
INVESTING AND DOING BUSINESS IN THE PHILIPPINES

BERNARDO PLACIDO CHAN AND LASAM LAW OFFICES



FOREWORD

Situated at the heart of Asia within just a few hours flight from major cities of the region, the Philippines is a strategic location for global businesses. The sustained economic growth, quality educated workforce pool, liberalized and business-friendly economy, stable fiscal and monetary policies, growth-oriented policies, open and hospitable culture, strong local consumption are just a few of the things that make the Philippines a worthy investment destination. In fact, the CEO Magazine, in an article posted on its website, ranked the Philippines seventh best country in the world to invest in or to do business for 2020.¹

According to estimates by the United Nations Conference on Trade and Development (UNCTAD), foreign direct investments (FDI) to the Philippines rose by almost a third in 2020, a stark contrast with the collapse in global FDI amid the coronavirus disease 2019 (COVID-19) pandemic.² UNCTAD said the Philippines bucked the trend as FDI went up 29% to \$6.4 billion in 2020 from \$5 billion in 2019.³ In contrast, global FDI plunged by 42% to around \$859 billion in 2020, mostly due to investment declines among developed countries.⁴ FDI in Southeast Asia in 2020 declined by 31% to \$107 billion after flows to largest recipients Singapore and Indonesia shrank.⁵ This assessment demonstrates the Philippines' ability to attract investments amid the pandemic.

Indeed, the Philippines has primed up various areas for investment and this is evident from the Build-Operate-Transfer (BOT) legislation, laws providing for low start-up costs for businesses, passage of key economic reforms like the amendments to the Public Service Act, Foreign Investment Act, and Retail Trade Liberalization Act, and other fiscal and non-fiscal incentives granted to businesses in specified sectors.

Anticipating the influx of foreign investment in the Philippines, the Bernardo Placido Chan & Lasam Law Offices, or BPCL Law, has seen it timely and relevant to publish a manual on doing business in the Philippines. This manual, entitled "Investing and Doing Business in the Philippines" has been prepared as a service to BPCL Law's clients, colleagues in the legal profession, law students and the public at large. It is intended for the general education and information of the reader. While information on this manual has been verified to the best of BPCL Law's ability, it cannot guarantee that there are no mistakes or errors. Moreover, it does not purport to be a complete, comprehensive and exhaustive presentation of the matters contained therein.

I would like to take the opportunity to thank Dave V. Bruzon, J.D., C.P.A., who helped add to the contents of this Manual and who painstakingly edited and polished them into a coherent whole. The Partners of BPCL Law, particularly Attys. Dennis L Chan and Manuel Innocencio L. Lasam, deserve credit for their invaluable comments and insights. I would also like to thank the law student interns of the Ateneo School of Law, namely: Gerald Pacifico Capuchino, Carlo Miguel Cacho, Marlo Capacite, Keanna Darrah Gran, Resen Ilagan, Marimelle Lucas, Carlos Nicole Recto and Enzo Rengel, for their considerable contribution in the research work and in

helping piece together the different sections of this Manual. Special gratitude goes to Atty. Antonio “Tony” Bernardo, whose encouragement and proddings made the completion of this Manual possible.

It is hoped that students of law, as well as law practitioners and prospective investors will find this Manual useful as a starting point to aid them in their respective pursuits.



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This “Investing and Doing Business in the Philippines” manual reflects laws, regulations and executive issuances in force only as of April 15, 2021. This manual is intended for general informational purposes only. This is not intended to be a substitute for actual professional legal advice and does not create a lawyer-client relationship between BPCL Law and the readers. Any action taken upon the information contained in this manual is strictly at the reader's own risk and the BPCL Law will not be liable for any losses and/or damages in connection with the use of said information.

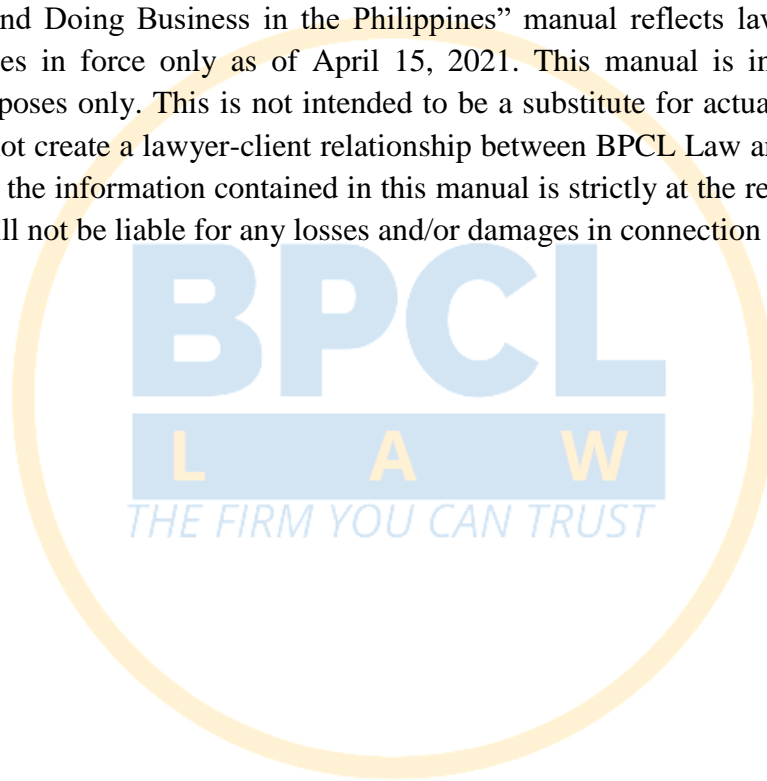


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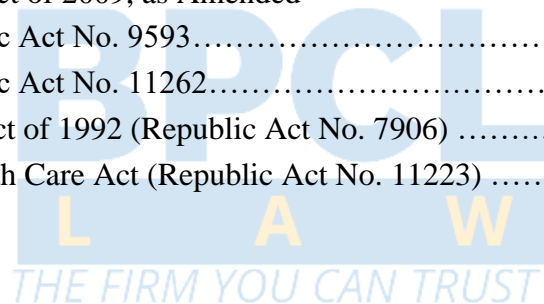
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CHAPTER 1

INTRODUCTION

A. The Philippines

The Philippines, home to 7,641 islands,⁶ is one of the leading economic hubs in the whole of Asia. It was tagged as Asia's Rising Tiger by World Bank in 2013 because of its macroeconomic stability, sound and improving government's finances, fight against corruption and greater transparency.⁷ The Philippine economy is the world's 36th largest, the 13th largest economy in Asia and the 4th largest economy in the ASEAN region behind Indonesia, Malaysia and Thailand.⁸ With a gross domestic product (GDP) growth of 6.2% in 2018, the Philippines has impressively maintained positive momentum in the face of a global economic slowdown and geopolitical tensions.⁹ However, the coronavirus pandemic is taking its toll on Philippine economy.¹⁰ The International Monetary Fund expects Philippines' economic growth at a dismal 0.6 percent this year, but also a strong recovery in 2021, with a growth rate of 7.6%.¹¹

In 2020, Philippines placed 95th in the ease of doing business ranking of the World Bank – Doing Business 2020 report,¹² compared to its previous year's rank of 124th.¹³ The significant increase in ranking can be credited to the removal of the minimum capital requirements for domestic companies under the Revised Corporation Code.¹⁴ Another factor is the greater disclosure of transactions with interested parties and enhancing director liability for transactions with interested parties required under Securities and Exchange Commission (SEC) Memorandum Circular No. 10, Series of 2019.¹⁵ It is noteworthy to mention the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 which required government agencies to process all applications or requests not be longer than three (3) working days in the case of simple transactions and seven (7) working days in the case of complex transactions. Through these government reforms, Philippine economy will continue to grow making it an investment hub for the years to come. As a testament to this, PricewaterhouseCoopers predicted that Philippines will become the 19th richest economy in the world by 2050 in terms of GDP.¹⁶ This only shows that the Philippine economy is going strong despite the global uncertainty.¹⁷

One of the top-notch destinations for foreign investments is the business processing outsource (BPO) sector, a form of service trade. In 2015, the Philippine BPO sector generated US\$ 22 billion in revenue¹⁸ and it is expected increase it to 19% of the global BPO market this 2020.¹⁹ The sector's international success owes a lot to the fact that the country has a young, educated workforce with a strong command of English, as well as relatively low living costs that allow labor to be compensated at an internationally competitive rate.²⁰ Overall, the Philippines is widely credited for transforming services trade into an economy and catalyze economic development.²¹

The continuous growth of the Philippine economy, notwithstanding the uncertainties in the global market, gives investors the opportunity to invest their money with lower risk and higher return of capital. The Philippines will continue to be the fastest growing economy in the region, making it the best destination for foreign investors.



CHAPTER 2

DIFFERENT BUSINESS STRUCTURES

Legal personality refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities.²² In the Philippines, there are three (3) most common types of business, i.e., sole proprietorship, partnership and corporation.

A. Sole Proprietorship

Sole proprietorship is a business in which one person owns all the assets, owes all the liabilities, and operates in his or her personal capacity.²³ It is the simplest form of business organization in the Philippines. It does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise.²⁴

B. Partnership

A partnership is an entity where two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.²⁵ It has a juridical personality separate and distinct from that of each of the partners.²⁶

One form of partnership is joint venture. Joint ventures are generally understood to mean an organization that is formed for some temporary purpose.²⁷ A corporation cannot enter into a partnership contract, but it may engage in a joint venture with others.²⁸

C. Corporation

A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incidental to its existence.²⁹ Together with partnership, a corporation has a legal personality separate and distinct from that of people comprising it.³⁰ Stockholders of a corporation enjoy the principle of limited liability: the corporate debt is not the debt of the stockholder.³¹

Under the Revised Corporation Code, a person opting to set up a corporation may organize a stock or nonstock corporation. Stock corporations are those which have capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits on the basis of the shares held.³² Any person, partnership, association or corporation, singly or jointly with others but not more than fifteen (15) in number, may organize a corporation for any lawful purpose or purposes.³³ All other corporations are nonstock corporations.³⁴

A foreign corporation can transact business in the Philippines provided it obtains a license to do business with the Securities and Exchange Commission.³⁵ Once it obtains the license to do business, it can set up a regional or area headquarters (RHQ), regional operating headquarters (ROHQ), branch office or representative office in the Philippines.

