage of the official national language was largely ushered in widely by the mass media. Pilipino is also used as a medium of instruction in schools, next to English. To date, small percentages of the total population speak Chinese, and to some extent – Spanish.

Religion

The Philippines is the only predominantly Christian country in Asia. Approximately 81% of the population belong to the Roman Catholic Church, and a further 14% belong to other denominations. There are two prominent local independent churches, the Aglipay (Philippine Independent Church) and the Iglesia ni Cristo (Church of Christ).

Muslim Filipinos constitute around 5% of the population, and are concentrated mainly in the southern part of the country, in Mindanao and in the Sulu archipelago.

New Administration

On 30 June 2016, President Rodrigo Duterte was inaugurated as the 16th President of the Philippines. He has announced his intention to loosen the stringent nationality restrictions contained in the 1987 Philippine Constitution (the “Constitution”) and various other laws containing such restrictions. Neither the Constitution nor laws involving nationality restrictions have been amended.

When is a foreign entity deemed to be doing business in the Philippines?

Determining whether a foreign entity’s activity constitutes “doing business in the Philippines” is important since:

- License Requirement. Foreign entities doing business in the Philippines are required to register and obtain a license to do business in the Philippines.
- Right to Sue. Foreign entities that do not obtain a license to do business in the Philippines do not have the right to sue in Philippine courts, although they are subject to suit in such courts

Acts that Constitute Doing Business

Under Republic Act No. 7042 or the Foreign Investments Act (“FIA”), the following activities constitute “doing business”:

- soliciting orders;
- entering into service contracts;
- opening offices, whether called liaison offices or branches;
- appointing representatives or distributors domiciled in the Philippines who in any calendar year stay in the country for a period of at least 180 days;
- participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and
- any act that imply a continuity of commercial dealing or arrangements, and contemplate to that extent the acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain, or the purpose and object of the business organization.

Acts that Do Not Constitute Doing Business

Under the FIA and its Implementing Rules and Regulations (“IRR”), the following do not constitute “doing business”:

- mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business and/or the exercise of rights as such investor;
- having a nominee director or officer to represent a foreign entity’s interest in domestic corporations;
- appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account;
- publication of a general advertisement through any print or broadcast media;
- maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;
- consignment by a foreign entity of equipment with a domestic entity to be used in the processing of products for export;
- collecting information in the Philippines; and
- performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery that the foreign entity has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services.

According to case law, activities that do not create earnings or profits to the foreign entity do not constitute doing business in the Philippines.

The Foreign Investments Act

The Foreign Investments Act (“FIA”) liberalized the Philippine economy by generally opening industries to foreign investment, while maintaining constitutional and statutory foreign ownership restrictions in certain industries. Under the FIA, industry sectors may be classified into:

- Nationalized Industries, where no foreign ownership is allowed (i.e. ownership is limited to Philippine nationals);
- Partially Nationalized Industries, where foreign ownership is subject to prescribed ceilings (i.e. minimum ownership by Philippine nationals is required); and
- Liberalized Industries, where 100% foreign ownership is allowed (i.e. no ownership by Philippine nationals is required).

Foreign Investments Negative List

Nationalized Industries and Partially Nationalized Industries are listed in a Foreign Investments Negative List (“Negative List”). The Negative List consists of List A and List B.

List A lists industries where foreign equity is limited by mandate of the Constitution or by law. List B lists industries where foreign equity is limited to safeguard the following national interests: security, defense, health, morals, and protection of small- and medium-scale enterprises.

List A may be amended anytime to reflect changes in law. List B may be amended no more than once every two years. A new Negative List is prospective in application and should not affect foreign investments existing on the date of its publication.

Industries not listed in the Negative List may be deemed as Liberalized Industries, i.e. 100% foreign ownership is allowed.

The following are some of the industries where foreign ownership is restricted (i.e. Nationalized Industries and Partially Nationalized Industries):

1. Nationalized Industries (No Foreign Equity)

- Mass media, except recording;
- Practice of professions (e.g. engineering, medicine, accountancy, architecture, law, real estate service, respiratory therapy, psychology);
- Retail trade where paid-up capital is less than US\$2.5 Million;
- Cooperatives
- Private security agencies
- Small-scale mining;
- Utilization of marine resources;
- Ownership, operation, and management of cockpits;
- Manufacture, repair, stockpiling and/or distribution of biological, chemical, radiological, and nuclear weapons, and anti-personnel mines; and,
- Manufacture of pyrotechnic devices.

2. Partially Nationalized Industries (Limited Foreign Equity)

Up to 20% Foreign Equity

- Private radio communications network.

Up to 25% Foreign Equity

- Private recruitment, whether for local or overseas employment; and
- Contracts for the construction and repair of locally-funded public works, except: infrastructure and development projects covered by Republic Act No. 7718 or the Build-Operate-Transfer Law (“BOT Law”) and projects which are foreign funded or assisted and required to undergo international competitive bidding.
- Contracts for construction of defense-related structures

Up to 30% Foreign Equity

- Advertising.

Up to 40% Foreign Equity

- Exploration, development, and utilization of natural resources;
- Ownership of private lands;
- Operation and management of public utilities;
- Educational institutions (other than those established by religious groups and mission boards);
- Culture, production, milling, processing, trading except retailing, of rice and corn and acquiring rice corn and their by-products;
- Contracts for the supply of materials, goods, and commodities to state-owned and municipal corporations;
- Facility operator of an infrastructure or development facility requiring a public utility franchise;
- Operation of deep sea commercial fishing vessels;
- Adjustment companies
- Ownership of condominium units;
- Project proponents and facility operator of a Build-Operate Transfer project requiring a public utilities franchise;
- All forms of gambling, except those covered by investment agreements with the Philippine Amusement and Gaming Corporation (“PAGCOR”) operating within special economic zones administered by the Philippines Economic Zone Authority (“PEZA”);

- Domestic market enterprises (i.e. enterprises which produce goods or renders service to the domestic market entirely or export less than 60% of its output) with paid-in capital of less than US\$200,000.00; and
- Domestic market enterprises which involve advanced technology or employ at least 50 employees with paid-in capital of less than US\$100,000.00.

Up to 49% Foreign Equity

- Lending companies Up to 60% Foreign Equity
- Financing companies; and
- Investment houses.

Anti-Dummy Law

It is important to distinguish between compliance with laws on foreign ownership restrictions for companies in Nationalized Industries and Partially Nationalized Industries (i.e. the subject matter of the discussion above) and compliance with laws restricting foreign control over the same companies, e.g. Commonwealth Act No. 108 or the Anti-Dummy Law (“ADL”).

