



FOREIGN INVESTMENTS IN THE PHILIPPINES

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LEAGUE OF LAWYERS WEBINAR

26 AUGUST 2021

NATIONAL PROFILE

- The Philippines is an archipelago with 7,107 islands
- Population - 109 Million people with **75 Million labor force**
- Comparative advantage – **English speaking, service-oriented people, ample natural resources and strategic location in an emerging market, the Asia-Pacific region**
- GDP total: PhP 47.744 trillion (USD1 trillion)
- GDP per capita: PhP 432,613.01 (USD9,061)
- Total Foreign Investment in Philippines
2018: USD83 billion (PhP3.988 trillion)
2019: USD88 billion (PhP4.229 trillion) with the top 3 foreign investors being Singapore, China and South Korea
- 3 largest trading partners: Japan, United States and China
Top 3 exports: Integrated circuits/ microassemblies, Computers, Computer parts

EUROPEAN INVESTMENTS

- In 2020, European companies have invested **EUR406.5 million** (PHP23.43 billion) in the Philippines.
- Main investors come from the **United Kingdom, Netherlands and France**
- On August 25, 2021, Lars Wittig, president of European Chamber of Commerce of the Philippines (ECCP), said the Philippines has become **most attractive to foreign investors in the ASEAN region** as it has managed well the CoVid-19 pandemic.
- The Philippine government urged European companies to invest more in **5 key sectors** —aerospace, automotive, copper, information technology and business process management (IT-BPM), and electronics sectors.

PRINCIPAL LAWS

1. Omnibus Investment Code (Republic Act No. 7042)
2. Foreign Investment Act (R. A. 8179)
3. Revised Corporation Code (R. A. 11232)
4. Securities Regulation Code (R. A. 8799)
5. Philippine Competition Law (R. A. 10667)
6. Policies of National Government Agencies/ Regulatory Bodies

PHILIPPINE REGULATORY BODIES

1. Board of Investments
2. Securities and Exchange Commission
3. Philippine Economic Zone Authority
4. Various Administrative Bodies

OPEN POLICY ON FOREIGN INVESTMENTS

- The Philippines is a friendly-nation. It has an open policy to all foreign investors.
- President Rodrigo Duterte issued Executive Order No. 65, Series of 2018 which established the 11th Foreign Investment Negative List
- The List opens all industries for foreign investments except nationalized industries (reserved for 100% domestic equity)

ACQUISITION OF REAL PROPERTY

1. A foreign investor may acquire a real property through a corporate vehicle in an industry which allows 40% foreign equity.
2. A foreign investor who is married to a Filipino citizen, by virtue of his/her bonafide union, may jointly acquire a real property and thus considered as conjugal ownership.

RESTRICTIONS IN THE NEGATIVE LIST

- A. Up to 25% foreign equity – private recruitment agencies, whether local or overseas employment, and contracts for the construction of defense-related structures.

- B. Up to 30% foreign equity - advertising

- C. Up to 40% foreign equity –
 - 1. Subject to applicable regulatory frameworks, contracts for the construction and repair of locally-funded public works, except:
 - Infrastructure/development projects covered in RA No. 7718; and
 - Projects which are foreign-funded or assisted and required to undergo international competitive bidding.

C. 40% FOREIGN EQUITY

1. Construction and repair of locally funded public works
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 residents, or for short-term high-level skills development that do not form part of the formal education system as defined in Sec. 20 of Batas Pambansa No. 232.

40% FOREIGN EQUITY

6. Culture, production, milling, processing, trading except retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and com 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.
10. Private radio communications network.

D. NO FOREIGN EQUITY

- Nationalized industries such as mass media, retail trade, practice of profession, small scale mining, cooperatives and the like are reserved 100% exclusively for domestic equity.

NEED FOR GOVERNMENT APPROVAL

- Except for projects and services in national public works, public defense and public order, foreign investors are liberally allowed to establish a business company or enter into a joint venture agreement in order to do business in the country.
- As long as foreign investors will observe the Negative List and secure compliances from regulatory bodies, they can do business in the Philippines.

TYPES OF FOREIGN INVESTMENTS

- The main sectors for investments are **information and communication, electricity, gas, steam and air conditioning supply, manufacturing, and administrative and support service activities.**
- The 2018 Negative List has further paved way for these foreign investments. In 2019, China and South Korea followed Singapore as the largest investors in the Philippines.

VEHICLES FOR FOREIGN INVESTMENTS

Foreign investments in the Philippines come into 2 vehicles:

1. Investments through the private corporation.
2. Investments through joint ventures with a local domestic corporation.

TAX ADVANTAGES

- The Philippines has 43 double taxation agreements which include Australia, Canada, China, Japan, France, Germany, EU States, United Kingdom and United States of America.
- The Philippines also provide several tax incentives and holidays to foreign investors which would locate their businesses at the Free Trade and Economic Zones.