A RHQ is an office whose purpose is to act as an administrative branch of a multinational company engaged in international trade which principally serves as a supervision, communications and coordination center for its subsidiaries, branches or affiliates in the Asia-Pacific Region and other foreign markets and which does not earn or derive income in the Philippines.³⁶ In contrast, a ROHQ is a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region and in other foreign markets.³⁷

A branch office of a foreign company carries out the business activities of the head office and derives income from the host country.³⁸ It is like an extension of the foreign company's operations in the host country. Lastly, a representative or liaison office deals directly with the clients of the parent company but does not derive income from the host country and is fully subsidized by its head office.³⁹ It undertakes activities such as but not limited to information dissemination and promotion of the company's products as well as quality control of products.⁴⁰



CHAPTER 3

DIFFERENT BUSINESS CORPORATIONS/ OFFICES

In general, foreign investors will operate through business corporations because of their strong legal personality apart from its stockholders, limited liability to the amount of the investment on investors, free transferability of units of investment without the consent of other stockholders, and centralized management through the board of directors.⁴¹ Setting up a business corporation in the Philippines involves applying for initial registration with the SEC. This chapter will provide you with a step-by-step procedure for SEC registration.

A. Subsidiary/ Domestic Corporation

This part will focus on stock corporation as a nonstock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers and formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes.⁴²

Stock Corporation

Step 1: Register Business Name

Step 2: Submit the Articles of Incorporation, By-Laws and Cover Sheet

One Person Corporation

Only a natural person, trust, or an estate may form a one person corporation.⁴³

Step 1: Register Business Name

Step 2: Submit the Articles of Incorporation, By-Laws and Cover Sheet.

For Ordinary Stock Corporation and One Person Corporation

Step 3 (*if applicable*): Submit Document Authorizing the Foreign Corporation to Invest in the Corporation being Formed

Step 4 (*if applicable*): Submit SEC Form No. F-100 for New Corporations with more than 40% foreign equity

Step 5: Submit Affidavit of Accuracy and Affidavit of Correctness

Step 6: Secure Certificate of Incorporation

B. Regional or Area Headquarters

Step 1: File Application of Multinational Company for Registration and License to Establish a Regional or Area Headquarters in the Philippines

Step 2: Submit Cover Sheet

Step 3: Submit Certification that Foreign Firm is an Entity Engaged in International Trade

Step 4: Submit Certification that Foreign Firm has been Authorized to Establish its Regional or Area Headquarters

Step 5: Submit Undertaking of Inward Remittance

Step 6: Submit Endorsement from Board of Investments

Step 7 (*if applicable*): Submit Endorsement or Clearance from Different Government Agencies

Step 8: Secure Certificate of Registration

C. Regional Operating Headquarters

Step 1: File Application of Multinational Company for Registration and License to Establish a Regional Operating Headquarters in the Philippines

Step 2: Submit Cover Sheet

Step 3: Submit Certification that Foreign Firm is an Entity Engaged in International Trade

Step 4: Submit Certification that Foreign Firm has been Authorized to Establish its Regional Operating Headquarters

Step 5: Submit Undertaking of Inward Remittance

Step 6: Submit Endorsement from BOI

Step 7 (*if applicable*): Submit Endorsement or Clearance from Different Government Agencies

Step 8: Secure Certificate of Registration

D. Branch Office

Step 1: File Application of a Foreign Corporation to Establish Branch Office in the Philippines (SEC Form No. F-103)

Step 2: Submit Cover Sheet

Step 3: Submit Board Resolution

Step 4: Submit Articles of Incorporation

Step 5: Submit Audited/Unaudited Financial Statements

Step 6: Compliance with Certain Financial Ratios

Step 7: Submit Notarized Proof of Inward Remittance

Step 8: Submit Endorsement from BOI

Step 9 (*if applicable*): Submit Endorsement or Clearance from Different Government Agencies

Step 10: Secure Certificate of Registration

E. Representative Office

Step 1: File Application of a Foreign Corporation to Establish a Representative Office in the Philippines (SEC Form No. F-104)

Step 2: Submit Cover Sheet

Step 3: Submit Board Resolution

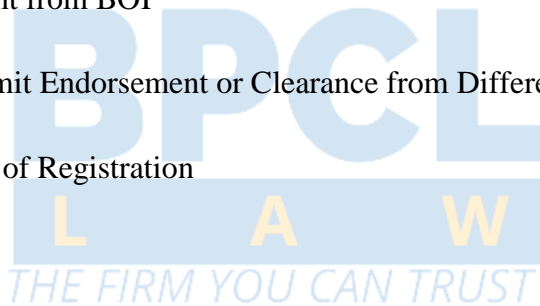
Step 4: Submit Articles of Incorporation

Step 5: Submit Audited/Unaudited Financial Statements

Step 6: Compliance with the Solvency Ratio

Step 7: Submit Notarized Proof of Inward Remittance

Step 8: Submit Endorsement from BOI



Step 9 (*if applicable*): Submit Endorsement or Clearance from Different Government Agencies

Step 10: Secure Certificate of Registration

F. Government Clearances and Endorsements

Depending on the nature of the business of the corporation, it may have to register with, or secure permits/ authorizations/ certifications/ endorsements from pertinent government agencies.

Clearance from Other SEC Departments

Business Style	SEC Department
Capital Market Institutions (i.e. Exchange, Broker, Dealer, Investment House and others)	Markets and Securities Regulation Department
Investment company, Financing and Lending companies, issuers of proprietary or non-proprietary membership (i.e. golf clubs), listed and public companies and foundation	Corporate Governance and Finance Department

Endorsements from Other Government Agencies

Business Style	Government Agency
Air Transport	Civil Aeronautics Board
Bank, Pawnshop and other Financial Intermediaries with Quasi-Banking Functions	Bangko Sentral ng Pilipinas
Volunteer Fire Brigade	Bureau of Fire Protection
Educational Institution (stock & non-stock):	
Elementary	Department of Education
College, Tertiary Course	Commission on Higher Education
Technical Vocational Course	Technical Education Skills and Development Authority
Electric Power Plant/Trading of Petroleum Products	Department of Energy
Hospital, Dental, Medical Clinics	Department of Health
Insurance/ Mutual Benefit Association/ Health Maintenance Organization	Insurance Commission
Money Changer and Remittance Services	Bangko Sentral ng Pilipinas
Non-Chartered Government Owned and Controlled Corporation	Government Commission for Government-owned and Controlled Corporation

Radio, TV, Telephone, Internet Service Providers, Value-Added Service Provider	National Telecommunications Commission
Recruitment for Overseas Employment	Philippine Overseas Employment Administration
Security Agency/ Anti-Crime Task Force	Philippine National Police
Tobacco Related Business	National Tobacco Administration
Vessel/ Ship Operation, Ship Management. Shipbuilding, Ship Repair, Shipping Agency, Ship Husbanding, Ship Handling and other Maritime related activities	Maritime Industry Authority
Water Service Providers and Waterworks	Local Waterworks Utilities Administration/ Manila Waterworks and Sewerage Systems



CHAPTER 4
TAX INCENTIVES

A. Omnibus Investments Code

1. Qualifications of a Registered Enterprise

An applicant must satisfy the following qualifications:

1. He is a citizen of the Philippines, in case the applicant is a natural person, or in case of a partnership or any other association, it is organized under Philippine laws and that at least sixty percent (60%) of its capital is owned and controlled by citizens of the Philippines; or in case of a corporation or a cooperative, it is organized under Philippine laws and that at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by Philippine nationals, and at least sixty per cent (60%) of the members of the Board of Directors are citizens of the Philippines.
2. The applicant is proposing to engage in a preferred project listed or authorized in the current Investment Priorities Plan within a reasonable time to be fixed by the Board or, if not so listed, at least fifty percent (50%) of its total production is for export or it is an existing producer which will export part of production under such conditions and/or limited incentives as the Board may determine; or that the enterprise is engaged or proposing to engage in the sale abroad of export products bought by it from one or more export producers; or the enterprise is engaged or proposing to engage in rendering technical, professional or other services or in exporting television and motion pictures and musical recordings made or produced in the Philippines, either directly or through a registered trader;
3. The applicant is capable of operating on a sound and efficient basis and of contributing to the national development of the preferred area in particular and of the national economy in general; and
4. If the applicant is engaged or proposes to engage in undertakings or activities other than preferred projects, it has installed or undertakes to install an accounting system adequate to identify the investments, revenues, costs, and profits or losses of each preferred project undertaken by the enterprise separately from the aggregate investment, revenues, costs and profits or losses of the whole enterprise or to establish a separate corporation for each preferred project if the Board should so require.⁴⁴

2. Fiscal Incentives

Income Tax Holiday

Only registered enterprises engaged or proposing to engage in new and expanding projects may avail of the income tax holiday (ITH) incentive. Availment shall be as follows:

1. New registered pioneer firms — 6 years from commercial operations.
2. New registered non-pioneer firms — 4 years from commercial operations.
3. Expanding firms — 3 years from commercial operations of the expansion.⁴⁵

Additional Deduction for Labor Expense (cannot be simultaneously enjoyed with the ITH incentive)

For the first five (5) years from registration a registered enterprise shall be allowed an additional deduction from the taxable income of fifty percent (50%) of the wages corresponding to the increment in the number of direct labor for skilled and unskilled workers if:

1. The ratio of imported and domestic capital equipment to the number of workers of the firm does not exceed US\$10,000.00 to one (1) worker; and
2. The registered firm does not avail of this incentive simultaneously with the ITH incentive.⁴⁶

Additional Deduction for Necessary and Major Infrastructure Works (cannot be simultaneously enjoyed with the ITH incentive)

Registered enterprises establishing their production, processing or manufacturing plants in an area that the Board designates as necessary for the proper dispersal of industry or in an area which the Board finds deficient in infrastructure, public utilities, and other facilities, such as irrigation, drainage or other similar waterworks infrastructure may deduct from taxable income an amount equivalent to one hundred percent (100%) of necessary and major infrastructure works it may have undertaken with the prior approval of the Board in consultation with other government agencies concerned.⁴⁷