The following are the key features of the ADL:

- *Limitation on Number of Foreign Board Directors.* For corporations engaged in Partially Nationalized Industries, the ADL limits the number of foreign directors to the proportion of their allowable participation in the corporation’s equity capital. For instance, a corporation which is subject to a 40% foreign ownership ceiling and which has a five-member Board can only have a maximum of two foreign nationals in the Board. A corporation engaged in a Nationalized Industry cannot have foreign Directors.
- *Prohibition on Foreign Management and Operational Control.* The ADL prohibits foreign nationals from intervening in the management, operation, administration, or control of companies engaged in nationalized and partially nationalized activities
- *Prohibition against Circumvention.* The ADL prohibits schemes and devices designed to circumvent foreign ownership restrictions.
- *Prohibition on Capital Simulation.* The ADL prohibits falsely simulating the existence of the minimum required ownership by Philippine nationals.
- *Lack of Financial Capacity as Indicia of Violation.* Under the ADL, the fact that a person had, at the time he acquired his holdings in the corporation under inquiry, no

real or personal property, credit, or other assets of value, which shall at least be equivalent to said holdings, is evidence of a violation of the ADL.

- *Penalties.* The penalties for violation of the ADL are: imprisonment; fine; and/or forfeiture of the right, franchise, privilege, property, or business enjoyed or acquired in violation of the provisions of the Anti -Dummy Law.
- *Whistle -Blower Immunity.* A dummy who shall voluntarily take the initiative of reporting to the proper authorities any violation of the ADL is entitled to a reward and shall be exempted from the penal liabilities under the law.
- *Proof Required for Conviction.* Being a criminal statute, the quantum of proof for a conviction under the ADL is proof beyond reasonable doubt.

What are the business forms or investment vehicles that are available to foreign entities?

Foreign entities intending to do business or invest in the Philippines may:

- Directly invest in the formation of a new business entity (i.e. Foreign Direct Investment (“FDI”) – New Entity), in which case the foreign entity may establish any of the following:
 - Domestic Subsidiary
 - Branch Office
 - Representative Office
 - Regional Headquarters
 - Regional Operating Headquarters
- Directly invest in an existing business entity (i.e. FDI – Existing Entity), in which case the foreign entity may pursue any of the following vis-à-vis an existing Philippine entity:
 - Establishment of a Joint Venture
 - Purchase of Shares (e.g. private equity or venture capital deals)
 - Merger or Consolidation
 - Technology Transfer Arrangement
 - Management Contract
- Make portfolio investments in Philippine public equity and debt capital markets.

The following section summarizes the most relevant fiscal and non-fiscal considerations for each of the foregoing business forms and investment vehicles.

Note that each business form or investment vehicle has its own requirements, characteristics, and features that may be viewed as an advantage or a disadvantage, depending on the investor’s business goals and growth plan.

A. Options for FDI – New Entity

1. Domestic Subsidiary

a. In General

A Domestic Subsidiary is a corporation which, while incorporated and existing under Philippine law, is either wholly owned or at least majority-owned by a foreign “parent” corporation. It is considered a domestic or Philippine corporation since it is incorporated under the laws of the Philippines, but it is also considered foreign since its shares of stock are wholly- or majority-owned by a foreign corporation.

Vis-à-vis a Branch Office, a Domestic Subsidiary has the advantage of having a separate and distinct juridical personality from its parent foreign corporation, such that the parent’s liability to the subsidiary’s creditors is limited to the parent’s shareholdings in the subsidiary. The parent foreign corporation is thus protected from the liabilities of the subsidiary in excess of its shareholdings in the subsidiary.

b. Scope of Activities

The powers of a Domestic Subsidiary are defined in its charter documents, i.e. its Articles of Incorporation and By-Laws.

Note that a Domestic Subsidiary cannot be given the power to engage in activities reserved for Philippine nationals or to entities that are required to be majority owned by Philippine nationals. For instance, a Domestic Subsidiary cannot have the power to own private land.

c. Exercise of Powers

The powers of a Domestic Subsidiary are exercised by its Board of Directors, which shall consist of not less than five but not more than 15 Directors. Each Director must own and have registered in his name at least one share of the Domestic Subsidiary. A majority of the Directors must be residents of the Philippines.

d. Minimum Capital Requirement

Pursuant to the FIA, a Domestic Subsidiary that qualifies as a Domestic Market Enterprise (i.e. an enterprise that produces goods or renders service to the domestic market entirely or exports less than 60% of its output) must have a paid-up capital of at least US\$200,000.00. This amount is reduced to US\$100,000.00 if the business involves the use of advanced technology, as determined by the Department of Science and Technology (“DOST”), or if the business directly employs at least 50 employees.

The US\$200,000.00 minimum capital requirement does not apply to a Domestic Subsidiary that qualifies as an Export Enterprise (i.e. an enterprise that exports 60% or more of its output).

Note that some industries have higher minimum capital requirements (e.g. large scale mining).

e. Taxes and Fees on Establishment

Filing Fee. 1/5 of 1% of the authorized capital stock or the subscription price of the subscribed capital stock of the new entity, whichever is higher, but not less than Php2,000.00.

Legal Research Fee. 1% of the Filing Fee, but not less than Php10.00.

Documentary Stamp Tax. Php1.00 on each Php200.00 par value of shares issued or fractional part thereof.

Applications under the FIA. Additional Php3,000.00.

Other Fees. Minimal amount for other incorporation fees and post-incorporation government permits such as Mayor’s Permit and Bureau of Internal Revenue (“BIR”) registrations.

f. Taxes on Operations

Corporate Income Tax. A Domestic Subsidiary’s taxable income from all sources within and without the Philippines is subject to a 30% Income Tax.

Minimum Corporate Income Tax (“MCIT”). A Domestic Subsidiary’s gross income is subject to a 2% MCIT beginning on the subsidiary’s fourth taxable year after commencing business operations, where the MCIT is greater than the subsidiary’s Income Tax (i.e. 30% of taxable income). The excess of the MCIT over Income Tax may be carried forward and credited against Income Tax for the three immediately succeeding taxable years. The Secretary of Finance may suspend the imposition of the MCIT on corporations which suffer losses on account of Guide to the Philippines 2017 18 prolonged labor disputes, force majeure, or legitimate business reverses. Final Tax on Passive Income and Capital Gains.

A Final Tax at the following rates is imposed on the following:

Interest income from deposits and deposit substitutes	20%
Interest income from foreign currency deposits	7 1/2%
Royalties	20%
Capital gains from sale of private stock	5% for the first Php100,000.00 in net gains and 10% for net gains above Php100,000.00
Dividends from another domestic corporation	0%

Value-Added Tax (“VAT”). VAT is a business tax imposed on and collected from any person who, in the course of trade or business, sells, barter, exchanges, or leases goods or properties, renders services, or imports goods. VAT is an indirect tax and may thus be passed on to the buyer or end consumer. The VAT rate of 12% is based on gross sales or receipts.

Sin Tax. Sin tax is an incremental excise tax imposed on alcoholic and tobacco products. Effective January 2013, ad valorem tax on distilled spirits is 15% of the net retail price with specific tax of Php 20.00 per proof liter, and on cigars or cigarettes ad valorem tax is 20% of net retail price with specific tax of Php5.00 per pack.

g. Taxes on Capital and Profit Repatriation

Remittance of Dividends. Dividends to the parent foreign corporation are generally taxed at 30%. This may be reduced to 15% where the parent’s domicile either [i] grants a tax sparing credit of 15% or [ii] does not impose tax on dividends received by the parent. The tax may also be reduced pursuant to an applicable tax treaty.

