



Philippines

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**GUIDE TO
DOING BUSINESS
AND
INVESTING IN THE PHILIPPINES**

2017 EDITION

ROMULO 

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DISCLAIMER

This Guide to Doing Business and Investing in the Philippines (“Guide”) is intended as a general reference only. This Guide does not cover the regulations exhaustively and does not purport to provide advice for a specific circumstance or query. The Guide only contains a summary of the most relevant laws and regulations and should not be relied upon as legal advice. Users of this Guide should obtain professional advice when specific issues are concerned, with due regard for the actual circumstances of each case.

This Guide is updated to reflect laws and regulations in force only as of June 30, 2017. Certain proposals to change relevant laws and regulation have been proposed by the legislature. These include significant revisions to tax laws and others that may have far reaching consequences especially if proposals to amend the Constitution go forward. The Guide discusses potential effects of tax reform proposals but these are not yet confirmed as of this version. We remain hopeful that you find the information useful and would be happy to provide further guidance to our clients and colleagues, as needed.

Chapter 1: Introduction

A. 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.

B. Commercial Opportunities

Resilient Economy. The Philippine economy grew by 6.4% in Q1 2017, overtaking both Vietnam’s and Indonesia’s 5.0% growth, and Thailand’s 3.3%. The National Economic and Development Authority (“NEDA”) stated that the first quarter performance bodes well for the economy as it is broadly in line with this year’s government target of 6.5-7.5%.

Strong Household Consumption. Household consumption decreased from 6.2 in Q4 2016 to 5.7% in Q1 2017.

Inflation Rate. Consumer prices in the Philippines declined to 3.1% year-on-year in May 2017, compared to a 3.4 in April 2017. The Philippine Statistics Authority (“PSA”) reported that this was mainly due to the slower annual increment in the communication, recreation and culture, clothing and footwear, furnishing, household equipment and routine maintenance of the house, health, transport, food and non-alcoholic beverages, and alcoholic beverages and tobacco index.

The index for restaurant and miscellaneous goods and services however, moved up at a faster pace of 1.6% while the indices for housing, water, electricity, gas, and other fuels and education remained.

Increased Consumer Lending. According to a statement released by the Bangko Sentral ng Pilipinas (“BSP”), consumer loans decreased from Php 1271.618 Billion in End-2016 to Php 1258.68 Billion in March 2017.

Remittances. Money sent home by overseas Filipino workers (“OFWs”) continue to grow in 2017. The BSP announced that personal remittances amounted to US\$7.7 billion in the first quarter of 2017. In March 2017 alone, personal remittances amounted to US\$2.9 billion.

Service Sector. Among the three major economic sectors, Services remained the main driver of the economy, contributing 3.8 percentage points to the total GDP. The sector expanded by 6.8 percent in the first quarter of 2017. The growth, however, was slower than the 7.5 percent growth recorded in the previous year. All subsectors, led by trade, repair of motor vehicles and household goods (7.1% growth); real estate, renting, and business activities (6.9%); and transport, storage, and financial intermediation (7.4%), contributed positively to the sector’s growth.

BPO Industry. The Business Process Outsourcing industry of the Philippines continues to be an important sector in the Philippine economy. According to the Information Technology-Business Process Association of the Philippines, with more than a million individuals working for the said industry, its contribution to the

economy is projected to overtake the income remittances from overseas Filipino workers in 2017.

Government Spending. Government spending decreased from Php 411,496 Million in Q4 2016 to Php 361,270 Million in Q1 2017. The improvement of public infrastructure will be a key spending area in 2017.

Increased FDI Flows. Foreign direct investments rose by 17% to US\$1.56 billion on the first quarter from US\$1.34 billion in the same period last year as the country continues to enjoy strong microeconomic fundamentals, according to the BSP.

The BSP said that the sustained FDI inflow reflect investor confidence in the economy on account of continued growth prospects and strong microeconomic fundamentals.

Domestic Confidence. Business optimism by local firms remained steady for Q1 2017, with the overall confidence index (CI) declining slightly to 39.4% from 39.8% for Q4 for Q4 2016. This means that the optimism continued to outnumber the pessimists but the margin was almost unchanged from that of a quarter ago, says BSP.

Industrial Sector. The industrial sector decelerated to 6.1% as compared with the 9.3% growth recorded in the first quarter of 2016.

Tax Reform. House Bill 5636 proposes to lower personal income taxes and corporate taxes to increase competitiveness and raise investments. The bill was recently approved by the House of Representatives after President Duterte marked its passage as urgent.

Proposed 70-30 Business Ownership Rule In Favor of Foreigners. The Duterte Administration has expressed its willingness to revise the current 60-40 business ownership rule in favor of Filipinos to 70-30 in favor of foreigners, to encourage investment inflow. This means that, after necessary amendments, foreigners may own as much as 70% of equity of certain businesses which the Constitution itself prohibits.

Rating Agencies' Positive Outlook. Standard & Poor's Financial Services ("S&P") validated the BBB Stable long-term sovereign credit rating of the Philippines, the highest rating ever received by the country. This set the country's credit rating a notch higher than the minimum investment grade status granted to it by S&P on May 2, 2013, making the country more internationally competitive and attractive to investments. This improvement is due to the Philippines' strong external position, with increasing foreign exchange reserves and decreasing external debt. Previously, the Philippines was unable to get an upgrade from Fitch Ratings, which rated it at the minimum investment grade of BBB. Its credit rating of Baa2 with Moody's Investors Service, and its BBB rating with Standard & Poor's, NICE Ratings and R&I are a notch higher than the rating assigned by Fitch. The Philippines' credit rating of BBB+ with Japan Credit Rating Agency is two notches higher than the rating assigned by Fitch.

International Recognition. The Philippines has found wider international recognition as an investment destination, because of its continuous economic growth and development. The World Investment Report 2016 named the Philippines one of the top 15 preferred investment destinations for the next three years.

Further, the Philippines ranks 47th in the 2015-2016 World Economic Forum's Global Competiveness Report.

consider in doing business or investing the Philippines?

Awakening of the Asian Tiger. With an economy strongly anchored by growing domestic consumption; a government spending program centered on public-private partnerships, value optimization, efficiency and transparency; prudent fiscal management; record-level FDI and portfolio investment inflows; and a positive outlook by credit rating agencies and international bodies, the Philippines is surely on its way to regaining its place as Asia's leading tiger economy.

C. Structure of this Guide

This Guide is structured to answer questions that a decision maker would generally consider in deciding whether to do business or to invest in the Philippines. These questions are addressed in the following Chapters:

When is a foreign entity deemed to be doing business in the Philippines?	Chapter 2
What businesses and investments can a foreign entity pursue in the Philippines?	Chapter 3
What are the business forms or investment vehicles that are available to foreign entities?	Chapter 4
What incentives are available to foreign entities that do business or invest in the Philippines?	Chapter 5
What are the key regulations that foreign entities must	Chapter 6

Chapter 2: When is a foreign entity deemed to be doing business in the Philippines?

A. Relevance

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 [*Avon Insurance PLC v. Court of Appeals*, 278 SCRA 312 (1997)].

B. 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.

C. 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 [*Cargill, Inc. v. Intra Strata Assurance Corporation*, 615 SCRA 304 (2010)].