Tax and Duty Exemption on Imported Capital Equipment

Zero percent (0%) duty shall be applied to importations by BOI-registered new and expanding enterprises of capital equipment, spare parts and accessories upon issuance by the BOI of a Certificate of Authority, provided that such imported capital equipment, spare parts and accessories comply with the following conditions:

1. They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices; and
2. They are reasonably needed and will be used exclusively by the enterprise in its registered activity.⁴⁸

Exemption from Wharfage Dues and any Export Tax, Duty, Impost and Fee

Exports by a registered enterprise of its non-traditional export products shall be exempted from any wharfage dues, and any export tax, duty, impost and fee.⁴⁹

Exemption on Breeding Stocks and Genetic Materials

The importation of breeding stocks and genetic materials within ten (10) years from the date of registration or commercial operation of the enterprise shall be exempt from all taxes and duties. It is required that the breeding stocks and genetic materials are:

1. Not locally available and/or obtainable locally in comparable quality and at reasonable prices;
2. Reasonably needed in the registered activity; and

3. Approved by the Board.⁵⁰

Tax Credit on Domestic Breeding Stocks and Genetic Materials

Tax credit equivalent to one hundred percent (100%) of the value of national internal revenue taxes and customs duties that would have been waived on the breeding stocks and genetic materials had these items been imported shall be given to the registered enterprise which purchases breeding stocks and genetic materials from a domestic producer within ten (10) years from date of registration or commercial operation of the registered enterprise.⁵¹

Tax Credit for Taxes and Duties on Raw Materials

Tax credit equivalent to the national internal revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof, exported directly or indirectly by the registered enterprise.⁵²

3. Non-Fiscal Incentives

Employment of Foreign Nationals

A registered enterprise may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding five (5) years from its registration, extendible for limited periods at the discretion of the Board.⁵³

Simplification of Customs Procedures

Customs procedures for the importation of equipment, spare parts, raw materials and supplies, exports of processed products by registered enterprises shall be simplified by the Bureau of Customs.⁵⁴

Unrestricted Use of Consigned Equipment

The use of consigned machinery, equipment and spare parts which are reasonably needed in the registered operations and for the exclusive use of the registered enterprise beyond the period permitted under other laws, rules and regulations may be authorized by the Board for an unlimited period subject to the posting of a re-export bond.⁵⁵

Access to Bonded Manufacturing/ Trading System

Registered export-oriented enterprises shall have access to the utilization of the bonded warehousing system in all areas required by the project subject to such guidelines as may be issued by the Board upon prior consultation with the Bureau of Customs.⁵⁶

B. Special Economic Zone Act

1. Application and Registration

Any person, firm, association, partnership, corporation, or any other form of business organization, regardless of nationality, control and/or ownership of the working capital thereof may apply for registration as an Export or Free Trade Enterprise within the economic zone (ECOZONE) in any sector of industry, international trade and commerce, except duty-free retailing and wholesale trading of imported finished products for purposes of serving the domestic market.⁵⁷

2. Fiscal Incentives

Income Tax Holiday

Only registered enterprises engaged or proposing to engage in new and expanding projects may avail of the income tax holiday (ITH) incentive. Availment shall be as follows:

1. New registered pioneer firms — 6 years from commercial operations.
2. New registered non-pioneer firms — 4 years from commercial operations.
3. Expanding firms — 3 years from commercial operations of the expansion.⁵⁸

Exemption from Local Taxes and Licenses

Zone registered enterprises shall, to the extent of their construction, operation or production inside the zone be exempt from the payment of any and all local government imposts, fees, licenses or taxes except real estate taxes which shall be collected by the Province/City/Municipality responsible for the collection thereof under the provisions of the Real Property Tax Code.⁵⁹

5% Final Tax on Gross Income (upon expiration of ITH)

Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE.⁶⁰

Exemption from Real Property Taxes

Machineries owned by zone registered enterprises which are actually installed and operated in the Zone for manufacturing, processing or for industrial purposes shall not be subject to the payment of real estate taxes for the first three (3) years of operation of such machineries.⁶¹

Additional Deduction for Labor Expense (cannot be simultaneously enjoyed with the ITH or 5% GIT incentive)

For the first five (5) years from registration, a qualified ECOZONE Export or Free Trade Enterprise shall be allowed to deduct from its taxable income an amount equivalent to fifty per cent (50%) of the wages corresponding to the increment in the number of direct labor for skilled and unskilled workers subject to the following conditions:

1. That the ratio of imported and domestic capital equipment to the number of workers of the firm does not exceed US\$10,000.00 to one worker;
2. The ECOZONE Export or Free Trade Enterprise does not avail of this incentive simultaneously with the income tax holiday incentive;
3. That in the event the ECOZONE Export or Free Trade Enterprise, except those engaged in mining or forestry-based activities, should be located in a less-developed area, it shall be allowed to deduct one hundred per cent (100%) of the wages.⁶²

Tax and Duty Exemption on Imported Capital Equipment

A tax credit equivalent to one hundred percent (100%) of the value of national internal revenue taxes and customs duties that would have been waived on the machinery, equipment and spare parts, had these items been imported shall be given to the new or expanding ECOZONE Export or Free Trade Enterprise which purchases machinery, equipment and spare parts from a domestic manufacturer.⁶³

Exemption from Wharfage Dues and any Export Tax, Duty, Impost and Fee

An ECOZONE Export or Free Trade Enterprise shall be exempt from payment of wharfage dues and any export tax, impost or fee on the exportation of its registered export products or, in the case of an ECOZONE Free Trade Enterprise, on foreign merchandise transshipped through its ECOZONE facilities.⁶⁴

Exemption on Importation of Breeding Stocks and Genetic Materials

The importation of breeding stocks and genetic materials by an ECOZONE Export Enterprise shall be exempt from taxes and duties.⁶⁵

Tax Credit on Domestic Breeding Stocks and Genetic Materials

An ECOZONE Export Enterprise which purchases breeding stocks and genetic materials from a domestic producer shall be entitled to a tax credit equivalent to one hundred per cent (100%) of the value of national internal revenue taxes and customs duties that would have been waived on the breeding stocks and genetic materials had these items been imported.⁶⁶

Exemption from Duties and Taxes on Merchandise

Foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.⁶⁷

Tax Credits for Incremental Export Performance

The incentive for the increase in export revenues shall be computed as follows:

For the first five percent (5%) increase in annual export revenues over the previous year	— 2.5%
For the next 5% increase	— 5%
For the next 5% increase	— 7.5%
In excess of 15% increase	— 10% ⁶⁸

3. Non-Fiscal Incentives

Employment of Foreign Nationals

ECOZONE Enterprises may employ foreign nationals in executive, supervisory, technical and advisory positions.⁶⁹

Unrestricted Use of Consigned Equipment

The use of consigned machinery, equipment and spare parts which are reasonably needed in the registered operations and for the exclusive use of the ECOZONE Export or Free Trade Enterprise beyond the period permitted under other laws, rules and regulations may be permitted by PEZA.⁷⁰

C. Bases Conversion and Development Act

1. Subic Special Economic Zone

The Subic Special Economic Zone (SSEZ) shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the SSEZ.⁷¹

2. Application and Registration

Application for SSEZ registration shall be open to nationals and business enterprises of any country in any area of economic activity, except only as is specifically limited by the Constitution of the Philippines.⁷²

3. Fiscal Incentives

National and Local Tax Exemption

SSEZ Enterprises shall be exempt from all national and local taxes.⁷³

5% Final Tax on Gross Income

No national and local taxes shall be imposed within the SSEZ. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the SSEZ.⁷⁴

Tax and Duty-Free Importations of Articles

All articles imported by SSEZ Enterprises into the SSEZ are free of customs and import duties and national internal revenue taxes.⁷⁵

Exemption from Real Property Taxes

Machineries owned by zone registered enterprises which are actually installed and operated in the Zone for manufacturing, processing or for industrial purposes shall not be subject to the payment of real estate taxes for the first three (3) years of operation of such machineries.⁷⁶

Tax Credits for Incremental Export Performance

The incentive for the increase in export revenues shall be computed as follows:

For the first five percent (5%) increase in annual export revenues over the previous year	— 2.5%
For the next 5% increase	— 5%

For the next 5% increase	— 7.5%
In excess of 15% increase	— 10% ⁷⁷

4. Non-Fiscal Incentives

Employment of Foreign Nationals

ECOZONE Enterprises may employ foreign nationals in executive, supervisory, technical and advisory positions.⁷⁸

5. Clark and Other Special Economic Zones

Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act of 1992, was amended by Republic Act No. 9400 and the said law introduced Clark Special Economic Zone and Clark Freeport Zone, Poro Point Freeport Zone, Morong Special Economic Zone, and John Hay Special Economic Zone.⁷⁹

All fiscal and non-fiscal incentives stated above are applicable to the Clark and other special economic zones.