Capital Repatriation. A return of capital is not considered as taxable income and is therefore not subject to income tax.

2. Branch Office

a. In General

A Branch Office is an extension of the foreign entity’s juridical personality in the Philippines. It is established by obtaining a License to Transact Business from the Securities and Exchange Commission (“SEC”) [Section 123, Corporation Code].

Unlike a Domestic Subsidiary, a Branch Office does not have a juridical personality separate and distinct from its parent company. A Branch Office may, therefore, conclude contracts with local entities in its parent’s name and engage in revenue generating activities in the same manner as its parent. The parent company, however, may be held fully responsible for the liabilities of its Branch Office.

b. Scope of Activities

A Branch Office may engage in the same activities as its parent company.

Note that a Branch Office cannot engage in activities reserved for Philippine nationals or to entities that require minimum ownership by Philippine nationals. For instance, a Branch Office cannot own private land.

c. Minimum Capital Requirement

A Branch Office is required to have a minimum capital of US\$200,000.00. This amount may be reduced to US\$100,000.00 if the business involves the use of advanced technology, as

determined by the Department of Science and Technology (“DOST”), or if the business directly employs at least 50 employees.

d. Required Deposit of Securities

i. Initial Deposit

Within 60 days from the issuance of its License to Transact Business, a Branch Office is required to deposit with the SEC securities with an actual market value of at least Php100,000.00. Acceptable securities consist of:

- bonds and other evidence of indebtedness by the Republic of the Philippines, its political subdivisions and instrumentalities, and stateowned enterprises;
- shares of stock of corporations registered with the Board of Investments (“BOI”);
- shares of stock of domestic corporations listed in the stock exchange;
- shares of stock in domestic insurance companies and banks; and
- any combination of the foregoing.

This deposit is maintained for the benefit of satisfying claims by creditors of the Branch Office in the Philippines [Section 126, Corporation Code].

ii. Additional Deposit

Within six months after each fiscal year, the SEC will require a Branch Office to deposit additional securities with an actual market value equivalent to 2% of the amount by which the Branch Office’s gross income for the previous fiscal year exceeds Php5 Million.

The SEC shall also require the deposit of additional securities if the actual market value of the Branch Office’s securities on deposit has decreased by at least 10% vis-à-vis their market value at the time such securities were deposited.

The SEC may, at its discretion, release part of the additional securities deposited if the gross income of the Branch Office has decreased or if the actual market value of the total securities on deposit has increased by more than 10% vis-à-vis their market value at the time such securities were deposited.

The SEC may allow the Branch Office to substitute the securities it has on deposit provided the Branch Office is solvent.

The Branch Office shall be entitled to collect the interest or dividends on the securities deposited with the SEC. The securities shall be returned upon cessation of the Branch Office’s business in the Philippines [Section 126, Corporation Code].

e. Taxes and Fees on Establishment

Filing Fee. 1% of the actual inward remittance to the Branch Office converted into Philippine Peso, but not less than Php 3,000.00.

Legal Research Fee. 1% of the Filing Fee, but not less than Php10.00.

Applications under the FIA. Additional Php3,000.00.

Other Fees. Minimal amount for other fees and government permits such as Mayor's Permit and Bureau of Internal Revenue (“BIR”) registrations.

f. Taxes on Operations

Corporate Income Tax. A Branch Office's taxable income from all sources within the Philippines is subject to a 30% Income Tax.

MCIT. A Branch Office is also subject to the 2% MCIT imposed on Domestic Subsidiaries (see discussion above).

Final Tax on Passive Income and Capital Gains. A Branch Office is also subject to the Final Tax on certain passive incomes and capital gains imposed on Domestic Subsidiaries (see discussion above).

VAT. A Branch Office is also subject to the VAT imposed on Domestic Subsidiaries (see discussion above).

g. Taxes on Capital and Profit Repatriation

Tax on Branch Profit Remittances. The remittance of profits made by a Branch Office to its head office is subject to a tax of 15%, which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which are registered with the Philippine Economic Zone Authority).

Dividends, interest, capital gains, and other income received by a Branch Office from all sources within the Philippines shall not be treated as branch profits unless the same is effectively connected with the conduct of its trade or business in the Philippines. Branch Profit Remittance Tax is not imposed on such unrelated income.

The tax may be reduced pursuant to an applicable tax treaty

Capital Repatriation. A return of capital is not considered as taxable income and is therefore not subject to income tax.

3. Representative Office

a. In General

A Representative Office is a limited purpose office of a foreign corporation in the Philippines. It cannot derive income from engaging in business in the Philippines and it must be fully subsidized by the foreign corporation that it represents.

b. Scope of Activities

The activities of a Representative Office are limited to the promotion and dissemination of information about the products and/or services of the foreign corporation that it represents. Although it can engage in products and/or services promotion, it cannot conclude contracts on behalf of the foreign corporation that it represents. Such contracts must be concluded between the foreign corporation and the relevant counterparty.

A Representative Office may perform the following activities:

- disseminate foreign market information;
- promote the export of Philippine products, specially non-traditional products;
- act as a message center or a communication center between interested parties and its head office;
- promote products presently being distributed in the Philippines;
- render, assist, and give technical know-how and training to existing and future customers of its foreign principal's products;
- provide and facilitate better communication and contact between its head office and affiliated companies on the one hand and present and future customers on the other;
- inform potential customers of price quotations of the head office and affiliated companies;
- conduct surveys and studies on the market, economic, and financial conditions in the Philippines; and
- attend to the needs of end-users of its foreign principal's products in the Philippines, advise them on the proper care and maintenance of their equipment, and communicate to its head office problems that call for consultations.

c. Minimum Capital Requirement

A minimum amount of US\$30,000.00 must be remitted initially to a Representative Office.

d. Taxes and Fees on Establishment

Filing Fee. 1/10 of 1% of the actual inward remittance to the Representative Office converted into Philippine Peso, but not less than Php2,000.00.

Legal Research Fee. 1% of the Filing Fee, but not less than Php10.00.

Other Fees. Minimal amount for other fees and government permits such as Mayor's Permit and Bureau of Internal Revenue ("BIR") registrations.

e. Taxes on Operations

A Representative Office cannot derive income from its operations and is therefore not subject to income tax.

4. Regional Headquarters (“RHQ”)

a. In General

An RHQ is an administrative branch of a multinational company established in the Philippines which acts as a supervision, communications, and coordination center for the multinational company’s subsidiaries, branches, and affiliates in the Asia-Pacific region and in other foreign markets. It cannot solicit or do business or earn income in the Philippines and all its expenses are financed by its principal multinational company.

b. Scope of Activities

An RHQ is only allowed to perform supervision, communications, and coordination activities and only with respect to its principal’s subsidiaries, branches, and affiliates. It cannot solicit or do business or earn income in the Philippines, i.e. it can only operate as a cost center.