D. Further Analysis

If a foreign entity is deemed to be doing business in the Philippines, the next analysis is whether the foreign entity can legally engage in such business (*i.e.* that the business is neither nationalized nor partially nationalized). This is discussed in Chapter 3. Assuming that the foreign entity can legally engage in its business in the Philippines, the next analysis concerns the business form or the investment vehicle to be used. This is discussed in Chapter 4.

Chapter 3: What businesses and investments can a foreign entity pursue in the Philippines?

A. 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).

B. 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.

C. The Tenth Negative List

The Tenth Negative List, which was promulgated on 29 May 2015, is the most recent.

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);¹
- Retail trade where paid-up capital is less than US\$2.5 Million;
- Cooperatives
- Private security agencies
- Small-scale mining;

¹ Foreigners are allowed to practice the following professions provided their country

- 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: [i] infrastructure and development projects covered by Republic Act No. 7718 or the Build-Operate-Transfer-Law (“BOT Law”) and [ii] 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.

allows Filipinos to be admitted to the practice of these professions.

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.

For a complete list of Nationalized Industries and Partially Nationalized Industries, see Annex A.

D. Export Enterprises v. Domestic Market Enterprises

Export Enterprises are [i] manufacturing, processing, and service enterprises that export 60% or more of its output or [ii] traders that purchase products domestically and export 60% or more of such purchases.

Domestic Market Enterprises, meanwhile, are enterprises that [i] produce goods for or renders service to the domestic market entirely or [ii] exports less than 60% of its output

Foreign entities may own up to 100% of Export Enterprises, provided the Export Enterprise’s products and services do not fall within the Negative List [Section 6, FIA].

Foreign entities may own up to 100% of Domestic Market Enterprises, unless foreign ownership is restricted under the Negative List [Section 7, FIA].

Note that a foreign entity may own more than 40% of a Domestic Market Enterprise only if the paid-in capital of the enterprise is at least US\$200,000.00. This minimum is reduced to US\$100,000.00 if the Domestic Market Enterprise involves advanced technology or employs at least 50 employees.

E. Who is a Philippine National?

Defining a Philippine national, and conversely a foreign entity, is important for purposes of determining compliance with the foreign ownership restrictions discussed above. For instance, a business in an industry that allows up to 40% foreign equity must have at least a 60% Philippine ownership (*i.e.* at least 60% of the shares of the business must be owned by a Philippine national).

In *Gamboa v. Teves* [652 SCRA 690 (2011)], the Supreme Court defined “capital” in Section 11, Article XII of the Constitution as referring only to the voting shares of a public utility.

The following are considered “Philippine nationals” under the FIA:

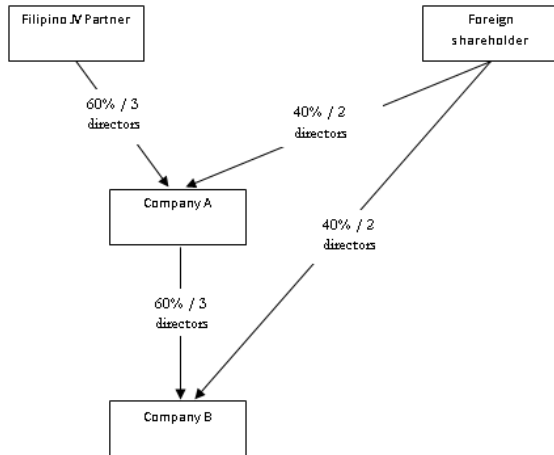
- citizens of the Philippines;
- domestic partnerships or associations wholly owned by citizens of the Philippines;
- corporations organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines;

- corporations organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos; and
- trustees of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals.

F. Control Test and Grandfather Rule

Under the Control Test, the nationality of a corporation is determined according to the nationality of the controlling stockholders. Under this test, shares belonging to corporations at least 60% of the capital of which is owned by Philippine nationals shall be considered as Philippine nationals. If the percentage of Filipino ownership in the corporation is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality.

Applying the Control Test to the layered structure illustrated below, Company A and Company B are both 60% owned by Philippine nationals, and are thus deemed to be 100% Philippine nationals. Both companies are therefore qualified to participate in nationalized activities where the minimum Philippine ownership is 60%.



If the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality.

The Grandfather Rule is not applicable to the illustrated structure above since at least 60% of the shares in both Company A and Company B are owned by Philippine nationals.

In *Narra Nickel Mining v. Redmont* [G.R. No. 195580 (2015)], the Supreme Court, however, ruled that while the Control Test is the prevailing rule, the Grandfather Test should apply if there is no doubt as to who owns the “beneficial ownership” and “control” of the corporation. The Supreme Court stated that although corporate layering is allowed, if it is used to circumvent the Constitution and pertinent laws, then the Grandfather Test should be used.

In *Roy III v. Herbosa* [G.R. No. 207246, (2016)], the Supreme Court upheld Memorandum Circular No. 8 issued by the SEC. The Memorandum Circular provides that for purposes of determining compliance with the minimum Philippine ownership, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote

in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors. The Supreme Court stated that this rule is consistent with the decision in *Gamboa v. Teves*.

G. Anti-Dummy Law

It is important to distinguish between [i] 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 [ii] 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: [i] imprisonment; [ii] fine; and/or [iii] 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.

Chapter 4: 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

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 state-owned 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 Php10,000.

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 [i] qualifying services [ii] 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 [i] to solicit or do business or earn income in the Philippines (except if derived from the above); [ii] to deal with the clients of its principal, even for purposes of products and/or services promotion; and [iii] 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.* large-scale 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 anti-competitive 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).

Chapter 5: What incentives are available to foreign entities that do business or invest in the Philippines?

Foreign entities may avail of investment incentives under any one of the incentive regimes established by the following laws:

- Executive Order No. 226, as amended, or the Omnibus Investments Code, by registering with the Board of Investments (“BOI”), *i.e.* by becoming a BOI-Registered Enterprise, or by establishing an RHQ or an ROHQ.
 - Republic Act No. 7916, as amended, or the Special Economic Zone Act, by registering with the Philippine Economic Zone Authority (“PEZA”) and locating in a PEZA Economic Zone (“PEZA ECOZONE”).
 - Republic Act No. 7903 by locating in the Zamboanga City Special Economic Zone; Republic Act No. 7922 by locating in the Cagayan Special Economic Zone; Republic Act No. 9490, as amended by Republic Act No. 10083, by locating in the Aurora Pacific Economic and Freeport Zone; and Republic Act No. 9728 by locating in the Freeport Area of Bataan.
 - Republic Act No. 7227, as amended, or the Bases Conversion and Development Act, by locating in the Subic Bay Special Economic Zone (“Subic SEZ”); the Clark Special Economic Zone (“Clark SEZ”); the John Hay Special Economic Zone (“John Hay SEZ”);
- or the Poro Point Freeport Zone (“PPFZ”).
 - Republic Act No. 9593 or the Tourism Act, by registering with the Tourism Infrastructure & Enterprise Zone Authority (“TIEZA”) and locating in a Tourism Enterprise Zone (“TEZ”).
 - Republic Act No. 7844 or the Export Development Act by registering with the Export Development Authority (EDA).
 - Republic Act No. 8756 or the Regional or Area Headquarters, Regional Operating Headquarters and Regional Warehouses Act by registering with the SEC, upon favorable recommendation of the BOI.
 - Other special laws that create other special economic zones or that grant incentives for certain priority industries.