D. Tourism Act

1. Application and Registration

Any person, firm, association, partnership, corporation, or any other form of business organization may apply for registration as a tourism enterprise within the tourism economic zone (TEZ) to avail of incentives and benefits.⁸⁰

2. Fiscal Incentives

Income Tax Holiday

New enterprises shall, from start of business operations, be exempt from tax on income for a period of six (6) years.⁸¹

5% Final Tax on Gross Income (upon expiration of ITH)

In lieu of all other national and local taxes, license fees, imposts and assessments, except real estate taxes and such fees as may be imposed by the TIEZA, a new enterprise shall pay a tax of five percent (5%) on its gross income earned.⁸²

Tax and Duty Exemption on Imported Capital Investment and Equipment

Registered enterprises shall be entitled to an exemption of one hundred percent (100%) of all taxes and customs duties on importations of capital investment and equipment.⁸³

Tax and Duty Exemption Transportation and Spare Parts

Importation of transportation and the accompanying spare parts of new and expanding registered enterprises shall be exempt from customs duties and national taxes, *provided* that:

1. They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices;
2. They are reasonably needed; and
3. They will be used exclusively by an accredited tourism enterprise.⁸⁴

Tax Credit and Tax and Duty Exemption on Goods and Services

Importation of goods actually consumed in the course of services actually rendered by or through registered enterprises within a TEZ shall enjoy One Hundred Percent (100%) exemption from all taxes and customs duties.⁸⁵

Social Responsibility Incentive

A registered enterprise shall be entitled to a tax deduction equivalent to a reasonable percentage, not exceeding fifty percent (50%), of the cost of environmental protection or cultural heritage preservation activities, sustainable livelihood programs for local communities, and other similar activities.⁸⁶

3. Non-Fiscal Incentives

Employment of Foreign Nationals

A registered enterprise may employ foreign nationals in executive, supervisory, technical or advisory positions.⁸⁷

Special Investor's Resident Visa

A foreign national who invests at least Two Hundred Thousand Dollars (\$200,000.00) in a registered enterprise shall be entitled to a special investor's resident visa enabling the foreign national to reside in the Philippines while his or her investment subsists.⁸⁸

Foreign Currency Transactions

The right to repatriate the entire proceeds of the liquidation of the investment and the right to remit earnings from foreign investments in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation or remittance. It also includes the right to remit such sums as may be necessary to meet the payments of interest and principal on foreign loans and foreign obligations arising from technological assistance contracts.⁸⁹

Lease of Land

Lands and buildings in each TEZ may be leased to foreign investors for a period not exceeding fifty (50) years, renewable once for a period of not more than twenty-five (25) years.⁹⁰

E. Renewable Energy Law

1. Registration

Renewable Energy (RE) Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the DOE, through the Renewable Energy Management Bureau. The following certifications shall be issued:

1. DOE Certificate of Registration - issued to an RE Developer holding a valid RE Service/Operating Contract.
2. DOE Certificate of Accreditation - issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment.

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall also register with the BOI.⁹¹

2. Fiscal Incentives

Income Tax Holiday

For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the national government.⁹²

10% Corporate Income Tax Rate

After seven (7) years of income tax holiday, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income.⁹³

Accelerated Depreciation (cannot be simultaneously enjoyed with the ITH incentive)

If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books using a rate not exceeding twice the rate which would have been used had the annual allowance been computed. Declining balance method or sum-of-the years digit method may be adopted.⁹⁴

Duty-free Importation of RE Machinery, Equipment and Materials

Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties.⁹⁵

Special Realty Tax Rates on Equipment and Machinery

Realty and other taxes on civil works, equipment, machinery, and other improvements of a registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value.⁹⁶

Net Operating Loss Carry-Over (NOLCO)

The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss.⁹⁷

Tax Exemption of Carbon Credits

All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes.⁹⁸

Tax Credit on Domestic Capital Equipment and Services

A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and custom duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer.⁹⁹

CHAPTER 5
LIMITATIONS ON FOREIGN BUSINESS INTEREST

A. 1987 Constitution

ARTICLE XII
National Economy and Patrimony

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.¹⁰⁰

Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact

measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.¹⁰¹

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. 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 the executive and managing officers of such corporation or association must be citizens of the Philippines.¹⁰²

Section 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.

The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.¹⁰³

B. Foreign Investments Act/ Negative List

List A: Foreign Ownership is Limited by Mandate of the Constitution and Specific Laws

No Foreign Equity

1. Mass media, except recording;
2. Practice of professions, including Radiologic and x-ray technology, Criminology, Law, and Marine deck officers and marine engine officers;
3. Retail trade enterprises with paid-up capital of less than US\$2,500,000;
4. Cooperatives;
5. Organization and operation of private detective, watchmen or security guards agencies;
6. Small-scale mining;

7. Utilization of marine resources in archipelagic waters, territorial sea and exclusive economic zone as well as small-scale utilization of natural resources in rivers, lakes, bays and lagoons;
8. Ownership, operation and management of cockpits;
9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons;
10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines; and
11. Manufacture of firecrackers and other pyrotechnic devices;

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

1. Private recruitment, whether for local or overseas employment; and
2. Contracts for the construction of defense-related structures.

Up to Thirty Percent (30%) Foreign Equity

1. Advertising.

Up to Forty Percent (40%) Foreign Equity

1. Subject to applicable regulatory frameworks, contracts for the construction and repair of locally-funded public works, except:
 - a. Infrastructure/development projects covered in RA No. 7718; and
 - b. Projects which are foreign-funded or assisted and required to undergo international competitive bidding;
2. Exploration, development and utilization of natural resources;
3. Ownership of private lands;
4. Operation of public utilities, except power generation and the supply of electricity to the contestable market) and such other like businesses or services not covered by the definition of public utilities;
5. Educational institutions other than those established by religious groups and mission boards, for foreign diplomatic personnel and their dependents, and other foreign temporary, or for short-term high-level skills development that do not form part of the formal education system;
6. 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;
7. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation;
8. Operation of deep sea commercial fishing vessels;
9. Ownership of condominium units; and

10. Private radio communications network.

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; and
 - 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.

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; and
- m. Others 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 National Defense 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.

- 3. Manufacture and distribution of dangerous drugs;
- 4. Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks posed to public health and morals, except wellness centers;
- 5. All forms of gambling except those covered by investment agreements with PAGCOR;
- 6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000; and
- 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\$100,000.¹⁰⁴

C. Statutory Provisions on Specific Businesses

1. Mining

Qualified person means any citizen of the Philippines with capacity to contract, or a corporation, partnership, association, or cooperative organized or authorized for the purpose of engaging in mining, with technical and financial capability to undertake mineral resources development and duly registered in accordance with law at least sixty per centum (60%) of the capital of which is owned by citizens of the Philippines: *Provided*, That a legally organized foreign-owned corporation shall be deemed a qualified person for purposes of granting an exploration permit, financial or technical assistance agreement or mineral processing permit.¹⁰⁵

No foreign ownership allowed for Small-Scale Mining.¹⁰⁶ Small-scale miners refer to Filipino citizens who, individually or in the company of other Filipino citizens, voluntarily form a

cooperative duly licensed by the Department of Environment and Natural Resources to engage, under the terms and conditions of a contract, in the extraction or removal of minerals or ore-bearing materials from the ground.¹⁰⁷

2. Banking

Domestic Banks

Foreign individuals and nonbank corporations may own or control up to forty percent (40%) of the voting stock of a domestic bank. This rule shall apply to Filipinos and domestic nonbank corporations.¹⁰⁸

Rural Banks

Foreign individuals may own, acquire or purchase up to sixty percent (60%) of the voting stocks in a rural bank.¹⁰⁹

Thrift Banks

At least forty percent (40%) of the voting stock of a thrift bank which may be established after the approval of this Act shall be owned by citizens of the Philippines, except where a new bank may be established as a result of a merger or consolidation of existing thrift banks with foreign holdings in which case, the resulting foreign holdings shall not be increased but may be reduced and, once reduced, shall not be increased thereafter beyond sixty percent (60%) of the voting stock of thrift banks. The percentage of the foreign-owned voting stocks shall be determined by the citizenship of individual stockholders and in case of corporations owning shares, by the citizenship of each stockholder in the said corporations.¹¹⁰

3. Construction

Partnerships and corporations duly organized under the laws of the Philippines, and persons/entities forming themselves into a joint venture must have at least sixty percent (60%) of their interest or outstanding capital stock belong to citizens of the Philippines for procurement of infrastructure projects. *Provided*, That joint ventures in which Filipino ownership or interest is less than sixty percent (60%) may be eligible where the structures to be build require application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the sixty percent (60%) Filipino ownership requirement: *Provided, further*, That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%).¹¹¹

4. Retail

Partnerships, associations and corporations, partially or wholly-owned by foreigners, formed and organized under the laws of the Philippines may upon registration with the Securities and

Exchange Commission (SEC), or in case of foreign-owned single proprietorships, with the Department of Trade and Industry (DTI), may engage or invest in the retail trade business, subject to the following categories:

Category A — Enterprises with paid-up capital of the equivalent in Philippine Pesos of less than Two million five hundred thousand US dollars (US\$2,500,000.00) shall be reserved exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.

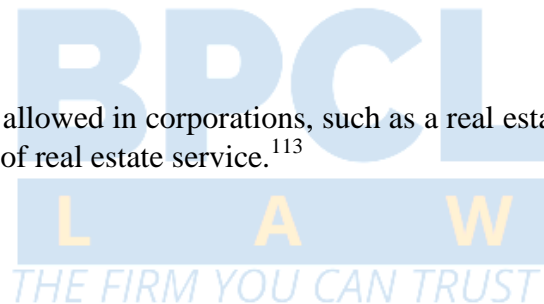
Category B — Enterprises with a minimum paid-up capital of the equivalent in Philippines Pesos of Two million five hundred thousand US dollars (US\$2,500,000.00) may be 100% foreign-owned.

Category C — No longer applicable.

Category D — Enterprises specializing in high-end or luxury products with a paid-up capital of the equivalent in Philippine Pesos of Two hundred fifty thousand US dollars (US\$250,000.00) per store may be owned up to 100% by foreigners.¹¹²

5. Real Estate

No foreign participation is allowed in corporations, such as a real estate brokerage company, that will engage in the practice of real estate service.¹¹³



CHAPTER 6

POST-BUSINESS REGISTRATION

A. Local Government Units

A business permit or mayor's permit is a document issued to a person who will put up a business or any trade activity. The documentary requirements accompanying application submission for business permit are the following:

1. Proof of business registration, incorporation or legal personality (i.e., SEC registration);
2. Basis for computing taxes, fees and charges (e.g., business capitalization);
3. Occupancy permit, if required by national laws and local laws;
4. Contract of Lease (if Leesee); and
5. Barangay Clearance (for businesses which are not required occupancy permits).

For new application of business permit with certificate of occupancy, a barangay clearance is no longer required if it was already provided by the business applicant to the City/Municipal Engineer Office or Office of the Building Official for securing Building Permit and Certificate of Occupancy.

For new application which do not require occupancy permit, the Business Permits and Licensing Office (BPLO) shall notify the concerned barangay immediately for the issuance of barangay clearance for new application for business permit. The barangay clearance will be issued and submitted by the barangay to the BPLO and shall be released to applicants together with the business permits.

B. Bureau of Internal Revenue

Any person, whether natural or juridical, is required to register with the Bureau of Internal Revenue (BIR) on or before the commencement of the business. The registration shall contain the taxpayer's name, style, place of residence, business and such other information as may be required.¹¹⁴ The required form for registration of Tax Identification Number is BIR Form No. 1903.