“Supervision” means superintending, overseeing and guiding the activities of its principal’s subsidiaries, branches, and affiliates to conform to approved policies and objectives, without participating directly in the execution of the work or activities necessary to implement said policies and objectives.

“Communications” means transmitting, disseminating and receiving information, messages and instructions from and to its principal’s subsidiaries, branches, and affiliates.

“Coordination” means adjusting, arranging or harmonizing the policies and workings of its principal’s subsidiaries, branches, and affiliates for their harmonious and efficient functioning.

Unlike a Domestic Subsidiary and a Branch Office, an RHQ is not allowed to solicit or do business or earn income in the Philippines.

Unlike a Representative Office, an RHQ is not allowed to deal with the clients of its principal, even for purposes of products and/or services promotion.

An RHQ is not allowed to participate in the management of its principal’s Domestic Subsidiary, Branch Office, or Representative Office in the Philippines, if any.

c. Minimum Capital Requirement

A minimum amount of US\$50,000.00 must be remitted initially to an RHQ.

d. Required Annual Capital Infusion

The RHQ's principal is required to finance all the expenses of the RHQ. Thus, the principal should remit into the Philippines the amount necessary to cover the operations of its RHQ. Such remittance shall not be less than US\$50,000.00 for any given year.

All funds of an RHQ shall be utilized for salaries, rental of offices, transportation and communication expenses, and other costs necessary for the operation and maintenance of the RHQ.

e. Taxes and Fees on Establishment

SEC Filing Fee. Php5,000.00 upon filing of the application for registration and Php2,000.00 upon issuance of the Certificate of Registration.

Legal Research Fee. 1% of the Filing Fee, but not less than Php10.00.

BOI Filing Fee. Php4,545.00.

Other Fees. Minimal amount for other fees and government permits such as Mayor's Permit and Bureau of Internal Revenue ("BIR") registrations.

f. Taxes on Operations

Exempt from Income Tax. An RHQ is not subject to income tax, provided it does not earn or derive income from the Philippines and merely act as an administrative center for its principal's subsidiaries, branches, and affiliates.

Exempt from VAT. An RHQ is exempted from VAT and its purchase and lease of goods and services is subject to 0% VAT.

Exempt from Local Taxes. An RHQ is exempt from local taxes, fees and charges, except for real property tax on land improvements and equipment.

Tax and Duty Free Importation. An RHQ is entitled to tax and duty free importation of training materials and equipment.

5. Regional Operating Headquarters ("ROHQ")

a. In General

An ROHQ is an operating headquarters of a multinational company established in the Philippines which, unlike an RHQ, is allowed to derive income in the Philippines. Such income, however, may only be derived from performing qualifying services to its principal's subsidiaries, branches, and affiliates in the Asia-Pacific region and in other foreign markets

b. Scope of Activities

An ROHQ may only perform qualifying services vis-à-vis its principal's subsidiaries, branches, and affiliates.

An ROHQ may provide the following qualifying services:

- general administration and planning;
- business planning and coordination;
- sourcing and procurement of raw materials and components;
- corporate finance advisory services;
- marketing control and sales promotion;
- training and personnel management;
- logistic services;
- research and development services and product development;
- technical support and communications; and
- business development.

An ROHQ is prohibited from offering qualifying services to entities other than its principal's subsidiaries, branches, and affiliates, as declared in its registration with the SEC.

Like an RHQ, an ROHQ is not allowed to solicit or do business or earn income in the Philippines (except if derived from the above); to deal with the clients of its principal, even for purposes of products and/or services promotion; and to participate in the management of its principal's Domestic Subsidiary, Branch Office, or Representative Office in the Philippines, if any.

c. Minimum Capital Requirement

A minimum amount of US\$200,000.00 must be remitted initially to an ROHQ.

d. Taxes and Fees on Establishment

Filing Fee. 1% of the actual inward remittance to the ROHQ converted into Philippine Peso, but not less than 1% of the Peso equivalent of US\$200,000.00.

Legal Research Fee. 1% of the Filing Fee, but not less than Php10.00.

Other Fees. Minimal amount for other fees and government permits such as Mayor's Permit and Bureau of Internal Revenue ("BIR") registrations.

e. Taxes on Operations

Preferential Income Tax. An ROHQ's taxable income from all sources within the Philippines is subject to a 10% Income Tax.

VAT. An ROHQ is subject to the VAT imposed on Domestic Subsidiaries (see discussion above).

Exempt from Local Taxes. An RHQ is exempt from local taxes, fees and charges, except for real property tax on land improvements and equipment.

Tax and Duty Free Importation. An RHQ is entitled to tax and duty free importation of training materials and equipment.

f. Taxes on Capital and Profit Repatriation

Tax on Branch Profit Remittances. An ROHQ is subject to the 15% Tax on Branch Profit Remittances imposed on a Branch Office (see discussion above).

B. Options for FDI – Existing Entity

1. Joint Venture

a. In General

A foreign corporation can enter into a joint venture with an existing domestic corporation by forming a new domestic corporation (i.e. the “Joint Venture Corporation”). A joint venture is a cooperative arrangement of corporations, whether foreign or domestic, to jointly perform a single, specific undertaking or project with each of the partners contributing to the performance.

b. Scope of Activities

A Joint Venture Corporation may engage in any business activities subject to the foreign ownership ceilings prescribed in the Negative List. For instance, a Joint Venture Corporation which has a foreign equity component of more than 40% cannot own private land.

c. Minimum Capital Requirement

If foreign ownership in the Joint Venture Corporation does not exceed 40%, the only requirement is for the Joint Venture Corporation to have a paid-in capital of at least Php5,000.00.

If foreign ownership exceeds 40% and the Joint Venture Corporation qualifies as a Domestic Market Enterprise (i.e. an enterprise that produces goods or renders service to the domestic market entirely or exports less than 60% of its output) the Joint Venture Corporation must have a paid-up capital of at least US\$200,000.00. This amount is reduced to US\$100,000.00 if the business involves the use of advanced technology, as determined by the Department of Science and Technology (“DOST”), or if the business directly employs at least 50 employees.

The US\$200,000.00 minimum capital requirement does not apply to a Joint Venture Corporation that qualifies as an Export Enterprise (i.e. an enterprise that exports 60% or more of its output).

Note that some industries have higher minimum capital requirements (e.g. largescale mining).

d. Taxes and Fees on Establishment

The establishment of a Joint Venture Corporation is subject to the same taxes and fees imposed on the establishment of a Domestic Subsidiary (see discussion above), except that if foreign ownership in the Joint Venture Corporation does not exceed 40%, the FIA fee of Php2,000.00 becomes inapplicable.

e. Taxes on Operations

The operations of a Joint Venture Corporation is subject to the same taxes imposed on a Domestic Subsidiary (see discussion above), except that if foreign ownership in the Joint Venture Corporation does not exceed 40% (i.e. the corporation is qualified to own land), the Joint Venture Corporation becomes subject to a final tax of 6% on the gross selling price or fair market value, whichever is higher, realized by the Joint Venture Corporation in selling or otherwise disposing of lands and or buildings treated as capital assets.

f. Taxes on Capital and Profit Repatriation

Capital and profits repatriated by a Joint Venture Corporation to its foreign shareholders is subject to the same taxes imposed on dividends remitted by a Domestic Subsidiary to its parent foreign corporation (see discussion above).