Qualification requirements and key incentives for the most pervasive incentive regimes are discussed below.

A. Omnibus Investments Code

1. Requirements for BOI Registration

The following are qualified to become a BOI-Registered Enterprise:

- Philippine Nationals (see discussion above for definition), provided the applicant proposes to engage in a preferred project listed in the current Investment Priorities Plan (“IPP”).

- Philippine Nationals, provided the applicant will export at least 50% of its total production (pursuit of an IPP-listed preferred project is not required).
- Non-Philippine Nationals, provided the applicant proposes to engage in a pioneer project which cannot be readily done by a Philippine National, and provided further that such pioneer project is not covered by the Negative List. A pioneer project is defined below.
- Non-Philippine Nationals, provided the applicant will export at least 70% of its total production.

The following are considered pioneer projects:

- the manufacture, processing or production of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale;
- projects which use 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 which is new and untried in the Philippines;
- pursuit of agricultural, forestry and mining activities and/or services including the industrial aspects of food processing which are essential to the attainment of national goals relating to food and agricultural programs for self-sufficiency and other social benefits; and
- production of non-conventional fuels or manufacture of equipment which utilize non-conventional sources of energy or uses or converts to coal or other non-conventional fuels or sources of energy in its production, manufacturing or processing operations.

2. 2017 IPP

The 2017 IPP, which was approved on 28 February 2017, is the current IPP.

Recognizing the vital role of the private sector in nation building, the 2017 IPP highlights the promotion of public-private partnership (“PPP”) projects.

Listed below are some notable inclusions in the 2017 IPP:

- *Manufacturing including Agro-Processing:*
 - Industrial goods;
 - Processing of agricultural and fishery products;
 - Modular housing components and machinery;
- *Agriculture, Fishery and Forestry:*
 - Commercial production;
 - Production of seeds and seedlings;
 - Establishment of nurseries and hatcheries;
 - Support services and infrastructures;
 - Harvesting, plowing, and spraying/dusting;
 - Packing houses, trading centers, ice plants, slaughterhouse, dressing plant;
- *Strategic Services:*
 - Integrated Circuit Design;

- Creative Industries/ Knowledge-Based Services;
- Maintenance, repair and overhaul of aircrafts;
- Charging/Refueling Stations for Alternative Energy Vehicles;
- Industrial waste treatment;
- Telecommunication;
- State-of-the-art Engineering, Procurement, and Construction;
- *Healthcare Services*
 - Establishment and operation of general and specialty hospitals, and other medical/healthcare facilities;
- *Mass Housing*
 - Development of mass housing units;
 - In-city low-cost housing projects for lease;
- *Infrastructure and Logistics*
 - Airports and seaports for cargo and passengers;
 - Air, land, and water transportation;
 - LNG storage and Regasification facility;
 - Pipeline projects for oil and gas;
 - Bulk water treatment and supply;
 - Training facilities;
 - Testing laboratories;
 - Domestic industrial zones;
- *Innovation Drivers*
 - Research and development (R&D) activities;
 - Conduct of clinical trials;
- Commercialization of new and emerging technologies and products of DOST or government-funded R&D;
- *Inclusive Business (IB) Models*
 - Business activities of medium and large enterprise (MLEs) in the agribusiness and tourism sectors
- *Environment or Climate Change-Related Projects*
 - Manufacture/assembly of goods;
 - Establishment of energy efficient-related facilities;
 - Green ship recycling;
- Establishment of privately-owned materials recovery facility;

For a complete list of the preferred and mandatory projects listed in the 2017 IPP, see Annex B.

3. Fiscal Incentives

Listed below are the key fiscal incentives available to BOI-Registered Enterprises.

a. Income Tax Holiday

BOI-Registered Enterprises shall be exempt from the payment of income tax reckoned from the scheduled start of their commercial operations as follows:

- New projects with a pioneer status: for six (6) years.
- New projects with a non-pioneer status: for four (4) years.
- Expansion projects: for three (3) years. As a general rule, exemption

is limited to incremental sales revenue/ volume.

- New or expansion projects in less developed areas: for six (6) years, regardless of status.
- Modernization projects: for three (3) years. As a general rule, exemption is limited to incremental sales revenue/ volume.

Criteria for Additional Period of Availment.

For new registered firms, the Income Tax Holiday incentive may be extended for an extra year for each of the following cases, but in no case to exceed the total period of eight years for pioneer registered enterprises:

- If the ratio of the total imported and domestic capital equipment to the number of workers for the project does not exceed US\$10,000.00 to one worker.
- If the average cost of indigenous raw materials used in the manufacture of the registered product is at least 50% of the total cost of raw materials for the preceding years prior to the extension unless the BOI prescribes a higher percentage.
- If the net foreign exchange savings or earnings amount to at least US\$500,000.00 annually during the first three years of operation to be determined by the BOI at the end of such three-year period: Provided, That the foreign exchange savings criterion shall apply as a general rule, to registered firms whose products are totally imported into the country at the time of

registration and duly indicated as imports substituting in the firm's certificate of registration.

Projects in Metro Manila. Applications covering new and expansion projects that will locate in Metro Manila are no longer entitled to the Income Tax Holiday incentive except:

- projects locating in governmental industrial estates, resettlement areas or National Housing Authority sites; and
- service type projects and trading projects with no manufacturing facilities.

b. Exemption from Taxes and Duties on Imported Spare Parts

A BOI-Registered Enterprise with a bonded manufacturing warehouse shall be exempt from customs duties and national internal revenue taxes on its importation of required supplies and spare parts for consigned equipment or those imported with incentives.

c. Exemption from Wharfage Dues and Export Tax, Duty, Impost and Fees

All BOI-Registered Enterprises registered under the IPP will be given a 10-year period from date of registration to avail of the exemption from wharfage dues and any export tax, impost and fees on its non-traditional export products.

d. Exemption on breeding stocks and genetic materials

Tax exemption on breeding stocks and genetic materials Agricultural producers will be exempted from the payment of all taxes and duties on their importation of

breeding stocks and genetic materials within ten (10) years from the date of registration or commercial operation.

e. Tax Credit on tax and duty portion of domestic breeding stocks and genetic materials

A tax credit equivalent to one hundred percent (100%) of the value of national internal revenue taxes and customs duties on local breeding stocks within ten (10) years from date of registration or commercial operation for agricultural producers.

f. Tax Credit on Raw Materials and Supplies

A tax credit equivalent to the national internal revenue taxes and duties on raw materials, supplies and semi-manufactured products used in the manufacture of export products and forming part thereof shall be granted to a BOI-Registered Enterprise.

g. Additional Deduction for Labor Expense

For the first five years from registration, a BOI-Registered Enterprise shall be allowed an additional deduction from taxable income equivalent to 50% of the wages of additional skilled and unskilled workers in the direct labor force. This incentive shall be granted only if the enterprise meets a prescribed capital to labor ratio and shall not be availed simultaneously with the Income Tax Holiday incentive. This additional deduction shall be doubled if the activity is located in Less Developed Areas (“LDA”).

h. Additional Deduction for Necessary and Major Infrastructure Works

BOI-Registered Enterprises locating in LDAs or in areas deficient in infrastructure, public utilities and other facilities may deduct from taxable income an amount equivalent to the expenses incurred in the development of necessary and major infrastructure works. This privilege, however, is not granted to mining and forestry-related projects as they would naturally be located in certain areas to be near their sources of raw materials.