Moreover, all corporations, companies, partnerships or persons required by law to pay internal revenue taxes shall keep and use relevant and appropriate set of bookkeeping records wherein all transactions and results of operations are shown and from which all taxes due the Government may readily and accurately be ascertained and determined any time of the year.¹¹⁵ They may, at their option, keep subsidiary books as the needs of their business may require.¹¹⁶ The required form for registration of books of accounts is BIR Form No. 1905.

In addition, all persons who are engaged in business shall secure from the BIR an Authority to Print (ATP) receipts or sales or commercial invoice before a printer can print the same.¹¹⁷ The required form for registration of ATP is BIR Form No. 1906.

C. Home Development Mutual Fund

All new employers are required to first register with the Pag-IBIG branch with jurisdiction over them prior to the start of their business operation. Employers who have been issued with a Certificate of Employer Registration are deemed as already registered with the Fund.

Requirements for Employer Registration:

1. Employers Data Form (HOP-PFF-002) (1 Original);
2. Specimen Signature Form (HQP-PFF-003) (1 Original); and
3. Present additional documents as proof of business existence depending on the type of legal personality they will engage in.

The employers shall ensure that their employees who were not covered by the Fund shall register with the Fund. Employers shall submit to the Fund all data and information that may be required in relation to their respective businesses and employees within thirty (30) days from the start of their business operations. In addition, said employers shall ensure that their newly-hired employees are registered with the Fund within.

Registration with Pag-IBIG for employees may be done through any of the following:

1. Online Registration shall be done online using the Membership Registration System. The member shall personally fill out the computerized Member's Data Form (MDF).
2. Manual Registration Those without access to the online Membership Registration System shall be required to accomplish the MDF in hard copy. MDFs with lacking information shall be returned to the concerned members for completion.

D. Philippine Health Insurance Corporation

The general procedure needed for employer's registration are the following:

1. Registration to the Philippine Business Registry (PBR) or submission of registration from the appropriate government agency in case failure to register through the PBR; and
2. Registration of Employer of his/her employees
 - a. Employer Data Record (ER1) Form (In Duplicate); and
 - b. PhilHealth Membership Registration Form (PMRF) for each employee (In Duplicate)

Employers are required to display the Certificate of Registration (PhilHealth) in conspicuous area of their offices.

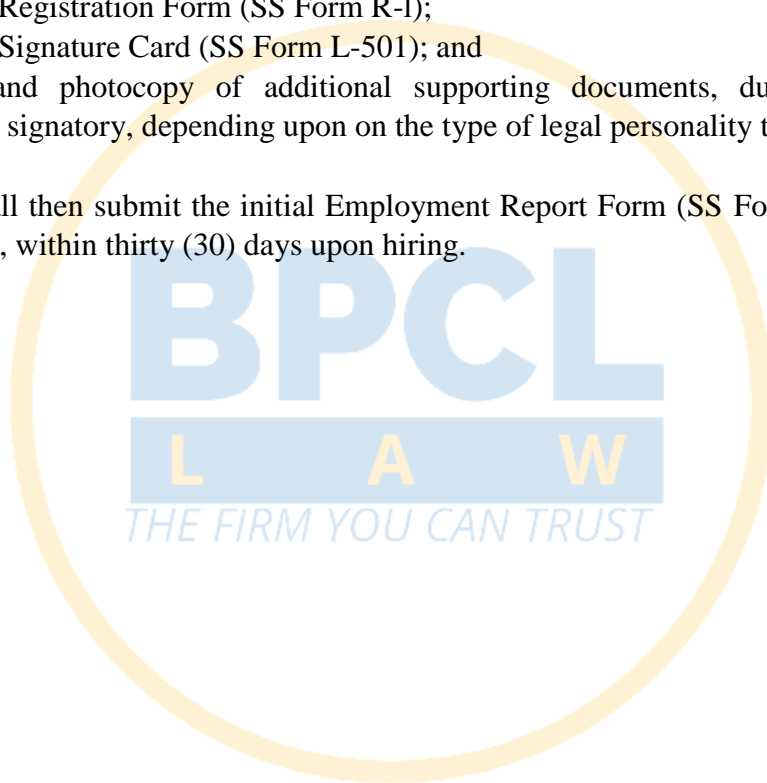
E. Social Security System

The employer shall deduct and withhold from an employee's salary, wages, compensation or earnings, the employee's contribution in an amount corresponding to his salary, wages, compensation or earnings. The employer shall also be responsible for paying the employer's contributions.

The general procedure needed for employer's registration are the following:

1. Employer Registration Form (SS Form R-1);
2. Specimen Signature Card (SS Form L-501); and
3. Original and photocopy of additional supporting documents, duly signed by the authorized signatory, depending upon on the type of legal personality they will engage in.

The employer shall then submit the initial Employment Report Form (SS Form R-1A) to report his/her employees, within thirty (30) days upon hiring.



CHAPTER 7
KEY STATUTES AFFECTING BUSINESS OPERATIONS

A. Immigration

Foreign nationals who are proceeding to Philippines to engage in any lawful occupation, whether for wages or salary or other forms of compensation must secure the pre-arranged employment visa or 9G visa. The 9G visa can be secured by submitting the employment contract of the foreign national with the Philippine-based employer or upon issuance of the following permits and authority:¹¹⁸

1. Permits

Alien Employment Permit

Permit issued by the Department of Labor and Employment (DOLE) pursuant to employment arrangement with Philippine-based company, after determination of the non-availability of a person in the Philippines who is competent, able, and willing at the time of application, to perform the services for which the foreign national is desired.¹¹⁹

Provisional Work Permit

Permit to work issued by the Bureau of Immigration (BI) which allows foreign nationals to engage in work pursuant to an employment arrangement pending issuance of their Alien Employment Permit (AEP) or with valid AEP but pending approval of 9G visa.¹²⁰

Special Work Permit

Permit to work issued by the BI which allows foreign national to engage in work outside of an employment arrangement.¹²¹

Special Temporary Permit

Permit issued by the Professional Regulation Commission to a foreign professional to practice in the Philippines for a limited period of time.¹²²

2. Authority

Authority to Employ Alien

Authority issued by Department of Justice (DOJ) for nationalized and partially nationalized industries where foreign equity participation is limited to a maximum of 40%.¹²³

Authority to Hire Foreign Nationals

Authority issued by the Department of Environment and Natural Resources - Mines and Geosciences Bureau for the employment of foreign nationals in the mining operation.¹²⁴

B. Labor Code

1. Minimum Labor Standards

The Labor Code imposes minimum labor standards to protect the rights of employees, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers.¹²⁵

Minimum Age of Employment

The minimum age of employment is 18 years for hazardous jobs, and 15 years for non-hazardous jobs.¹²⁶

Payment of Minimum Wage

The employer is required to pay minimum wage as set by the Regional Tripartite Wage and Productivity Board depending on the location of the business.

Meal Periods

Employees are entitled to not less than one (1) hour time-off for regular meals.¹²⁷

Weekly Rest Periods

Employees are entitled to a rest period of not less than twenty-four (24) consecutive hours after every six (6) consecutive normal work days.¹²⁸

Overtime Work Pay

Overtime work pay is 25% of the employee's regular wage for each hour of work beyond the normal eight (8) hours of work.¹²⁹

Night Shift Differential

Night shift differential is 10% of the employee's regular wage for each hour of work between 10PM to 6AM of the following day.¹³⁰

Compensation for rest day, Sunday or holiday work

Where an employee is made or permitted to work on his scheduled rest day, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage. An employee shall be entitled to such additional compensation for work performed on Sunday only when it is his established rest day.

When the nature of the work of the employee is such that he has no regular workdays and no regular rest days can be scheduled, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage for work performed on Sundays and holidays.

Work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee. Where such holiday work falls on the employee's scheduled rest day, he shall be entitled to an additional compensation of at least fifty per cent (50%) of his regular wage.

Where the collective bargaining agreement or other applicable employment contract stipulates the payment of a higher premium pay than that prescribed under this Article, the employer shall pay such higher rate.¹³¹

Service Incentive Leave

Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.¹³²

Paid Leaves

Employees are entitled to paid leaves in one calendar year such as maternity leave, paternity leave, solo parental leave, and special leaves for women under the Magna Carta of Women and Violence against Women and Children law.

2. Security of Tenure

The employer shall not terminate the services of an employee except for a just cause or authorized cause. A dismissal based on a just cause means that employee has committed a

wrongful act or omission; while dismissal based on an authorized cause means that there exists a ground which the law itself allows or authorizes to be invoked to justify the termination of an employee even if he has not committed any wrongful act or omission.¹³³

3. Termination by Employer

Just Causes

Serious Misconduct

Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.¹³⁴

Gross and habitual neglect

Gross and habitual neglect by the employee of his duties.¹³⁵

Fraud or willful breach

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.¹³⁶

Crime or Offense

Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives.¹³⁷

Other Causes Analogous to the Foregoing

Authorized Causes

Installation of Labor-Saving Devices

The purpose for such installation of labor saving devices must be valid such as to save on cost, enhance efficiency and other justifiable economic reasons.¹³⁸

Redundancy

An employer has no legal obligation to keep more employees than are necessary for the operation of its business.¹³⁹

Retrenchment

Retrenchment is the termination of employment initiated by the employer through no fault of and without prejudice to the employees, it is resorted to during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery or of automation.¹⁴⁰

Closure of Cessation of Business Operation

Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer.¹⁴¹ It is carried out to either stave off the financial ruin or promote the business interest of the employer.¹⁴²

Disease

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees.¹⁴³

4. Termination by Employee

An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance.¹⁴⁴

However, an employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:

1. Serious insult by the employer or his representative on the honor and person of the employee;
2. Inhuman and unbearable treatment accorded the employee by the employer or his representative;
3. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and
4. Other causes analogous to any of the foregoing.¹⁴⁵

5. Contractualization

Contractualization is not absolutely prohibited by the Labor Code.¹⁴⁶

Permissible Contracting or Subcontracting Arrangements

Contracting or subcontracting shall only be allowed if all the following circumstances concur:

1. The contractor or subcontractor is engaged in a distinct and independent business and undertakes to perform the job or work on its own responsibility, according to its own manner and method;
2. The contractor or subcontractor has substantial capital to carry out the job farmed out by the principal on his account, manner and method, investment in the form of tools, equipment, machinery and supervision;
3. In performing the work farmed out, the contractor or subcontractor is free from the control and/or direction of the principal in all matters connected with the performance of the work except as to the result thereto; and
4. The Service Agreement ensures compliance with all the rights and benefits for all the employees of the contractor or subcontractor under the labor laws.¹⁴⁷

Labor-Only Contracting Arrangement Prohibited

There is LOC exists where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. It is prohibited to protect the rights of workers.