2. Purchase of Shares

a. In General

A foreign corporation may invest in the Philippines by acquiring shares in an existing domestic corporation. In doing so, the foreign corporation may take advantage of the goodwill already generated by the domestic corporation as a going concern.

b. Scope of Activities

The domestic corporation may continue pursuing its activities and exercising its powers as defined in its charter documents.

Note that the amount of shares that a foreign corporation can purchase in an existing domestic corporation is subject to the foreign ownership ceilings prescribed in the Negative List.

c. Taxes on Acquisition of Shares

Capital Gains – Unlisted Corporation. The seller of shares of an unlisted corporation is subject to capital gains tax of 5% for his first Php100,000.00 in net gains and 10% for net gains above Php100,000.00.

Capital Gains – Listed Corporation. The seller of shares of a corporation listed in the Philippine Stock Exchange is subject to a final stock transfer tax equivalent to 1/2 of 1% of the value of the stock sold, regardless of any gain or loss.

Documentary Stamp Tax (“DST”) – Primary Issuance. Shares purchased pursuant to a primary or original issuance is subject to 0.50% DST computed based on the purchased shares’ par value.

DST – Secondary Issuance. Shares purchased pursuant to a secondary issuance is subject to 0.375% DST computed based on the purchased shares’ par value.

Tax-Free Exchange. Where a person exchanges his property for stock in a corporation resulting in that person alone, or together with others, not exceeding four, gaining control of the corporation, the transaction is considered a tax-free exchange.

d. Taxes on Dividends

Dividends to foreign shareholders is subject to the same taxes imposed on dividends remitted by a Domestic Subsidiary to its parent foreign corporation (see discussion above).

3. Merger or Consolidation

a. In General

A Domestic Subsidiary can merge or consolidate with an existing domestic corporation.

A merger occurs when one or more existing corporations are absorbed by another corporation which survives and continues the combined business. Consolidation occurs when two or more existing corporations consolidate or join their businesses to form a new, single, consolidated corporation.

Although mergers and consolidations are generally allowed, Republic Act No. 16067, the Philippine Competition Act (the “PCA”) authorizes the Philippine Competition Commission (the “PCC”) to review mergers and acquisitions to determine whether a proposed merger or acquisition is likely to substantially prevent, restrict, or lessen competition in the relevant market. If the PCC determines that the merger or acquisition agreement will have an anticompetitive effect, it may prohibit outright the implementation of the agreement, prohibit the implementation of the agreement unless modifications are made to its terms, or prohibit the implementation of the agreement unless the relevant parties enter into other agreements.

The PCA imposes a pre-acquisition notification requirement, which prevents the parties from consummating the merger or acquisition until the PCC reviews the transaction. Under the Implementing Rules and Regulations of the PCA (the “IRR”), this notification is triggered when the aggregate annual gross revenues in, into or from the Philippines, or value of the assets in the Philippines of the ultimate parent entity of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, exceeds P1,000,000,000.00 and the following thresholds are breached:

1. With respect to a merger or acquisition of assets, when either (i) the value of the acquired assets or (ii) revenues generated by the acquired assets exceed P1,000,000,000.00.
2. With respect to an acquisition of voting shares of a corporation, or interest in a non-corporate entity when either (i) the aggregate value of assets of the corporation or (ii) gross revenues from sales in, into, or from the Philippines of the corporation or by entities it controls exceeds P1,000,000,000.00, and (iii) if as a result of the proposed acquisition the acquirer would own voting shares in excess of either 35% or 50% if prior to the transaction, such entity already held more than 35%.

The parties to a notifiable merger are prohibited from executing definitive agreements that set out the complete and final terms and conditions of the transaction, until notifying the PCC.

Within 15 days from submission of the Notification Form, the PCC will notify the parties whether the filing is sufficient for purposes of commencing Phase I review, or if additional documents are required. The 30-day Phase I Review period, commences to run one day after receipt of the notification from the PCC that the Notification Form is sufficient. Within the 30-day period the PCC will either (i) approve the merger/acquisition; or (ii) inform the parties that a Phase II review is required. A determination by the PCC that a Phase II review is required has the effect of extending the period within which the parties are prohibited from consummating the transaction by 60 days. The IRR, however, provides that in no event may the entire review period may not exceed 90 days beginning from the receipt of notice that the filing is sufficient. Significantly, the lapse of any of the above mentioned periods without the PCC having rendered a decision, the merger or acquisition shall be deemed approved and the parties may proceed to implement or consummate it.

Non-compliance with the notification and waiting periods will result in the imposition of a fine of between 1% and 5% of the value of the transaction, in addition to the agreement being deemed void. Further, failure to notify and execution of a anticompetitive merger/acquisition may be penalized with an administrative fine of up to Php100 million for the first offense and Php250 million for the second offense

b. Scope of Activities

A Merged or Consolidated Corporation may engage in any business activities subject to the foreign ownership ceilings prescribed in the Negative List. For instance, a Merged or Consolidated Corporation which has a foreign equity component of more than 40% cannot own private land.

c. Minimum Capital Requirement

Since the entities that will merge or consolidate are both pre-existing, no minimum capital requirement is required.

This is subject to minimum capital requirements in some industries (e.g. large-scale mining).

d. Taxes upon Merger or Consolidation

Filing Fee. 1/5 of 1% of the equity of the absorbed corporation/s, but not less than Php3,000.00.

For mergers, in case of simultaneous filing of an application for an Increase of the Authorized Capital Stock of the surviving corporation, the filing fee shall be the higher of: [i] the filing fee for increase in capital stock (i.e. 1/5 of 1% of the increase in capital stock or the subscription price of the subscribed capital stock whichever is higher, but not less than Php3,000.00) or [ii] the filing fee for merger (i.e. 1/5 of 1% of the equity of the absorbed corporation/s, but not less than Php3,000.00).

For consolidations, where the total equity of the constituent corporations is different from the authorized capital stock of the consolidated corporation, the filing fee shall be the higher of: [i] 1/5 of 1% of the total equity of the constituent corporations or [ii] the filing fee for Articles of Incorporation (1/5 of 1% of the authorized capital stock or the subscription price of the subscribed capital stock whichever is higher, but not less than Php2,000.00).

Legal Research Fee. 1% of the Filing Fee, but not less than Php10.00.

DST – Primary Issuance. Shares issued pursuant to a primary or original issuance, if any, is subject to 0.50% DST computed based on the issued shares' par value.

DST – Secondary Issuance. Shares transferred pursuant to a secondary issuance, if any, is subject to 0.375% DST computed based on the transferred shares' par value.

Other Fees. Minimal amount for other incorporation fees and post-incorporation government permits such as Mayor's Permit and Bureau of Internal Revenue ("BIR") registrations.