TAX HOLIDAYS AND OTHER INCENTIVES

- Tax incentives are laid out depending on the types of industries and location of principal business operations. Higher incentives for those outside of urban areas.
- Generally, a foreign investor may have a 5-year income tax holiday for pioneer business, a special percentage tax in lieu of national and local taxation, and tax-free and duty-free importation for capital equipment, supplies, raw materials, spare parts and other articles, including finished goods, among others.
- They are also allowed to employ foreign nationals.
- Furthermore, they can be granted permanent resident status depending on the level of their investments.

CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES (CREATE) ACT

- Effective 1 July 2020, the corporate income tax (CIT) rate is reduced from **30%** to:
 - **20%** for domestic corporations **with net taxable income not exceeding US\$100,000** (PHP5 million) and with **total assets** (excluding land where the business entity's office, plant and equipment are situated) **not exceeding US\$2 million** (PHP 100 million)
 - **25%** for all other domestic corporations and resident foreign corporations (e.g., branches)
- Effective 1 January 2021, the CIT rate is reduced from **30% to 25% for nonresident foreign corporations.**
- Effective 1 July 2020 until 30 June 2023, the minimum CIT rate is reduced from 2% to **1%**. The minimum CIT is applicable to domestic and resident foreign corporations if the calculated minimum CIT is higher than the regular CIT amount.

CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES (CREATE) ACT

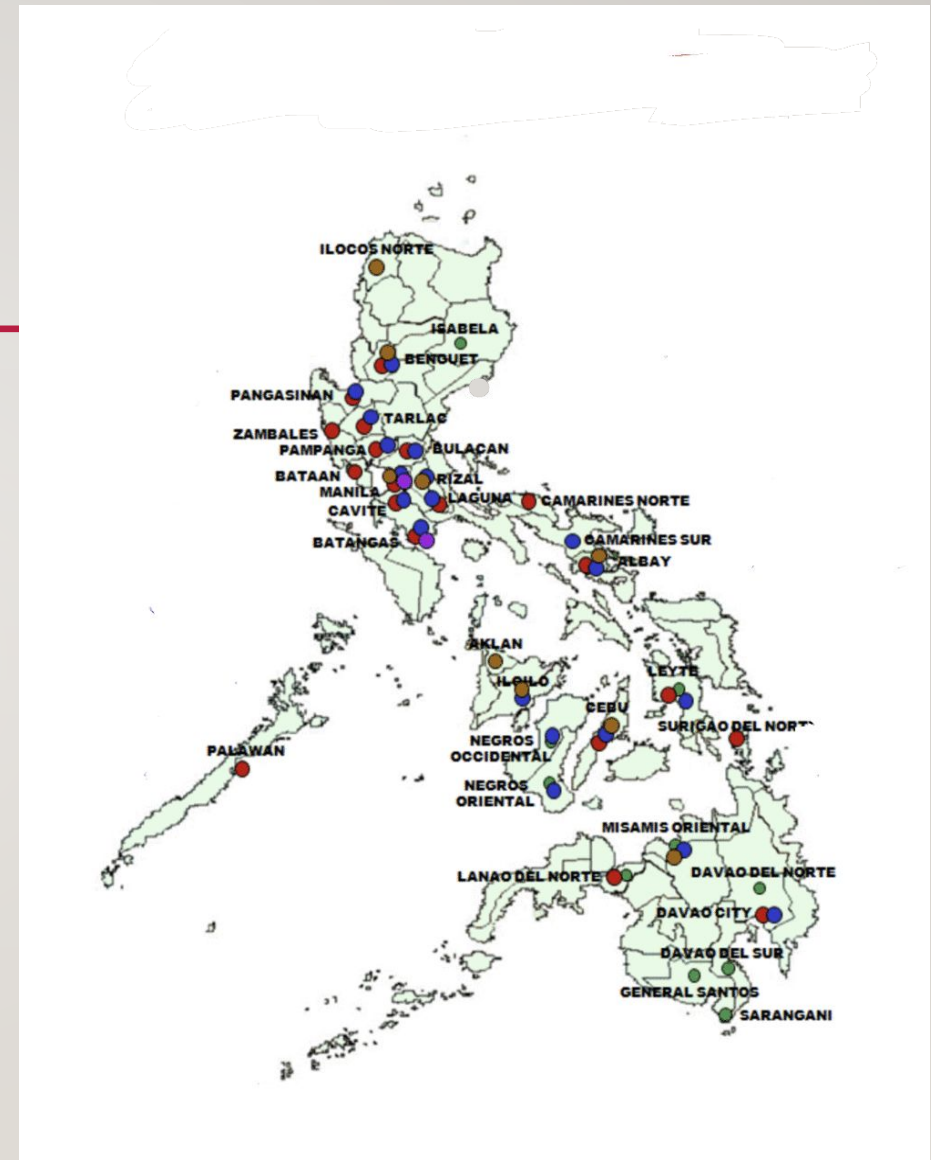
- Capital gains derived by foreign corporations from the sale of shares of stock not traded on the Philippine stock exchange are subject to a **flat tax rate of 15%** (previously 5% on the first US\$2,000 and 10% in excess thereof).
- Qualified export enterprises may be eligible for a four to seven-year income tax holiday (ITH), to be followed by a 10-year 5% special corporate income tax (SCIT) on gross income earned or 10-year enhanced deductions (ED).
- Qualified domestic market enterprises may be eligible for a four- to seven-year ITH, to be followed by a five-year ED.