Labor-only contracting exists when:

1.
 - a. The contractor or subcontractor does not have substantial capital, or
 - b. The contractor or subcontractor does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others, and
 - c. The contractor's or subcontractor's employees recruited and placed are performing activities which are directly related to the main business operation of the principal;
2. The contractor or subcontractor does not exercise the right to control over the performance of the work of the employee.¹⁴⁸

C. Intellectual Property Code

1. Overview

Intellectual Property Rights (IPRs) are intangibles assets of a business that are considered vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products.¹⁴⁹

2. Patents

A Patent is any technical solution of a problem in any field of human activity. It may be, or may relate to, a product, or process, or an improvement of any of the foregoing. It must be: 1. new; 2. involves an inventive step; and 3. industrially applicable.¹⁵⁰

Non-Patentable Inventions

The following shall be excluded from patent protection:

1. Discoveries, scientific theories and mathematical methods;
2. Schemes, rules and methods of performing mental acts, playing games or doing business, and programs for computers;
3. Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body;
4. Plant varieties or animal breeds or essentially biological process for the production of plants or animals;
5. Aesthetic creations; and
6. Anything which is contrary to public order or morality.¹⁵¹

Registration Needed for Protection

There can be no infringement of a patent until a patent has been issued, since whatever right one has to the invention covered by the patent arises alone from the grant of patent.¹⁵²

Non-Prejudicial Disclosure

The element of novelty is an essential requisite of the patentability of an invention or discovery. If a device or process has been known or used by others prior to its invention or discovery by the applicant, an application for a patent therefor should be denied.¹⁵³

However, the disclosure of information contained in the application during the twelve (12) months preceding the filing date or the priority date of the application shall not prejudice the applicant on the ground of lack of novelty if such disclosure was made by:

1. The inventor;
2. A patent office and the information was contained in another application filed by the inventor and should not have been disclosed by the office, or in an application filed without the knowledge or consent of the inventor by a third party which obtained the information directly or indirectly from the inventor; or
3. A third party which obtained the information directly or indirectly from the inventor.¹⁵⁴

Term of Patent

The term of a patent shall be twenty (20) years from the filing date of the application.¹⁵⁵

3. Trademarks and Service Marks

Trademark is defined as:

1. Mark means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods;
2. Collective mark means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark; and
3. Trade name means the name or designation identifying or distinguishing an enterprise. These can be registered with the IPO.¹⁵⁶

Marks that Cannot be Registered

There are certain marks which cannot be registered, such as:

1. Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;
2. Consists of the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;
3. Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow;
4. Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:
 - a. The same goods or services, or
 - b. Closely related goods or services, or
 - c. If it nearly resembles such a mark as to be likely to deceive or cause confusion;
5. Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services;
6. Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark;
7. Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;

8. Consists exclusively of signs that are generic for the goods or services that they seek to identify;
9. Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice;
10. Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services;
11. Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value;
12. Consists of color alone, unless defined by a given form; or
13. Is contrary to public order or morality.¹⁵⁷

Right is Acquired through Registration

The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law.¹⁵⁸

Duration of Protection

A certificate of registration shall remain in force for ten (10) years. Each certificate of registration can be renewed for periods of 10-years at its expiration. In order to maintain the registration, Declarations of Actual Use and evidence of use must be filed within one (1) year from the fifth anniversary of the date of the registration of the mark.¹⁵⁹

4. Copyright and Related Rights

Copyright is the legal protection extended to the owner of the rights in an original work.¹⁶⁰

Original Works

Literary and artistic works are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

1. Books, pamphlets, articles and other writings;
2. Periodicals and newspapers;
3. Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
4. Letters;
5. Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
6. Musical compositions, with or without words;

7. Works of drawing, painting, architecture, sculpture, engraving, lithography or other work of art; models or designs for works of art;
8. Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
9. Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
10. Drawings or plastic works of a scientific or technical character;
11. Photographic works including works produced by a process analogous to photography; lantern slides;
12. Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
13. Pictorial illustrations and advertisements;
14. Computer programs; and
15. Other literary, scholarly, scientific and artistic works.¹⁶¹

Derivative Works

Copyright also protects derivative works which are generally based on not limited to one preexisting works. This includes:

1. Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and
2. Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents.¹⁶²

Works Not Protected

No protection shall extend to:

1. Any idea, procedure, system, method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work;
2. News of the day and other miscellaneous facts having the character of mere items of press information;
3. Any official text of a legislative, administrative or legal nature, as well as any official translation thereof; and
4. Any work of the Government of the Philippines.¹⁶³

Duration of Protection

The term of protection for copyright in literary, artistic, and derivative works is generally the duration of the author's life and for fifty (50) years after his death.¹⁶⁴

Fair Use of a Copyrighted Work

The IP Code lays down what are considered as statutory fair uses which are not tantamount to copyright infringement. In order to determine fair use, the following should be considered:

1. The purpose and character of the use;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.¹⁶⁵

5. Industrial Designs

An industrial design is any composition of lines or colors or any three-dimensional form, whether or not associated-with lines or colors. The composition or form must give a special appearance to and can serve as pattern for an industrial product or handicraft.¹⁶⁶

Non-Registrable Industrial Designs

The following industrial designs cannot be registered:

1. Those that are not new or ornamental;
2. Those dictated essentially by technical or functional considerations to obtain a technical result; and
3. Those that are contrary to public order, health or morals.¹⁶⁷

Duration of Protection

The registration of an industrial design shall be for a period of five (5) years from the filing date of the application. The registration of an industrial design may be renewed for not more than two (2) consecutive periods of five (5) years each for a total of fifteen (15) years.¹⁶⁸

6. Utility Model

A utility model is a technical solution to a problem in any field of human activity which is new and industrially applicable. It may be, or may relate to, a product, or process, or an improvement of any of the aforesaid. Essentially, a utility model refers to an invention in the mechanical field. Therefore, its object is sometimes described as a device or useful object.¹⁶⁹

Duration of Protection

A utility model's term of registration is seven years-counting from the effective date of filing of the application. It automatically expires at the end of the period and it has no opportunity for renewal.¹⁷⁰

Prohibition Against Filing of Parallel Applications

An applicant may not file two (2) applications for the same subject, one for utility model registration and the other for the grant of a patent whether simultaneously or consecutively.¹⁷¹

7. Technology Transfer Arrangements

Technology transfer agreements (TTA) refers to contracts or agreements involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts; and the transfer, assignment or licensing of all forms of IPRs, including licensing of computer software except computer software developed for mass market.¹⁷²

Registration Not Required

TTAs need not be registered with the Documentation, Information and Technology Transfer Bureau of the IPO.¹⁷³

8. Layout-Designs (Topographies) of Integrated Circuits

A Layout-Design means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture. Meanwhile, an Integrated Circuit is a product, in its final form, or an intermediate form, in which the elements, at least one of which is an active element and some or all of the interconnections are integrally formed in and/or on a piece of material, and which is intended to perform an electronic function.¹⁷⁴

Requirement for Registration

It must be original and a layout-design which consists of a combination of elements and interconnections may only be protected if it is original when taken as a whole.¹⁷⁵

Duration of Protection

The term of registration of layout-designs of integrated circuits is ten (10) years without renewal. It commences from either: the date of the first commercial exploitation; or the date of filing of application, if it was not previously exploited commercially.¹⁷⁶

9. Geographical Indications

Geographical Indications are indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

The use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good is prohibited.¹⁷⁷

While Geographical Indications are protected under the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights or TRIPS Agreement, there is no counterpart provision nor protection under the IP Code.

10. Protection of Undisclosed Information

Trade Secrets is a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value.¹⁷⁸ A trade secret may consist of any formula, pattern, device, or compilation of information that is used in one's business; and gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.¹⁷⁹

Trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information in confidence or through a confidential relationship.¹⁸⁰

Protection from Disclosure

There is a privilege not to disclose one's trade secrets and it may not be the subject of compulsory disclosure. Under the revised rules on evidence, a person cannot be compelled to testify about any trade secret, unless the non-disclosure will conceal fraud or otherwise work injustice.¹⁸¹

CHAPTER 8
HYPERLINKS

A. Government Agencies

1. Bases Conversion and Development Authority

<https://bcda.gov.ph/>

2. Bureau of Customs

<https://customs.gov.ph/>

3. Bureau of Immigration

<https://immigration.gov.ph/>

4. Bureau of Internal Revenue

<https://www.bir.gov.ph/>

5. Department of Energy

<https://www.doe.gov.ph/>

6. Department of Environment and Natural Resources

<https://www.denr.gov.ph/>

a. Mines and Geosciences Bureau

<https://mgb.gov.ph/>

7. Department of Labor

<https://www.dole.gov.ph/>

8. Department of Tourism

<http://beta.tourism.gov.ph/>

a. Tourism Infrastructure and Enterprise Zone Authority

<https://tieza.gov.ph/>

9. Department of Trade and Industry

<https://www.dti.gov.ph/>

a. Board of Investment

<https://boi.gov.ph/>

b. Philippine Economic Zone Authority

<http://www.peza.gov.ph/>

10. Home Development Mutual Fund

<https://www.pagibigfund.gov.ph/>

11. Intellectual Property Office of the Philippines

<https://www.ipophil.gov.ph/>

12. Philippine Health Insurance Corporation

<https://www.philhealth.gov.ph/#gsc.tab=0>

13. Social Security System

<https://www.sss.gov.ph/>

B. Pertinent Legislation

1. 1987 Constitution

<https://www.officialgazette.gov.ph/constitutions/1987-constitution/>

2. Bases Conversion and Development Act of 1992, as Amended

a. Republic Act No. 7227

<https://boi.gov.ph/ra-7227-bases-conversion-and-development-act-of-1992/>

b. Republic Act No. 9400

<https://www.officialgazette.gov.ph/2007/03/20/republic-act-no-9400/>

3. Export Development Act of 1994 (Republic Act No. 7844)

<https://boi.gov.ph/ra-7844-export-development-act-of-1994/>

4. Foreign Investments Act of 1991 (Republic Act No. 7042)

<https://www.officialgazette.gov.ph/1991/06/13/republic-act-no-7042/>

5. General Banking Law of 2000 (Republic Act No. 8791)

https://boi.gov.ph/sdm_downloads/ra-8791-the-general-banking-law-of-2000/

6. Home Development Mutual Fund Law of 2009 (Republic Act No. 9679)

http://legacy.senate.gov.ph/republic_acts/ra%209679.pdf

7. Intellectual Property Code of the Philippines, as Amended

a. Republic Act No. 8293

<https://www.officialgazette.gov.ph/1997/06/06/republic-act-no-8293/>

b. Republic Act No. 9150

<https://www.officialgazette.gov.ph/2001/08/06/republic-act-no-9150/>

8. Labor Code of the Philippines (Presidential Decree No. 442)

https://www.dole.gov.ph/php_assets/uploads/2017/11/LaborCodeofthePhilippines20171.pdf