Non-Recognition of Gains and Losses. The Philippine Tax Code generally recognizes the entire amount of gain or loss upon the sale or exchange of any property. However, in a merger or consolidation, no gain or loss is recognized, provided the constituent corporation exchanges property, stocks or other securities solely for stocks or other securities of the surviving or consolidated corporation. If the exchange contemplates some payment in money or delivery of other property, no gain or loss will be recognized, provided the money and/or other property is distributed to the stockholders of the constituent corporations pursuant to the merger or consolidation plan.

Exempt from Securities Registration. The transfer or exchange of shares of stock or other securities pursuant to a plan of merger or consolidation is exempt from registration under Philippine securities law.

e. Taxes on Operations

The operations of a Merged or Consolidated Corporation are subject to the same taxes imposed on a Joint Venture Corporation (see discussion above).

f. Taxes on Capital and Profit Repatriation

Capital and profits repatriated by a Merged or Consolidated Corporation to its foreign shareholders is subject to the same taxes imposed on dividends remitted by a Domestic Subsidiary to its parent foreign corporation (see discussion above).

4. Technology Transfer Arrangement

a. In General

A foreign corporation may enter into a Technology Transfer Arrangement with a domestic entity. Technology Transfer Arrangements refer to contracts or agreements involving any or all of the following:

- transfer of systematic knowledge for the manufacture of a product or the application of a process;
- rendering of a service, including management contracts; and
- transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software, except computer software developed for mass market.

Provisions of Technology Transfer Contracts: [i] should not have adverse effects on competition and trade; [ii] must provide for effective quality control by the licensor over the product or service covered; and [iii] must allow continued access to improvements in the transferred technology.

Technology Transfer Agreements are no longer required to be registered with the Documentation, Information, and Technology Transfer Bureau if they comply with the provisions of and/or include the stipulations/conditions required under Sections 87 and 88 of the Intellectual Property Code (“IP Code”). Otherwise, the agreements will be considered unenforceable. Non-complying agreements, however, may be allowed registration under exceptional circumstances provided in Section 91 of the IP Code.

b. Fees on Registration

Technology Transfer Arrangements required to be registered with the Intellectual Property Office (IPO) are subject to the following:

Filing Fee. Php2,500.00 plus 1% legal research fund paid to the IPO.

Registration Fee. Php2,500.00 plus 1% legal research fund.

c. Taxes on Royalty Payments

Income Tax. Royalty payments received pursuant to a Technology Transfer Arrangement by a foreign corporation not doing business in the Philippines are subject to income tax of 30%. This may be reduced to 15% where the foreign corporation's domicile either [i] grants a tax sparing credit of 15% or [ii] does not impose tax on dividends received by the foreign corporation. The tax may also be reduced pursuant to an applicable tax treaty.

VAT. Royalty payments are subject to 12% VAT.

5. Management Contract

a. In General

A foreign corporation may enter into a management contract with a domestic corporation. Under a management contract, the foreign corporation shall undertake to manage all or substantially all of the business of a domestic corporation. It may be entered into for a period of only five years for any one term.

Domestic corporations engaged in Nationalized Industries or Partially Nationalized Industries cannot enter into a management contract with a foreign corporation.

b. Taxes

Income Tax. The foreign corporation's income from its management contract is subject to 30% income tax or to MCIT, whichever is higher (see discussion above).

What are the key regulations that foreign entities must consider?

A. Regulation of Foreign Currency Transactions

Rules governing transactions involving foreign currency (e.g. current account transactions such as import and export trades, and capital account transactions such as foreign loans and investments) are prescribed by the Philippines' Central Bank, i.e. the Bangko Sentral ng Pilipinas ("BSP"), and consolidated in the Manual of Regulations on Foreign Exchange Transactions ("ForEx Manual").

1. Registration of Foreign Investments

Pursuant to the ForEx Manual, foreign investments are not required to be registered with the BSP, provided no foreign currency will be purchased from the Philippine banking system (i.e. from authorized agent banks or subsidiary/affiliate

foreign exchange corporations of authorized agent banks) for the purpose of repatriating capital and remitting earnings back to the foreign investor. Conversely, BSP registration is required if the investor foresees the need to purchase foreign currency from the Philippine banking system for purposes of capital and earnings repatriation.

Note that foreign currency may be sourced either from the Philippine banking system or from non-banking institutions such as foreign exchange dealers.

a. Foreign Direct investments

For registration purposes, foreign currency funding for a foreign direct investment need not be converted to Philippine Pesos. Thus, a foreign currency investment intended to be kept by the investee entity in foreign currency may be registered with the BSP.

Portfolio Investments

Portfolio investments refer to the following instruments:

- Peso-denominated securities issued onshore by the National Government and other public sector entities;
- Securities of resident enterprises listed at the Philippine Stock Exchange;
- Peso time deposits with an authorized agent bank with a maturity of at least 90 days; and
- Other peso-denominated debt instruments issued onshore by private resident firms (such as bonds/notes, bills payables, nonparticipating preferred shares) and which do not constitute loans requiring BSP approval under Section 23 of the ForEx Manual.

Portfolio investments must be registered. For registration purposes, foreign currency funding for a portfolio investment must be inwardly remitted and converted to Philippine Pesos.

b. Registration Deadline and the BSRD

Applications for registration of foreign currency funding for foreign direct investments must be filed with the BSP within one year from the date of inward remittance to the Philippines. A Bangko Sentral Registration Document (“BSRD”) shall be issued by the BSP to evidence the registration.

2. Foreign Currency as Consideration for Stocks

Subscription to shares of stock may be paid in foreign currency. For purposes of determining the Philippine Peso equivalent of the foreign currency payment, the Philippine Dealing System Weighted Average Rate (“PDSWAR”), as published in the BSP’s Reference Exchange Rate Bulletin, shall be used.

B. Taxation

Laws, regulations, interpretations, and administrative practices on taxation in the Philippines are complex and constantly changing. It is strongly recommended that investors obtain tax advice prior to pursuing an investment.

1. Classification of National Taxes

National taxes under the National Internal Revenue Code (“Tax Code”) consist of the following:

- Income Tax
- Estate and Donor’s Tax
- Value-Added Tax (“VAT”)
- Other Percentage Tax
- Excise Tax
- Documentary Stamp Tax (“DST”)

2. Income Tax and Classification of Taxable Entities for Income Tax Purposes

Liability for Income Tax (i.e. tax basis, rate, and manner of collection) depends on the taxable entity’s classification. The classifications relevant to foreign entities are:

- Domestic Corporations, which include Domestic Subsidiaries
- Foreign Corporations Doing Business in the Philippines, i.e. Resident Foreign Corporation, which include Branch Offices, RHQs, and ROHQs
- Foreign Corporations Not Doing Business in the Philippines, i.e. Non-Resident Foreign Corporations
- Resident Foreign Individuals
- Non-Resident Foreign Individuals Doing Business in the Philippines
- Non-Resident Foreign Individuals Not Doing Business in the Philippines
- Foreign Individuals Employed by an RHQ or an ROHQ
- Foreign Individuals Employed by an Offshore Banking Unit
- Foreign Individuals Employed by a Petroleum Service Contractor or Subcontractor

3. *Estate and Donors Taxes*

Estate and Donors taxes are imposed and collected on the transfer by any person, resident or non-resident, of property by gift or through succession. Property of citizens and resident aliens within or without the Philippines are subject to Estate and Donors taxes. Only property of resident aliens within the Philippines are subject to this tax.