4. Non-Fiscal Incentives

a. Employment of Foreign Nationals

BOI-Registered Enterprises are entitled to employ foreign nationals in supervisory, technical or advisory positions for five years from date of registration. The position of president, general manager and treasurer of foreign-owned BOI-Registered Enterprises or their equivalent shall not be subject to the foregoing limitations.

Foreign nationals under employment contract within the purview of this incentive, their spouses and unmarried children under twenty-one (21) years of age, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

b. Simplified Customs Procedures

BOI-Registered Enterprises are entitled to simplified customs procedures for the importation of equipment, spare parts, raw materials, and supplies and export of processed products.

c. Duty-Free Importation of Consigned Equipment

BOI-Registered Enterprises are entitled to duty-free importation of consigned equipment for a period of 10 years from date of registration, subject to posting of a re-export bond.

d. Operation of a Bonded Warehouse

BOI-Registered Enterprises are entitled to operate a bonded manufacturing or trading warehouse subject to Customs rules and regulations.

5. Additional Incentives for Locating in Less Developed Areas (“LDA”)

Additional incentives include:

- Six year Income Tax Holiday regardless of status (pioneer or non-pioneer) or type of project (new or expansion).
- Additional deductions from taxable income equivalent to 100% of expenses incurred in the development of necessary and major infrastructure facilities.

6. RHQ and ROHQ

a. RHQ

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.

b. ROHQ

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 ROHQ is exempt from local taxes, fees and charges, except for real property tax on land improvements and equipment.

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

c. Incentives for RHQ and ROHQ Employees

Visa. Foreign employees of RHQs and ROHQs are entitled to multiple entry visa, including their spouse and unmarried children below the age of 21.

The multiple entry visa is valid for a period of three years and extendible for another three years

Preferential Executive Compensation Income Tax. Foreign and Filipino executives of RHQs and ROHQs holding

managerial and technical positions are entitled to compensation income tax of 15%.

Travel Tax Exemption. Foreign employees of RHQs and ROHQs are entitled to travel tax exemption for the duration of their assignment in the country

Tax and Duty Free Importation. Foreign employees of RHQs and ROHQs are entitled to tax and duty free importation of personal and household effects.

B. Special Economic Zone Act

1. PEZA ECOZONES

PEZA ECOZONES are selected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist/recreational, commercial, banking, investment and financial centers. A PEZA ECOZONE may contain any or all of the following:

- Manufacturing Economic Zone;
- Information Technology Parks/Centers;
- Agro-Industrial Economic Zone
- Tourism Economic Zones; and
- Medical Tourism Parks/Centers.

PEZA ECOZONES are considered as separate customs territories from the rest of the Philippines.

The PEZA reports that as of 31 March 2012, there are 258 PEZA ECOZONES operating in various provinces and regions throughout the Philippines. Of the 258, 64 are Manufacturing economic Zones, 164 are IT Parks/Centers, 16 are Agro-Industrial Economic Zones, 12 are Tourism Economic Zones, and two are Medical Tourism Parks/Centers.

Projects registered with the PEZA may still avail of BOI incentives provided there is no double enjoyment of the same or similar incentives.

2. Requirements for PEZA Registration

Foreign entities may set up enterprises within a PEZA ECOZONE either by themselves or in joint venture with Filipinos in any sector of industry, international trade, or commerce.

3. Fiscal Incentives

Listed below are the key fiscal incentives available to PEZA-Registered Enterprises.

- Income Tax Holiday
- Option to pay a special 5% Gross Income Tax, in lieu of all national and local taxes

4. Non-Fiscal Incentives

Listed below are the key non-fiscal incentives available to PEZA-Registered Enterprises.

- Permanent resident status for foreign investors and immediate family members
- Employment of foreign nationals
- Assistance in the promotion of economic zones to local and foreign locator enterprises

C. Bases Conversion and Development Act

1. Subic Bay SEZ

The Subic Bay SEZ boasts of one of the world's best seaport facilities, and is ideal for light-to-medium and high-tech industries.

The incentives available to Subic Bay SEZ Enterprises are similar to those available to BOI-Registered Enterprises, viz.:

- Tax and duty free importation of articles for registered enterprises.
- Subic Bay SEZ is managed as a separate customs territory, ensuring free flow of articles within the zone.
- Businesses within the Subic Bay SEZ can be 100% foreign-owned.
- Liberalized banking rules and no foreign exchange controls.
- Security and infrastructure of a Special Economic and Freeport Zone.
- Freely engage in any business, trade, manufacturing, financial or service activity and importing and exporting freely all types of goods, subject only to regulations of the Subic Bay Metropolitan Authority.
- Exemption from national internal taxes and local taxes, including income tax on all income from sources within areas considered as separate customs territory from the Philippine customs territory.
- Maximum of 5% final tax on gross income in lieu of all national and local taxes.
- Income tax credits for all taxes paid by foreign corporations.
- Allowable income from sources within the Philippine customs territory of a maximum of 30 % of total income.
- Exemption from franchise, common carrier or VAT and other percentage taxes on public and service utilities operating within the Subic Bay SEZ.
- Preferential income tax treatment on income earned or derived from business operations within the secured area of the Subic Bay SEZ or from foreign sources.
- 0% VAT on purchases of raw materials, capital goods or equipment and services from entities within the Philippine customs territory.
- Employment of foreign nationals, subject to the certification requirements of the Department of Labor and Employment.
- Permanent residency visas for foreign investors investing at least US\$250,000.00 in the Subic Bay SEZ.
- Temporary residency visas for foreign employees, their spouses and dependent children under 21 years of age.
- A free market for foreign exchange, gold, securities and futures that will allow freedom to engage in

business transactions involving any foreign currency.

- Availability of an Inspection and Disputes Office for the amicable settlement of labor disputes.

D. Zamboanga City Special Economic Zone, Cagayan Special Economic Zones, Aurora Pacific Economic and Freeport Zone and Freeport Area of Bataan.

Corporations registered with and located within the boundaries of these ecozones are entitled to the same fiscal and non-fiscal incentives available to PEZA-registered enterprises.

E. Tourism Act

The Tourism Act established the Tourism Enterprise Zones (TEZs) in identified and selected areas in the country for the purpose of developing the tourism industry. A TEZ can either be a Greenfield Tourism Zone or areas with new or pioneer development, or Brownfield Tourism Zones or areas with existing infrastructures or developments.

1. Requirements

- Primary tourism enterprises refers to travel and tour services, land, sea and air transport services exclusively for tourist use, accommodation establishments, convention and exhibition organizers, tourism estate management services, and such other enterprises as may be identified.
- Secondary tourism enterprises refers to all other tourism

enterprises not covered by the primary tourism enterprises.

2. Income Tax Holiday

- New enterprises are entitled to 6 years ITH from start of business operations, which may be extended up to a maximum of another 6 years.
- Existing enterprises in a Brownfield Zone may avail of a maximum of 6 years non-extendible ITH.
- Net operating losses for any taxable year immediately preceding the current taxable year may be carried over as deduction from gross income for the next 6 years.