9. Omnibus Investments Code of 1987, as Amended

a. Executive Order No. 226, series of 1987

<https://www.officialgazette.gov.ph/1987/07/16/executive-order-no-226-s-1987/>

b. Republic Act No. 7918

<https://boi.gov.ph/r-a-7918-an-act-amending-article-39-title-iii-of-e-o-226/>

c. Republic Act No. 8756

https://lawphil.net/statutes/repacts/ra1999/ra_8756_1999.html

10. People's Small-Scale Mining Act of 1991 (Republic Act No. 7076)

https://lawphil.net/statutes/repacts/ra1991/ra_7076_1991.html

11. Philippine Mining Act of 1995 (Republic Act No. 7942)

https://mgb.gov.ph/images/stories/RA_7942.pdf

12. Renewable Energy Act of 2008 (Republic Act No. 9513)

<https://www.officialgazette.gov.ph/2008/12/16/republic-act-no-9513/>

13. Retail Trade Liberalization Act of 2000 (Republic Act No. 8762)

https://boi.gov.ph/sdm_downloads/ra-8762-retail-trade-liberalization-act-of-2000/

14. Revised Corporation Code of the Philippines (Republic Act No. 11232)

<https://www.officialgazette.gov.ph/downloads/2019/02feb/20190220-RA-11232-RRD.pdf>

15. Rural Act of 1992, as Amended

a. Republic Act No. 7353

<https://www.officialgazette.gov.ph/1992/04/02/republic-act-no-7353/>

b. Republic Act No. 10574

<https://www.officialgazette.gov.ph/2013/05/24/republic-act-no-10574/>

16. Social Security Act of 2018 (Republic Act No. 11199)

<https://www.sss.gov.ph/sss/DownloadContent?fileName=20190207-RA-11199-RRD.pdf>

17. Tax Reform Act of 1997, as Amended

a. Republic Act No. 8424

<https://www.officialgazette.gov.ph/1997/12/11/republic-act-no-8424/>

b. Republic Act No. 10963

<https://www.officialgazette.gov.ph/2017/12/27/republic-act-no-10963/>

18. The Special Economic Zone Act of 1995, as Amended

a. Republic Act No. 7916

<http://www.peza.gov.ph/index.php/about-peza/special-economic-zone-act>

b. Republic Act No. 8748

<https://www.officialgazette.gov.ph/1999/06/01/republic-act-no-8748/>

19. The Tourism Act of 2009, as Amended

a. Republic Act No. 9593

<https://www.officialgazette.gov.ph/2009/05/12/republic-act-no-9593-s-2009/>

b. Republic Act No. 11262

<https://www.officialgazette.gov.ph/2019/04/10/republic-act-no-11262/>

20. Thrift Banks Act of 1992 (Republic Act No. 7906)

<http://www.ctb.com.ph/wp-content/uploads/2011/12/ra7906-thrift-banks-act.pdf>

21. Universal Health Care Act (Republic Act No. 11223)

<https://www.officialgazette.gov.ph/2019/02/20/republic-act-no-11223/>



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- ¹ Emily Pidgeon, 10 best countries to invest in post-COVID, *available at* <https://www.theceomagazine.com/business/finance/countries-invest/>.
- ² Jenina Ibanez, Philippine bucks global decline in FDI, *available at* <https://www.bworldonline.com/philippines-bucks-global-decline-in-fdi/>.
- ³ *Id.*
- ⁴ United Nations Conference on Trade and Development, Global foreign direct investment fell by 42% in 2020, outlook remains weak, *available at* <https://unctad.org/news/global-foreign-direct-investment-fell-42-2020-outlook-remains-weak>.
- ⁵ *Id.*
- ⁶ About The Philippines, *available at* <https://www.gov.ph/about-the-philippines>.
- ⁷ Motoo Konishi, Press statement of Motoo Konishi, Co-Chair Philippines Development Forum, *available at* <https://www.worldbank.org/en/news/speech/2013/02/06/Press-Statement>.
- ⁸ AFM Editorial office, Philippine economy on the rise – coronavirus aside, *available at* <https://www.asiafundmanagers.com/int/philippines-economy/>.
- ⁹ Forbes, The Philippines in 2019: Resilient and Rising, *available at* <https://www.forbes.com/custom/2019/10/22/the-philippines-in-2019-resilient-and-rising/>.
- ¹⁰ *Supra* note 8.
- ¹¹ *Id.*
- ¹² World Bank Group, Doing Business 2020, page 4.
- ¹³ World Bank Group, Doing Business 2019, page 5.
- ¹⁴ *Id.* at 116.
- ¹⁵ *Id.*
- ¹⁶ PwC, The Long View How will the global economic order change by 2050? (2017).
- ¹⁷ *Supra* note 7.
- ¹⁸ Price, N. A., Francisco, J. P. and Caboverde, C. E. IT-BPO in the Philippines: A Driver of Shared Prosperity?, Working Paper 16-002, Philippines: Asian Institute of Management (2016),
- ¹⁹ Errighi, L., Bodwell, C. and Khatiwada, S. Business process outsourcing in the Philippines: Challenges for decent work, ILO Asia-Pacific Working Paper Series, Geneva, International Labour Organization (2016),.
- ²⁰ Shead, R., Business Process Outsourcing in The Philippines, ASEAN Briefing from Dezan Shira & Associates, online version, (2017).
- ²¹ World Trade Organization, World Trade Report 2019 The future of services trade, page 58.
- ²² GEORGE PATON, A TEXTBOOK OF JURISPRUDENCE, 393 (David Derham ed., 1972).
- ²³ BRYAN A. GARNER, ET AL., BLACK'S LAW DICTIONARY 1520 (9th ed. 2009).
- ²⁴ Ejercito vs. M.R. Vargas Construction, G.R. No. 172595 (2008).
- ²⁵ An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 1767 (1949).
- ²⁶ *Id.* art. 1768.
- ²⁷ Realubit vs. Jaso, G.R. No. 178782 (2011).
- ²⁸ Aurbach vs. Sanitary Wares Manufacturing Corporation, G.R. No. 180 SCRA 130, 146-147 (1989).
- ²⁹ An Act Providing for the Revised Corporation Code of the Philippines [REVISED CORPORATION CODE], Republic Act No. 11232, §2 (2018).
- ³⁰ Heirs of Tan Uy v. International Exchange Bank, G.R. No. 166282 (2013).
- ³¹ Philippine National Bank v. Hydro Resources Contractars Corp., G.R. No. 167530 (2013).
- ³² REVISED CORPORATION CODE, §3.
- ³³ *Id.* at §10.
- ³⁴ *Id.* at §3.
- ³⁵ *Id.* at §140-142.
- ³⁶ An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, Amending for the Purpose Certain Provision of Executive Order No. 226, Otherwise Known as the Omnibus Investments Code of 1987, Republic Act No. 8756, §2, ¶2 (1999).
- ³⁷ *Id.* at ¶3.
- ³⁸ Rules and Regulations Implementing the Foreign Investments Act of 1991, Republic Act No. 7042, Rule 1, §2(c), ¶2 (1996).
- ³⁹ *Id.* at ¶3.

-
- ⁴⁰ *Id.*
- ⁴¹ CESAR L. VILLANUEVA & TERESA S. VILLANUEVA-TIANSAY, PHILIPPINE CORPORATE LAW (5th ed. 2017).
- ⁴² REVISED CORPORATION CODE, §86-87.
- ⁴³ *Id.* at §116.
- ⁴⁴ The Omnibus Investments Code of 1987, Executive Order No. 226, Series of 1987, Article 32.
- ⁴⁵ The Omnibus Investments Code of 1987, Executive Order No. 226, Series of 1987, as amended by Republic Act No. 7918, Article 39 (a).
- ⁴⁶ *Id.* at Article 39 (b).
- ⁴⁷ Omnibus Investments Code of 1987, Article 40 (b).
- ⁴⁸ Omnibus Investments Code of 1987, As amended, Article 39 (c).
- ⁴⁹ *Id.* at Article 39 (m).
- ⁵⁰ *Id.* at Article 39 (h).
- ⁵¹ *Id.* at Article 39 (i).
- ⁵² *Id.* at Article 39 (j).
- ⁵³ *Id.* at Article 39 (g).
- ⁵⁴ Omnibus Investments Code of 1987, As amended, Article 39 (e).
- ⁵⁵ *Id.* at Article 39 (f).
- ⁵⁶ *Id.* at Article 39 (k).
- ⁵⁷ Rules and regulations implementing Republic Act No. 7916, otherwise known as the ‘The Special Economic Zone Act of 1995’, Part II, Rule III, §1.
- ⁵⁸ *Id.* at Part VII, Rule XV, §6 (E).
- ⁵⁹ *Id.* at §2.
- ⁶⁰ *Id.* at Rule XX.
- ⁶¹ *Supra* note 44, Article 78 (a).
- ⁶² *Supra* note 57, Part VII, Rule XV, §6 (A).
- ⁶³ *Id.* at §6 (B).
- ⁶⁴ *Id.* at §4.
- ⁶⁵ *Id.* at §6 (C).
- ⁶⁶ *Id.* at §6 (D).
- ⁶⁷ *Id.* at §1.
- ⁶⁸ An Act to Develop Exports as a Key Towards the Achievement of the National Goals Towards the Year 2000 [EXPORT DEVELOPMENT ACT OF 1994], §16 (d) (1994).
- ⁶⁹ *Supra* note 57, Part VII, Rule XVIII, §1.
- ⁷⁰ *Supra* note 57, Part VII, Rule XV, §6 (F).
- ⁷¹ An Act Accelerating the Conversion of Military Reservations into Other Productive Uses, Creating the Bases Conversion and Development Authority for the Purpose, Providing Funds Therefor and for Other Purposes, Republic Act No. 7227 [BASES CONVERSION AND DEVELOPMENT ACT OF 1992], as amended by Republic Act No. 9400, §12 (1992).
- ⁷² Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic Zone and Freeport Zone and the Subic Bay Metropolitan Authority under Republic Act No. 7227, Otherwise Known as the ‘‘Bases Conversion and Development Authority Act of 1992’’, Chapter III, §17 (1992).
- ⁷³ *Id.* at Chapter V, §43.
- ⁷⁴ *Id.* at §57.
- ⁷⁵ *Id.* at §45.
- ⁷⁶ *Supra* note 44, Article 78 (a).
- ⁷⁷ EXPORT DEVELOPMENT ACT OF 1994, §16 (d).
- ⁷⁸ *Supra* note 57, Part VII, Rule XVIII, §1.
- ⁷⁹ BASES CONVERSION AND DEVELOPMENT ACT OF 1992, as amended by Republic Act No. 9400, §15-15-C.
- ⁸⁰ Rules and Regulations Implementing Republic Act No. 9593, Otherwise Known as the Tourism Act of 2009, Chapter II, §76 (2009).
- ⁸¹ *Id.* at Subchapter V-A, §86 (a).
- ⁸² *Id.* at §86 (b).
- ⁸³ *Id.* at §86 (c).
- ⁸⁴ *Id.* at §86 (d).
- ⁸⁵ *Id.* at §86 (e).