4. *Value-Added Tax (“VAT”)*

VAT is a business tax imposed on and collected from any person who, in the course of trade or business, sells, barter, exchanges, or leases goods or properties, renders services, or imports goods, whether or not in the course of trade or business. VAT is an indirect tax and may thus be passed on to the buyer or end consumer. The VAT rate of 12% is based on gross sales or receipts.

5. *Other Percentage Tax*

These are imposed based on the gross annual receipts or sales on persons whose sales do not exceed the minimum amount to be subject to VAT [Php 1,919,500.00] and those engaged in the business of:

- Domestic Carriers and Keepers of Garages
- International Carriers • Franchises not otherwise subject to VAT
- Overseas dispatch, message or conversation originating from the Philippines
- Banks and non-bank financial intermediaries performing quasibanking functions
- Non-bank financial intermediaries
- Life insurance premium
- Agents of foreign insurance companies
- Amusement taxes
- Winnings
- Sale, barter or exchange of shares of stock listed and traded through the local stock exchange or initial public offering

Under the proposed Tax Reform Bill, the VAT threshold for exemption will be increased to Php3,000,000.

6. *Excise Tax*

Excise taxes are imposed on following goods which are imported, manufactured or produced in the Philippines for domestic sale or consumption:

- Distilled spirits, wines, fermented liquor

- Saccharine
- Tobacco products, cigars, and cigarettes
- Automobiles
- Manufactured oils and other fuels
- Non-essential goods (i.e. jewelry, perfumes, and toilet water)
- Fireworks
- Yachts and other vessels intended for pleasure or sports
- Cinematographic films
- Mineral products and quarry resources

Under the proposed Tax Reform Bill, the following excise taxes on Manufactured oils and other fuels and automobiles will be increased rates gradually from 2018 to 2020 to adjusted for inflation.

7. Documentary Stamp Tax (“DST”)

DST is a tax on documents, instruments, loan agreements, and other papers evidencing the acceptance, assignment, sale or transfer of obligations, rights, or property incident thereto. DST rates vary depending on the type of document made, signed, issued, accepted or transferred.

The documents subject to DST are:

- 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
- Jai-alai 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

8. *Transfer Pricing*

Under the Tax Code, the Commissioner of Internal Revenue has the power to allocate income and expenses between or among controlled groups of companies in order to prevent the avoidance of taxes. It places a controlled taxpayer in tax parity with an uncontrolled taxpayer by determining the arm's-length price of inter-company transactions.

The Bureau of Internal Revenue has issued revenue regulations which provide for audit guidelines and procedures in the examination of interrelated group of companies.

9. *Local Taxation*

Local government units are given the power to levy fees, charges and taxes, such as real property taxes and business taxes.

10. *Tax Treaties*

The Philippines is party to tax treaties with countries that include:

- Australia
- Austria
- Bahrain
- Bangladesh
- Belgium
- Brazil
- Canada
- China
- Czech Republic
- Denmark
- Finland (Amended in 1993; not yet in force)
- France
- Germany •
- Hungary

- India
- Indonesia
- Israel
- Italy
- Japan
- Korea (South)
- Kuwait
- Malaysia
- Netherlands
- New Zealand
- Nigeria
- Norway
- Pakistan
- Poland
- Qatar
- Romania
- Russian Federation
- Singapore
- Spain
- Sweden
- Switzerland
- Thailand
- Turkey
- United Arab Emirates
- United Kingdom
- United States of America
- Vietnam

11. Tax Disclosure

Philippine law allows for sharing of tax information and tax returns with a foreign tax authority pursuant to an international convention or agreement to which the Philippines and the foreign country are parties.

C. Labor and Employment

State Policy Geared Towards the Protection of Labor

The Philippine Constitution affirms labor as a primary social economic force, and mandates the State to “protect the rights of workers and promote their welfare.” Particularly, Article XIII, Section 3 of the Constitution guarantees the basic workers’ rights to, among others, the right to security of tenure.

The Constitution likewise recognizes the interdependency between labor and capital and the necessity of safeguarding their respective rights. Thus, while the Philippine Constitution manifests special regard for labor welfare, this does not mean that Philippine law disregards management's rights.

With the Constitutional preference for labor, Philippine law is quite strict in the mode and manner of addressing employee issues. This is most apparent, for instance, in the fact that Philippine law does not recognize at-will employment. Labor laws and other social legislation adhere strongly to security of tenure as one of the fundamental rights of employees. Thus, while laws and jurisprudence are rich in supporting management prerogative in prescribing standards of employment as well as in disciplining employees, the matter of termination of employees must always be implemented with the twin requirements of a valid reason and proper procedure.

It is thus strongly recommended that investors obtain legal advice prior to making any labor and employment-related decision.

Minimum Labor Standards

The Labor Code and other statutory enactments provide for minimum terms and conditions of employment which employers must generally observe. These minimum terms include:

- Prohibition against employment of minors less than 15 years of age or less than 18 years of age in hazardous undertaking.
- Payment of a minimum wage, which varies depending on the place of employment;
- Payment of overtime pay for work performed beyond eight hours a day;
- Payment of night shift differential for work performed between 10:00 PM and 6:00 AM;
- Provision of a weekly rest period of 24 consecutive hours after every six consecutive normal work days;
- Payment of additional or premium compensation for work performed on a rest day or holiday; and
- Provision of yearly service incentive leave of five days with pay for those who have rendered one year of service.
- Provisions for maternity, paternity and solo parental leave
- Provision for leave due to military training
- Leaves due to domestic violence and surgery caused by gynecological disorders
- Provision for Retirement Benefits
- Provisions for work-related employee disability, social security, and housing loans.

D. Immigration

1. Entry Visa

Foreign nationals may come to the Philippines for reasons of business, pleasure or health with a temporary visitor's visa. This visa allows stays for periods of 59 days, extendable for a maximum of one year. To extend their stay, visitors must register with the Bureau of Immigration or with the office of the municipal or city treasurer in areas outside Manila. Executive Order No. 408 allows foreign nationals, except those of specifically restricted nationalities, to stay in the Philippines for up to 21 days without a visa.

The following are the more common types of work visas:

- Multiple Entry Special Visa;
- Special Non-Immigrant or 47(a)(2) Visa; and
- Pre-Arranged Employment or 9(g) Visa

2. Work Permits

Generally, foreign nationals seeking employment in the Philippines, whether resident or non-resident, must secure an Alien Employment Permit (“AEP”) from the Department of Labor and Employment (“DOLE”). An AEP is valid for either one year from the date of issue or for the same term as the employment contract but shall not exceed five years. It may be renewed subject to approval of the DOLE. Executives of RHQs, ROHQs, and Offshore Banking Units, as well as treaty trader visa holders, are exempt from the requirement to obtain an AEP.