FREE TRADE AND ECONOMIC ZONES

- There are **413 Operating Economic Zones in the Philippines**, the biggest of which may be found in Cagayan, Subic-Zambales, Clark, Pampanga, Bataan, Cavite and Zamboanga.
- Aside from manufacturing zones, those which do business in sunshine industries like Business Process Outsourcing enjoy incentives and tax holidays similar to free trade and economic zones.

OPERATING ECONOMIC ZONES

Classifications		
As of 31 December 2020		
Manufacturing	:	76
I.T. Center	:	236
I.T. Park	:	59
Tourism SEZ	:	17
Medical Tourism Park	:	1
Medical Tourism Center	:	2
Agro-Industrial EZ	:	22
TOTAL		413



WORK VISA AND ALIEN EMPLOYMENT PERMIT

- A foreign investor is required to secure a work visa from the Philippine Bureau of Immigration and an Alien Employment Permit (AEP) from the Department of Labor and Employment.
- Technically, the law requires that the applicant must offer a special set of knowledge, expertise and experience that no local national can do to justify the issuance of AEP and work visa.
- Administrative agencies however relaxed this interpretation such that even workers in offshore gaming operations were given their respective visas and AEPs.

FOREIGN EXCHANGE REGULATIONS

- The Philippines is guided the Anti-Money Laundering Act or by R.A. 9160 which checks the inflow and outflow of foreign investments.
- A foreign national can bring in less than US\$10,000.00 to the country. More than than, he must secure a clearance from the Anti-Money Laundering Council, which is led by the Central Bank of the Philippines.
- The law seeks to ensure that the country will not be a place for dirty money, while “hot money” is minimized in order not to adversely affect economic stability.

INVESTMENTS IN GOVERNMENT PROJECTS

Foreign investors may engage in contracts for the construction and repair of locally-funded public works, subject to applicable regulatory frameworks, except:

- Infrastructure/development projects covered under RA No. 7718; and
- Projects which are foreign-funded or assisted and required to undergo international competitive bidding.

SAFEGUARDS AND PROTECTION FRAMEWORKS

- The Philippines gives ample protection to foreign investment pursuant to the 1987 Constitution, Omnibus Investment Code and the Foreign Investment Act, as amended.
- The Public-Private Partnership Act (R.A. 8975) prohibits regular trial courts, except the Supreme Court, to issue temporary restraining orders, preliminary injunction and preliminary mandatory injunctions against all infrastructure projects which involve the Philippine national government. This law allows smooth implementation of projects even if there are disputes or misunderstanding between the parties.

FOREIGN INVESTMENT TREATIES

The Philippines has 40 bilateral and international investment agreements which provide protection measures and infrastructure for foreign investments.

INVESTMENT POLICY AND LAW REFORMS

- The Ease of Doing Business and Efficient Government Service Delivery Act (**EDB Act**) or R.A. 11032 was enacted which introduced a series of facilitative and commercially practical reforms such as:
 - introduction of standardised deadlines for government transactions;
 - creation of a single business application form;
 - automation of business permits processing; and
 - establishment of a central business databank.
- Established the Anti-Red Tape Authority (**ARTA**), which is mandated to simplify, fast-track and do away with red tape in the process of doing business in the country. It has helped facilitate the timely approval of permits and licenses, even the visas of foreign nationals seeking to work or do business in the country.

TIPS FOR FOREIGN INVESTORS

- Foreign investors must consider **a special product or service together with their capital and their competitive advantage in specific industries** before investing in the country. It is best that they pursue some **exploratory mission/s and engage a business consultant and legal team** in order to map out the way for their business undertakings.
- Foreign investors should consider the many **comparative advantages** of the Philippines such as **English-speaking, young and well-skilled workforce, ample natural resources, strong cultural proximity to the United States of America, exposure to an emerging market, and a geographical location in a dynamic Asia-Pacific region.**

Come and visit us soon!

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