3. Fiscal Incentives

- Final tax of 5% on gross income in lieu of all other national and local taxes, license fees, imposts and assessments, except real estate taxes and those imposed by TIEZA.
- Exemption of 100% from all taxes and customs on importation of capital investment and equipment that will be used directly, actually, exclusively by the enterprise.
- Exemption from customs duties and national taxes on importation of transportation equipment and accompanying spare parts.
- Exemption of 100% from all taxes and customs duties on importation of goods actually consumed in the course of services actually rendered by the enterprise.

4. Non-Fiscal Incentives

- Foreign nationals with a minimum investment of USD200,000.00 in a registered enterprise will be entitled to a special investor's resident visa.
- Registered enterprises are guaranteed to repatriate the entire proceeds of the investment or remit earnings in the currency in which it was originally made.

F. Export Development Act

Any person, natural or juridical, licensed to do business in the Philippines and exporting at least 50% of his products or services may be accredited as an export enterprise.

In addition to the all existing incentives being enjoyed by the enterprise if registered with the BOI, PEZA, SBMA, and CDC, tax credit on increments in export revenue over the previous year are also given to export enterprises, computed as follows:

- 2.5% for the first 5% increase;
- 5.0% for the next 5% increase;
- 7.5% for the next 5% increase
- 10.0% for the next 15% increase

Chapter 6: 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, non-participating 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

The Income Tax liability of each of the foregoing entities is generally discussed below.

a. Domestic Corporation

Source of Taxable Income. Domestic Corporations, which include Domestic Subsidiaries of foreign corporations (see discussion above on Domestic Subsidiary), are subject to Income Tax on all income derived from sources within and without the Philippines.

Income Tax Rate. Domestic Corporations are subject to 30% Income Tax based on their taxable income.

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%
Dividends from another domestic corporation	0%
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
Capital gains from sale of real property	6% on the gross selling price or fair market value, whichever is higher, realized in selling or otherwise disposing of lands and or buildings treated as capital assets

Minimum Corporate Income Tax ("MCIT"). A Domestic Corporation's gross income is subject to a 2% MCIT beginning on the corporation's fourth taxable year after commencing business operations, where the MCIT is greater than the corporation'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

prolonged labor disputes, force majeure, or legitimate business reverses.

Improperly Accumulated Earnings Tax ("IAET"). Corporations are only allowed to accumulate earnings (*i.e.* retained earnings) to the extent required by the "reasonable needs of the business." Accumulated earnings beyond the reasonable needs of the business is subject to a 10% IAET.

Generally, the accumulation of earnings up to 100% of a corporation's paid-up capital is considered to be within the reasonable needs of the business. Thus, a corporation generally exposes itself to IAET when its accumulated earnings exceed 100% of its paid-up capital (greater accumulation is permitted for legitimate business purposes such as considerable corporate expansion projects).

b. Foreign Corporation Doing Business in the Philippines

Definition. A foreign corporation is considered to be doing business in the Philippines if it is licensed to do so by the SEC, *i.e.* it has an SEC-issued License to Transact Business.

Source of Taxable Income. Foreign corporations doing business in the Philippines ("Resident Foreign Corporation") are subject to Income Tax only on income derived from sources within the Philippines.

Income Tax Rate. Same as a Domestic Corporation.

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%
Dividends from another domestic corporation	0%
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

MCIT. Same as a Domestic Corporation.

IAET. Same as a Domestic Corporation.

i. Branch Office

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

ii. RHQ

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.

iii. ROHQ

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

c. Foreign Corporation Not Doing Business in the Philippines

Source of Taxable Income. Like Resident Foreign Corporations, foreign corporations not doing business in the Philippines ("Non-Resident Foreign Corporation") are subject to Income Tax only on income derived from sources within the Philippines.

Income Tax. Non-Resident Foreign Corporations are subject to 30% Income Tax based on gross income.

Final Tax on Passive Income and Capital Gains. A Final Tax at the following rates is imposed on the following:

Interest income from foreign loans	20%
Dividends from another domestic corporation	15%
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

IAET. Same as a Domestic Corporation.

d. Resident Foreign Individual

Source of Taxable Income. Resident Foreign Individuals are subject to Income Tax only on income derived from sources within the Philippines.

Income Tax Rate. Like individual Philippine citizens, Resident Foreign Individuals are subject to 5% to 32% Income Tax depending on the amount of their taxable income.

If the proposed Tax Reform Bill is passed into law, the following rates will apply:

Effective 1 July 2017 to 2019

Not over P250,000	0
Over P250,000 but not over P400,000	20% of the excess over 250,000
Over P400,000 but not over P800,000	P30,000 + 25% excess over P400,000
Over P800,000 but not over P2,000,000	P130,000 + 30% of the excess over P800,000
Over P2,000,000 but not over P5,000,000	P490,000 + 32% of the excess over P2,000,000
Over P5,000,000	P1,450,000 + 35% of the excess over P5,000,000

Effective 1 January 2020

Not over 250,000	0
Over 250,000 but not over P400,000	15% of the excess over 250,000
Over P400,000 but not over P800,000	P22,500 + 20% excess over P400,000
Over P800,000 but not over P2,000,000	P102,500 + 25% of the excess over P800,000
Over P2,000,000 but not over P5,000,000	P402,500 + 30% excess over P2,000,000.

Over P5,000,000 P1,302,500 + 35% of the excess over P5,000,000

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%
Dividends	10%
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
Capital gains from sale of real property	6% on the gross selling price or fair market value, whichever is higher, realized in selling or otherwise disposing of lands and or buildings treated as capital assets

e. Non-Resident Foreign Individual

Source of Taxable Income. Like Resident Foreign Individuals, Non-Resident Foreign Individuals are subject to Income Tax only on income derived from sources within the Philippines.

i. Non-Resident Foreign Individual Doing Business in the Philippines

Definition. A Non-Resident Foreign Individual Doing Business in the Philippines is one who stays in the Philippines for an aggregate period of more than 180 days during any calendar year,

Income Tax Rate. Same as a Resident Foreign Individual.

Final Tax on Passive Income and Capital Gains. Same as a Resident Foreign Individual.

ii. Non-Resident Foreign Individual Not Doing Business in the Philippines

Income Tax Rate. Non-Resident Foreign Individuals Not Doing Business in the Philippines are subject to 25% Income Tax on all income received from all sources within the Philippines.

Final Tax on Capital Gains. Same as a Resident Foreign Individual.

f. Foreign Individual Employed by an RHQ or an ROHQ

Income Tax Rate. Foreign Individuals employed by an RHQ or an ROHQ are subject to a preferential 15% Income Tax based on gross income received from the RHQ or ROHQ, provided that the same tax treatment is extended to Philippine citizens employed and occupying the same positions in the RHQ or ROHQ.

g. Foreign Individual Employed by an Offshore Banking Unit

Income Tax Rate. Same as Foreign Individuals employed by an RHQ or an ROHQ.

h. Foreign Individual Employed by a Petroleum Service Contractor or Subcontractor

Income Tax Rate. Same as Foreign Individuals employed by an RHQ or an ROHQ.

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 quasi-banking 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

a. 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.

2. 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.