A local employer who wishes to employ a foreign national must apply on the foreign national's behalf with the DOLE for an AEP. The petitioning company must prove that the foreign national possesses the required skills for the position and that no Filipino is available who is competent, able and willing to do the specific job for which the foreign national is desired.

To ensure a proper transfer of technology, the DOLE requires the employers of foreign nationals to provide an Understudy Training Program (“UTP”) and to designate at least two Filipino understudies. The functions of these employers must be deemed permanent, and they must require skills or expertise that are scarce in the Philippines.

3. *Special Investor Resident Visa*

The Special Investor Resident Visa (“SIRV”) entitles the holder to reside in the Philippines for an indefinite period as long as his investment subsists. Any alien, except restricted nationals under the Foreign Service Code, may apply for an SIRV provided he meets the following requirements:

- He has not been convicted of a crime involving moral turpitude.
- He is not afflicted with any loathsome, dangerous or contagious disease.
- He has not been institutionalized for mental disorder or disability.
- He is willing and able to invest the amount of at least US\$75,000.00 in the Philippines.

The government has liberalized visa requirements for foreign entrants to encourage foreign participation in the economic development of the Philippines. Among the liberalized rules are the following provisions:

- Foreign stockholders, investors, representatives of investment houses, land developers and tourism developers are among the categories entitled to the special visa incentive, which grants privileges to certain foreign nationals.
- Aliens entitled to enter the country under the provision of a treaty of amity, commerce and navigation may be admitted as non immigrants. They are given treaty trader visas for the sole purpose of carrying on substantial trade between the Philippines and the state of which they are nationals.
- Foreign technicians may be admitted to the Philippines with a pre-arranged employment visa if their employers can prove that the skills they possess are not available in the country.

4. *Special Work Visas*

The Philippine Government issues as well special visas for foreign nationals in executive or highly technical positions exempted from the AEP (i.e. Offshore Banking Units, RHQ, ROHQ, and those employed in establishments within the Subic Free Port Zone and Clark Special Economic Zone.

E. Intellectual Property Protection

The Philippines is a party to 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 (“WTO”). By virtue of its WTO-membership, the Philippines adheres to the Agreement on Trade Related Aspects of Intellectual Property Rights (“TRIPS”).

The most common forms of intellectual property granted protection under Philippine law are:

- Copyright
- Trademarks and Service Marks
- Patents
- Industrial Design
- Utility Model
- Lay-out Design of Integrated Circuits

Personal data is also protected under the Data Privacy Act of 2012. It penalizes unlawful accessing, distribution or publication of such data.

F. Environmental Regulation

Philippine law ensures the right of its people to a balanced and healthful ecology. The Department of Environment and Natural Resources formulates and implements the government's environmental protection policy. Presidential Decree No. 984, otherwise known as the National Pollution Control Decree is the country's main law on pollution prevention. Industry specific legislation has been passed concerning the handling of solid wastes, toxic substances, hazardous and nuclear wastes. In addition, laws have been passed concerning air and water pollution.

G. Enforcement of Foreign Judgments and Arbitration

The Philippines is a party New York Convention, a landmark international instrument. The parties to this convention recognize the validity and binding effect of foreign arbitral awards. Said also enumerates the grounds for refusing to enforce foreign arbitral awards, such as:

- A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

- The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- The subject matter of the dispute is not capable of settlement by arbitration under Philippine law; or
- The recognition or enforcement of the award would be contrary to Philippine public policy.

Foreign Judgments may also be enforced in the Philippines. In case of a judgment or final order upon a specific thing, the judgment or final order, is conclusive upon the title to the thing, and in case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In both cases, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact

H. Cross-Border Insolvency

Philippine law provides for the recognition of foreign insolvency proceedings and adopts the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law.

Said Model law provides that a foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.

However, the Court is not precluded from refusing to take an action governed by it if the action would be manifestly contrary to the public policy of this State.

I. Anti-Trust Regulation

On 21 July 2015, the President of the Philippines signed the PCA into law. The PCA became effective on 8 August 2015.

The PCA primarily regulates three types of behavior: Anti-competitive Agreements, Abuse of Dominant Position, and Mergers and Acquisitions.

Anti-competitive Agreements are agreements entered into between competitors which substantially prevent, restrict or lessen competition on the market. The following agreements are per se illegal:

1. Restricting competition as to price, or other terms of trade;
2. Fixing the price at an auction or in any form of bidding.

An agreement containing these prohibited provisions is punishable by imprisonment ranging from two to seven years and/or a fine of not less than Php50,000,000.00. These agreements may also be penalized with an administrative fine of up to Php100,000,000.00 for the first offense and Php250,000,000.00 for the second offense.

The following agreements between competitors which substantially prevent, restrict, or lessen competition are illegal:

1. Setting, limiting, or controlling production, markets, technical development, or investment;
2. Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers, or any other means.

In addition to these, the PCA prohibits any other types of agreements which have the object or effect of substantially preventing, restricting, or lessening competition. These agreements may be penalized with an administrative fine of up to Php100 million for the first offense and Php250 million for the second offense.

Abuse of Dominant Position is the unilateral or concerted abuse of an entity's or entities' economic strength to substantially prevent, restrict or lessen competition on the market. The term "Dominant Position" is defined as a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers. Notably, the PCA does not penalize mere dominance, but the abuse of such dominant position in any of the following ways:

1. Selling goods or services below cost with the object of driving competition out of the relevant market;
2. Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anticompetitive manner
3. Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;
4. Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially;
5. Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially;

6. Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;
7. Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers; 8. Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers; and,
8. Limiting production, markets or technical development to the prejudice of consumers.

These agreements may be penalized with an administrative fine of up to Php100 million for the first offense and Php250 million for the second offense.

As previously mentioned, the PCA authorizes the PCC to review mergers and acquisitions to determine whether a proposed merger or acquisition is likely to substantially prevent, restrict, or lessen competition in the relevant market.

J. Data Privacy Protection

The key legislation governing privacy in the Philippines is the Data Privacy Act of 2012. Its Implementing Rules and Regulations were promulgated on 26 August 2016. It governs the processing of Personal Information and Sensitive Personal Information. Processing includes the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data.

The Data Privacy Act applies to the processing of all types of personal information of any natural and 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.

Generally, personal information may only be collected from an individual who has given their consent. The processing of personal information is allowed if collected for specified and legitimate purposes and processed fairly and lawfully.

Subject to specific exceptions, the use and disclosure of personal data is permitted for the purpose for which it was collected. Such as, when necessary to the fulfilment of a contract, for compliance with a legal obligation, to protect vitally important interests of the data subject, and to comply with the requirements of public order and safety.

The Data Privacy Act applies to entities engaged in and outside of the Philippines if the processing relates to personal information about a Philippine citizen or a resident, even if the processing is done outside of the Philippines.

The National Privacy Commission is the government arm tasked to administer and implement the provisions of the Data Privacy Act, and to monitor and ensure compliance of the country with international standards set for data protection.