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- ⁸⁶ *Supra* note 80, §86 (f).
- ⁸⁷ *Id.* at §87 (a).
- ⁸⁸ *Id.* at §87 (b).
- ⁸⁹ *Id.* at §87 (c).
- ⁹⁰ *Id.* at §87 (e).
- ⁹¹ Department of Energy, Department of Energy Circular No. DC2009-05-008, Rules and Regulations Implementing Republic Act No. 9513, §18 (2009).
- ⁹² An Act Promoting the Development, Utilization and Commercialization of Renewable Resources and for Other Purposes [Renewable Energy Act of 2008], Republic Act No. 9513, §15 (a) (2009).
- ⁹³ *Id.* at §15 (e).
- ⁹⁴ *Id.* at §15 (f).
- ⁹⁵ *Id.* at §15 (b).
- ⁹⁶ *Id.* at §15 (c).
- ⁹⁷ *Id.* at §15 (d).
- ⁹⁸ Renewable Energy Act of 2008, §15 (i).
- ⁹⁹ *Id.* at §15 (j).
- ¹⁰⁰ 1987 CONSTITUTION, Article XIII, §2.
- ¹⁰¹ 1987 CONSTITUTION, Article XIII, §10.
- ¹⁰² 1987 CONSTITUTION, Article XIII, §11.
- ¹⁰³ 1987 CONSTITUTION, Article XIII, §14.
- ¹⁰⁴ Office of the President, Executive Order No. 65, series of 2018, Eleventh Negative List (2018).
- ¹⁰⁵ An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation [PHILIPPINE MINING ACT OF 1995], Republic Act No. 7942, §3 (1995).
- ¹⁰⁶ *Supra* note 104.
- ¹⁰⁷ An Act Creating a People’s Small-Scale Mining Program and for Other Purposes [PEOPLE’S SMALL-SCALE MINING ACT OF 1991], Republic Act No. 7076, §3 (1991).
- ¹⁰⁸ An Act Providing for the Regulation of the Organization and Operation of Banks, Quasi-Banks, Trust Entities and for Other Purposes [THE GENERAL BANKING LAW OF 2000], Republic Act No. 8791, §11 (2000).
- ¹⁰⁹ An Act Providing for the Creation, Organization and Operation of Rural Banks, and for Other Purposes [RURAL ACT OF 1992], Republic Act No. 7353, as amended by Republic Act No. 10574, §4 (1992).
- ¹¹⁰ An Act Providing for the Regulation of the Organization and Operations of Thrift Banks, and for Other Purposes [THRIFT BANKS ACT OF 1995], Republic Act No. 7906, §8 (1995).
- ¹¹¹ Government Procurement Policy Board, Adoption of Foreign Equity Requirement Under Executive Order No. 65. S. 2018 and Amendment of the Relevant Provisions of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184, Resolution No. 06-2019, §23.4.2.1 (2019).
- ¹¹² An Act Liberalizing the Retail Trade Business, Repealing of the Purpose Republic Act No. 1180, as Amended, and for Other Purposes [RETAIL TRADE LIBERALIZATION ACT OF 2000], Republic Act No. 8762, §5 (2000).
- ¹¹³ Securities and Exchange Commission, SEC-OGC Opinion No. 14-16 (2016).
- ¹¹⁴ An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes [TAX REFORM ACT OF 1997], Republic Act No. 8424, as Amended by Republic Act No. 10963, §236 (1997).
- ¹¹⁵ *Id.* at §232.
- ¹¹⁶ *Id.* at §233.
- ¹¹⁷ *Id.* at §238.
- ¹¹⁸ Department of Justice, Department of Foreign Affairs, Department of Finance, Department of Labor and Employment, Department of Environment and Natural Resources, Bureau of Immigration, Professional Regulation Commission, and National Intelligence Coordinating Agency, Rules and Procedure Governing Foreign Nationals Intending to Work in the Philippines, Joint Memorandum Circular No. 1, Series of 2019, §2 (2019).
- ¹¹⁹ Department of Labor and Employment, Department of Justice, Bureau of Immigration, and Bureau of Internal Revenue, Guidelines on the Issuance of Work and Employment Permits to Foreign National, DOLE, DOJ, BI, and BIR Joint Guidelines No. 1, Series of 2019, §5 (2019).
- ¹²⁰ *Id.* at §6.
- ¹²¹ *Id.* at §7.
- ¹²² *Id.*
- ¹²³ *Supra* note 118.
- ¹²⁴ *Id.*

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- ¹²⁵ A Decree Instituting A Labor Code Thereby Revising and Consolidating Labor and Social Law to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE OF THE PHILIPPINES], Presidential Decree No. 442, as Amended, §3 (1972).
- ¹²⁶ *Id.* at §137.
- ¹²⁷ *Id.* at §85.
- ¹²⁸ *Id.* at §91.
- ¹²⁹ *Id.* at §87.
- ¹³⁰ *Id.* at §86.
- ¹³¹ LABOR CODE OF THE PHILIPPINES, §93.
- ¹³² *Id.* at §95.
- ¹³³ JOSELITA CHAN, BAR REVIEWER ON LABOR LAW 683 (4th ed. 2019).
- ¹³⁴ LABOR CODE OF THE PHILIPPINES, §297 (a).
- ¹³⁵ *Id.* at §297 (b).
- ¹³⁶ *Id.* at §297 (c).
- ¹³⁷ *Id.* at §297 (d).
- ¹³⁸ JOSELITA CHAN, p. 708.
- ¹³⁹ Morales vs. Metropolitan Bank and Trust Company, G.R. No. 182475 (2012).
- ¹⁴⁰ Anabe vs. Asian Construction, G.R. No. 183233 (2009).
- ¹⁴¹ Eastridge Golf Club, Inc. vs. Eastridge Golf Club, Inc. Labor Union – Super, G.R. No. 166760 (2008).
- ¹⁴² *Id.*
- ¹⁴³ LABOR CODE OF THE PHILIPPINES, §299.
- ¹⁴⁴ *Id.* at §300 (a).
- ¹⁴⁵ *Id.* at §300 (b).
- ¹⁴⁶ *Id.* at §106.
- ¹⁴⁷ Department of Labor and Employment, Department Order No. 174, Series of 2017 [D.O. No. 174, s. 2017], §8 (Mar. 16, 2017).
- ¹⁴⁸ *Id.* at §5.
- ¹⁴⁹ An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and for Other Purposes [INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES], Republic Act No. 8293, §2.
- ¹⁵⁰ INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES, §21.
- ¹⁵¹ *Id.* at §22.
- ¹⁵² *Pearl & Dean*, G.R. No. 148222.
- ¹⁵³ *Manzano v. CA*, G.R. No. 113388 (1997).
- ¹⁵⁴ INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES, §25.
- ¹⁵⁵ *Id.* at §54.
- ¹⁵⁶ *Id.* at §121.
- ¹⁵⁷ *Id.* at §123.
- ¹⁵⁸ *Id.* at §122.
- ¹⁵⁹ *Id.* at §145.
- ¹⁶⁰ *available at*
<https://www.ipophil.gov.ph/copyright/#:~:text=Copyright%20is%20the%20legal%20protection,literary%2C%20scientific%20and%20artistic%20domain.>
- ¹⁶¹ INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES, §172.
- ¹⁶² *Id.* at §173.
- ¹⁶³ *Id.* at §175.
- ¹⁶⁴ *Id.* at §198.
- ¹⁶⁵ *Id.* at §185.
- ¹⁶⁶ *Id.* at §112.
- ¹⁶⁷ INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES, §113.
- ¹⁶⁸ *Id.* at §118.
- ¹⁶⁹ *Ching vs. Salinas, Sr.*, G.R. No. 161295 (2005).
- ¹⁷⁰ INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES, §109.
- ¹⁷¹ *Id.* at §111.
- ¹⁷² *Id.* at §4.

¹⁷³ *Id.* at §92.

¹⁷⁴ INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES, as amended by Republic Act No. 9150, §112.

¹⁷⁵ *Id.* at §113.

¹⁷⁶ *Id.* at §118.

¹⁷⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994 TRIPS Agreement, art. 22.

¹⁷⁸ *Air Philippines Corporation v. Pennswell, Inc.*, G.R. No. 172835 (2007).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