3. Labor Relations

Philippine legislation grants employees the right to form and join unions and engage in concerted bargaining activities, including the right to strike, subject to compliance with procedural requirements. However two types of employees, namely managerial and confidential employees are prohibited from engaging in concerted bargaining activities.

4. Security of Tenure; No At Will Employment

a. Twin Requirements of Legal Grounds and Valid Procedure

Article 279 of the Labor Code guarantees regular employees security of tenure. This means that regular employees may only be terminated [i] upon legal grounds and [ii] pursuant to valid procedure.

b. Legal Grounds

The legal grounds for termination are the “just causes” enumerated under Article 282 of the Labor Code and the “authorized causes” enumerated under Article 283. Without a “just” or “authorized” cause, an employer cannot validly terminate the employment of a regular employee.

“Just Causes” include serious misconduct or willful disobedience by the employee; gross and habitual neglect of duties; fraud or willful breach of employer’s trust; and commission of a crime. “Authorized Causes” include the installation of labor saving devices; redundancy; retrenchment to prevent losses; and closing or cessation of business operations.

c. Valid Procedure

Valid procedure simply means observing due process.

The Implementing Rules and Regulations of the Labor Code provides that for termination of employment based on just causes defined in Article 282 of the Labor Code:

- A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
- A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
- A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

5. Contractualization

To further protect the right to security of tenure, the DOLE issued Department Order No. 18A (DO 18-A), which prohibits Labor-only contracting. According to DO 18-A, there is Labor-only contracting when the contractor or subcontractor:

- a.i. does not have substantial capital; or
- a.ii. does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others, and the contractor; and,
- a.iii. its employees are performing activities which are directly related to the main business operation of the principal; or,

b. does not exercise the right of control over the performance of the work of the employee.

If there is a finding of labor-only contracting the principal shall be deemed the direct employer of the contractor or subcontractor's employees.

The DOLE subsequently issued Department Order No. 174 ("DO 174"), which did not deviate substantially from DO 18-A. DO 174 increased the registration fee and renewal registration fee for legitimate contractors from PHP25,000.00 to PHP100,000.00 and the minimum amount of capitalization required to be considered a legitimate contractor from PHP 3,000,000.00 to PHP5,000,000.00. Further, DO 174 shortened the term of the certificate of registration from three years to two years.

DO 174 exempts the Construction industry from its coverage, since contractors are licensed by the Philippine Contractors Accreditation Board (PCAB). Department Circular No. 1 series of 2017, however, clarified that if these PCAB-licensed contractors engage in arrangements other than construction activities, such contractors are required to register under DO 174. Also excluded from its scope are professionals or individuals with unique skills and talents, and information-enabled services involving an entire or specific business process such as:

- Business Process Outsourcing
- Knowledge Process Outsourcing
- Legal process Outsourcing
- IT infrastructure Outsourcing
- Application Development
- Hardware and/or Software Support
- Medical Transcription
- Animation Services
- Back Office Operations/Support

6. Non-Diminution Principle

Article 100 of the Labor Code prohibits the elimination or diminution of employee benefits already being granted to employees. Simply, employers are

prohibited from withdrawing or reducing employee benefits which are founded on policy or which have ripened into company practice. We note that contingent and performance-related bonuses do not fall under the non-diminution principle, *i.e.* such bonuses may be withheld if the preconditions for their grant are absent.

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 Judgements 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 anti-competitive 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,
9. 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.

Chapter 7: Firm Background

Romulo Mabanta Buenaventura Sayoc & de los Angeles traces its roots to the law firm of Gibbs, McDonough and Ozaeta that practiced law in the Philippines in 1902, under the American regime.

Romulo offers a full range of legal services with its team of talented and experienced lawyers who are experts in their own fields.

Romulo is composed of more than 90 lawyers – all of whom speak English fluently, and majority of whom have received training and graduate degrees from international universities.

Romulo offers a full range of legal services including mergers & acquisitions, capital markets, foreign investments, dispute resolution, art & antiquity, taxation, mining, oil & gas, infrastructure, environment, family, immigration, insurance, labor & employment, real estate, securities, banking, intellectual property, aviation, and admiralty.

Romulo is the sole Philippine member of Lex Mundi, a worldwide network of more than 160 independent law firms, with a combined total of more than 21,000 lawyers in all commercially significant jurisdictions throughout the world.

Annex A

NATIONALIZED INDUSTRIES AND PARTIALLY NATIONALIZED INDUSTRIES UNDER THE NINTH NEGATIVE LIST

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

No Foreign Equity

1. Mass media except recording (Art. XVI, Sec. 11 of the Constitution; Presidential Memorandum dated 05 May 1994)
2. Practice of professions² (Art. XII, Sec.14 of the Constitution, Sec. 1 of RA 5181, Sec.7.j of RA 8981)
 - a) Pharmacy (RA 5921)
 - b) Radiologic and x-ray technology (RA 7431)
 - c) Forestry (RA 6239)
 - d) Law (Art. VIII, Sec. 5 of the Constitution; Rule 138, Sec. 2 of the Rules of Court)

² Foreigners are allowed to practice the following professions provided their country allows Filipinos to be admitted to the practice of these professions:

- i. Aeronautical engineering
- ii. Agricultural engineering
- iii. Chemical engineering
- iv. Civil engineering
- v. Electrical engineering
- vi. Electronics engineering
- vii. Electronics technician
- viii. Geodetic engineering
- ix. Mechanical engineering
- x. Metallurgical engineering
- xi. Mining engineering
- xii. Naval architecture and marine engineering
- xiii. Sanitary engineering
- xiv. Medicine
- xv. Medical Technology
- xvi. Dentistry
- xvii. Midwifery
- xviii. Nursing
- xix. Nutrition and dietetics
- xx. Optometry
- xxi. Physical and occupational therapy
- xxii. Veterinary medicine
- xxiii. Accountancy
- xxiv. Architecture
- xxv. Chemistry
- xxvi. Customs brokerage
- xxvii. Environmental planning

3. Retail trade enterprises with paid-up capital of less than US\$2,500,000 (Sec. 5 of RA 8762)³
4. Cooperatives (Ch. III, Art. 26 of RA 6938)
5. Private security agencies (Sec. 4 of RA 5487)
6. Small-scale mining (Sec. 3 of RA 7076)
7. Utilization of marine resources in archipelagic waters, territorial sea, and exclusive economic zone as well as small-scale utilization of natural resources in rivers, lakes, bays, and lagoons (Art. XII, Sec. 2 of the Constitution)
8. Ownership, operation and management of cockpits (Sec. 5 of PD 449)
9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons (Art. II, Sec. 8 of the Constitution)
10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines (Various treaties to which the Philippines is a signatory and conventions supported by the Philippines)⁴
11. Manufacture of firecrackers and other pyrotechnic devices (Sec. 5 of RA 7183)

- xxviii. Geology
- xxix. Landscape architecture
- xxx. Librarianship
- xxxi. Marine deck officers
- xxxii. Marine engine officers
- xxxiii. Master plumbing
- xxxiv. Sugar technology
- xxxv. Social work
- xxxvi. Teaching
- xxxvii. Agriculture
- xxxviii. Fisheries
- xxxix. Guidance counseling
- xl. Real estate service (consultant, appraiser, assessor, broker, and salesperson)
- xli. Respiratory therapy
- xlii. Psychology
- xliii. Interior design

³ Full foreign participation is allowed for retail trade enterprises: (a) with paid-up capital of US\$2,500,000 or more provided that investments for establishing a store is not less than US\$ 830,000; or (b) specializing in high end or luxury products, provided that the paid-up capital per store is not less than US\$ 250,000 (Sec.5 of RA 8762).

⁴ Domestic investments are also prohibited (Art. II, Sec. 8 of the Constitution; Conventions/Treaties to which the Philippines is a signatory).

Up to Twenty Percent (20%) Foreign Equity

12. Private radio communications network (RA 3846)

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

13. Private recruitment, whether for local or overseas employment (Art. 27 of PD 442)

14. Contracts for the construction and repair of locally-funded public works (Sec. 1 of CA 541, LOI 630) except:

a) Infrastructure/ development projects covered in RA 7718; and

b) Projects which are foreign funded or assisted and required to undergo international competitive bidding (Sec. 2a of RA 7718)

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

Up to Thirty Percent (30%) Foreign Equity

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

Up to Forty Percent (40%) Foreign Equity⁵

17. Exploration, development and utilization of natural resources (Art. XII, Sec. 2 of the Constitution)⁶

18. Ownership of private lands (Art. XII, Sec. 7 of the Constitution; Ch. 5, Sec. 22 of CA 141; Sec. 4 of RA 9182)

19. Operation and management of public utilities (Art. XII, Sec. 11 of the Constitution; Sec. 16 of CA 146)^{7,8}

20. Educational institutions other than those established by religious groups and mission boards (Art. XIV, Sec. 4 of the Constitution)⁹

21. Culture, production, milling, processing, trading except retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof (Sec. 5 of PD 194)¹⁰

22. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation (Sec. 1 of RA 5183)

23. Facility operator of an infrastructure or development facility requiring a public utilities franchise (Art. XII, Sec. 11 of the Constitution; Sec. 2a of RA 7718)

24. Operation of deep sea commercial fishing vessels (Sec. 27 of RA 8550)

25. Adjustment companies (Sec. 323 of PD 612 as amended by PD 1814)

26. Ownership of condominium units where the common areas in the condominium project are co-owned by the owners of the separate units or owned by a corporation (Sec. 5 of RA 4726)

Up to Forty-Nine Percent (49%) Foreign Equity

27. Lending companies (Sec.6 of RA 9474)

Up to Sixty Percent (60%) Foreign Equity

28. Financing companies regulated by the SEC (Sec. 6 of RA 5980 as amended by RA 8556)

29. Investment houses regulated by the SEC (Sec. 5 of PD 129 as amended by RA 8366)

⁵ Lending companies regulated by SEC are allowed to have up to 49% foreign equity participation (Sec. 6 of RA 9474).

Financing companies and investment houses regulated by SEC are allowed to have up to 60% foreign equity participation (Sec. 6 of RA 5980 as amended by RA 8556; PD 129 as amended by RA 8366).

⁶ Full foreign participation is allowed through financial or technical assistance agreement with the President (Art. XII, Sec. 2 of the Constitution).

⁷ The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all executive and managing officers of such corporation or association must be citizens of the Philippines (Art. XII, Sec. 11 of the Constitution).

⁸ A "public utility" is a business or service engaged in regularly supplying the public with

some commodity or service of consequence such as electricity, gas, water, transportation, telephone, or telegraph service (Supreme Court ruling on JG Summit Holdings v. Court of Appeals, et. Al., September 24, 2003). Power generation and the supply of electricity to the contestable market are not considered as public utility operation (Sec. 6 and Sec. 29, respectively, of RA 9136).

⁹ Control and administration of educational institutions shall be vested in citizens of the Philippines (Art. XIV, Sec.4(2) of the Constitution).

¹⁰ Full foreign participation is allowed provided that within the 30-year period from start of operation, the foreign investor shall divest a minimum of 60 percent of their equity to Filipino citizens (Sec. 5 of PD 194; NFA Council Resolution No. 193 s.1998).

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

Up to Forty Percent (40 %) Foreign Equity

1. Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance:

- a) Firearms (handguns to shotguns), parts of firearms and ammunition therefor, instruments or implements used or intended to be used in the manufacture of firearms
- b) Gunpowder
- c) Dynamite
- d) Blasting supplies
- e) Ingredients used in making explosives:
 - i. Chlorates of potassium and sodium
 - ii. Nitrates of ammonium, potassium, sodium, barium, copper (11), lead (11), calcium and cuprite
 - iii. Nitric acid
 - iv. Nitrocellulose
 - v. Perchlorates of ammonium, potassium and sodium
 - vi. Dinitrocellulose
 - vii. Glycerol
 - viii. Amorphous phosphorus
 - ix. Hydrogen peroxide
 - x. Strontium nitrate powder
 - xi. Toluene
- f) Telescopic sights, sniper scope and other similar devices.

However, the manufacture or repair of these items may be authorized by the Chief of the PNP to non-Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance (RA 7042 as amended by RA 8179)

2. Manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) clearance:

- a) Guns and ammunition for warfare
- b) Military ordnance and parts thereof (e.g., torpedoes, depth charges, bombs, grenades, missiles)
- c) Gunnery, bombing and fire control systems and components
- d) Guided missiles/missile systems and components
- e) Tactical aircraft (fixed and rotary-winged), parts and components thereof
- f) Space vehicles and component systems

- g) Combat vessels (air, land and naval) and auxiliaries
- h) Weapons repair and maintenance equipment
- i) Military communications equipment
- j) Night vision equipment
- k) Stimulated coherent radiation devices, components and accessories
- l) Armament training devices
- m) Other as may be determined by the Secretary of the DND.

However, the manufacture or repair of these items may be authorized by the Secretary of the DND to non-Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance (RA 7042 as amended by RA 8179)

3. Manufacture and distribution of dangerous drugs (RA 7042 as amended by RA 8179)

4. Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks posed to public health and morals (RA 7042 as amended by RA 8179)

5. All forms of gambling (RA 7042 as amended by RA 8179), except those covered by investment agreements with PAGCOR (RA 9487) operating within special economic zones administered by the Philippine Economic Zone Authority (RA 7916)

6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000 (RA 7042 as amended by RA 8179)

7. Domestic market enterprises which involve advanced technology or employ at least fifty (50) direct employees with paid-in-equity capital of less than the equivalent of US\$100,000 (RA 7042 as amended by RA 8179).

Annex B

2017 INVESTMENT PRIORITIES PLAN

I. PREFERRED ACTIVITIES

1. All Qualified Manufacturing Activities including Agro-Processing

This covers the manufacture of industrial goods and processing of agricultural and fishery products, including Halal and Kosher food, into (a) semi-finished/intermediate goods for use as inputs in the

production of other goods, or (b) finished products or consumer goods for final consumption.

This also covers the manufacture of modular housing components and machinery and equipment including parts and components.

2. Agriculture, Fishery and Forestry

This covers commercial production of agricultural, fishery and forestry products.

This also covers production of seeds and seedlings, and establishment of nurseries and hatcheries, and support services and infrastructures, such as, facilities for drying, cold chain storage, blast freezing, bulk handling and storage; harvesting, plowing, and spraying/dusting; packing houses, trading centers, ice plants in Less Developed Areas, AAA slaughterhouse, AAA dressing plant

3. Strategic Services

a. IC Design

This covers all logic and circuit design techniques required to design integrated circuits.

b. Creative Industries/Knowledge-Based Services

This covers IT-BPM services for the domestic market (e.g., contact centers, data analytics), and those that involve original content such as animation, software development, game development, health information management systems, and engineering design.

This also covers digital or technological start-ups/activities.

c. Maintenance, Repair, and Overhaul (MRO) of aircraft

This covers the MRO of all types of aircraft.

d. Charging/Refueling Stations for Alternative Energy Vehicles

This covers the establishment of charging/refueling stations for alternative energy vehicles except LPG-run vehicles.

e. Industrial Waste Treatment

This covers the establishment of treatment facilities for toxic and hazardous wastes (THW) from an industrial operation.

f. Telecommunication

This covers the establishment of connectivity facilities for fixed and mobile broadband services.

Fixed broadband services include the delivery of broadband services through wired, wireless, satellite and other technological methods. Wired services include cable wire, fiber optics, submarine cables or other means of similar material. Wireless services include reception of broadband services by mobile phones, personal computers, modems and access points, vehicular communications/electronic boxes, and other nomadic/portable/mobile devices.

g. State-of-the-art Engineering, Procurement, and Construction

This covers engineering design, procurement, and construction for industrial plants and infrastructure.

4. Healthcare services including Drug Rehabilitation Centers

This covers the establishment and operation of general and specialty hospitals, and other medical/healthcare facilities including drug rehabilitation centers.

5. Mass Housing

This covers the development of mass housing units based on price ceiling of Php2.0 Million.

This also covers in-city low-cost housing projects for lease.

6. Infrastructure and Logistics including LGU-PPPs

This covers the establishment and operation of physical infrastructures vital to the country's economic development and prosperity such as, but not limited to: airports, seaports, (air, land and water) transport, LNG storage and regasification facilities, pipeline projects for oil and gas, bulk water treatment and supply, training facilities, testing laboratories, and domestic industrial zones.

This also covers PPP projects including those initiated and/or implemented by Local Government Unit (LGUs).

7. Innovation Drivers

This covers research and development (R&D) activities, conduct of clinical trials (including drug trials) and the establishment of Centers of Excellence, innovation centers, business incubation hubs, and fabrication laboratories (Fablabs)/co-working spaces.

This also covers commercialization of new and emerging technologies and products of DOST or government-funded R&D, such as, but not limited to:

- Agricultural biotechnology tools
- Disaster mitigation/prevention hardware or software
- Hardware or software for increasing agricultural productivity
- Mechanized means for natural resources conservation
- Portable technologies – innovation on existing bulky or heavy device to make it portable, or a new device or service that can be brought virtually anywhere
- Hardware or software for the prevention of disease outbreaks
- Remote monitoring devices or systems
- Professional services for remote sensing
- Hardware or software for the upgrading of local industries
- Photonics and Nanotechnology
- Natural health products

8. Inclusive Business (IB) Models

This covers business activities of medium and large enterprise (MLEs) in the agribusiness and tourism sectors that provide business opportunities to micro and small enterprises (MSEs) as part of their value chains.

9. Environment or Climate Change-Related Projects

This covers manufacture/assembly of goods and the establishment of energy efficient-related facilities where either utilization of which would significantly lead to either the efficient use of energy, natural resources or raw materials; minimize/prevent pollution; or reduce greenhouse gas emissions.

This also covers green ship recycling based on international standards, and the establishment of privately-owned materials recovery facility.

10. Energy

This power generation projects utilizing conventional fuels (i.e., coal, diesel, bunker, natural gas, and geothermal), waste heat and other wastes, and the establishment of battery energy storage systems.

II. Export

1. Production and Manufacture of Export Products

This covers the production/manufacture of non-traditional export products and with export requirement of at least 50% of its output, if Filipino-owned or at least 70%, if foreign n-owned .

2. Services Exports

This covers service activities rendered to clients abroad and paid for in foreign currency with export requirement of at least 50% of its revenue, if Filipino-owned or at least 70%, if foreign- owned.

This also covers non-voice business processing operations such as administrative and business services including analytics , data management, engineering and architectural services.

Mere deployment of people or individual practice of profession abroad is not qualified for registration.

For contact centers, project must have a minimum investment cost of the Philippine Peso equivalent of US\$2,500 per seat to qualify for registration . This amount covers the cost of equipment (hardware and software) , office furniture and fixture, building improvements and renovation, and other fixed assets except land, building and working capital. If equipment used were leased, the same should be converted to assets in terms of commercial interest rates and amortized over a five-year period. If equipment were consigned, the same should have an assigned value to be considered as part of the project cost.

For IT-BPM, upgrading of existing or baseline skills/training program related to people, process, tools and technology to a higher level of certification or standards may qualify for registration as modernization project subject to the conditions and requirements as specified under the listing Creative Industries/Knowledge-Based Services.

3. Activities in Support of Exporters

This covers activities directly supporting export producers as follows :

- a. Manufacture of parts/components and materials and supplies directly/ reasonably needed in the production of the export product;
- b. Services rendered to 11.1 and 11.2 above;
- c. Product testing and inspection ;
- d. Repair and maintenance; and
- e. Logistics services.

This also covers service providers to foreign film and television production projects in the country as endorsed by the Philippine Film Export Services Office (PFESO) as mandated by E.O. No. 674.

III. Special Laws

1. Industrial Tree Plantation

This covers extensive plantation of forest land of tree crops (except fruit trees) for commercial and industrial purposes.

2. Mining

This covers the exploration and development of mineral resources, mining/quarrying and processing of metallic and non-metallic minerals.

3. Publication or Printing of Books/ Textbooks

This covers printing, re-printing, publication and content development of books or textbooks.

4. Refining, Storage, Marketing and Distribution of Petroleum Products

This covers refining, storage, distribution, and marketing of petroleum products.

5. Rehabilitation, Self-Development and Self-Reliance of Persons with Disability

This covers the manufacture of technical aids and appliances for the use and/or rehabilitation of persons with disability, and the establishment of special schools, homes, residential communities or retirement villages solely to suit the needs and requirements of persons with disability.

6. Renewable Energy

This covers developers of renewable energy facilities, including hybrid systems. This also covers manufacturers, fabricators and suppliers of locally produced renewable energy (RE) equipment and components.

7. Tourism

This covers tourism enterprises that are outside the tourism enterprise zones (TEZs) and are engaged in the following:

1. Tourist transport services whether for land, sea and air transport for tourist use;
2. Establishment and operation of:
 - Accommodation establishments such as but not limited to hotels, resorts, apartment hotels, tourist inns, motels, pension houses, private homes for homestay, ecolodges, condotels, serviced apartments, and bed and breakfast facilities;
 - Convention and exhibition facilities or “meetings, incentives, conventions and exhibition” (MICE) facilities;
 - Amusement parks;

- Adventure and ecotourism facilities;
- Sports facilities and recreational centers;
- Theme parks;
- Health and wellness facilities such as but not limited to spas, tertiary hospitals, and ambulatory clinics;
- Agri-tourism farms and facilities; and
- Tourism training centers and institutes.