THE 2020 PHILIPPINE INVESTMENT GUIDE

OCAMPO & SURALVO
LAW OFFICES

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I. THE PHILIPPINE ECONOMY ON A GROWTH TRAJECTORY

The Philippines has maintained its position as one of the fastest-growing economies in Southeast Asia in recent years.

The country's gross domestic product ("**GDP**") has sustained average annual growth of 6.3% between 2010-2018 from an average of 4.5% between 2000-2009. The country's GDP growth rate is projected to fall in 2020 due to the effects of the COVID-19 measures, but it is also expected to recover rapidly in 2021 with some analysts expecting the GDP growth to reach as high as 9.4%. As of April 2020, the International Monetary Fund expected GDP growth for the Philippines to be 0.6% in 2020 and 7.6% in 2021.

It is hoped that high GDP growth, rising tax collections, and substantial investments in infrastructure will allow the country to broaden the middle class and pull millions of Filipinos across the poverty line.

As of early 2020, the Philippines has received stable and positive credit ratings from Standard & Poor's (BBB+), Moody's (Baa2), and Fitch (BBB).

Energy

Investment in the energy and power sector is one of the preferred activities for investment under the Philippines' 2017 Investment Priorities Plan ("**IPP**").

In recent years, the Philippines has seen a steady increase in electricity consumption. As of May 2020,it was found that electricity consumption increased from 99.765MWh in 2018 to 106.041MWh in 2019. The Philippines' total installed capacity grew from 23,815 MW in 2018 to 25,531 MW in 2019.
In 2019, the Energy Virtual One-Stop Shop ("**EVOSS**") Act was passed into law, followed by its implementing rules. Under the law, it shall be easier for prospective power generation, transmission, or distribution companies to apply, monitor and receive all the necessary permits and make the corresponding payments, through the online platform, EVOSS. The law is expected to encourage more

energy firms to invest in the country and help reduce power rates. As of this writing, the EVOSS platform has yet to be implemented.

Infrastructure

Under its "Build-Build-Build" Program, the government plans to increase infrastructure spending to 7.4% of GDP by 2022. Public spending on infrastructure amounted to PHP881.7 billion in 2019. According to the latest Department of Budget Management data, the national government's infrastructure and capital outlays rose by 9.7% in 2019.

With the ramped-up spending on infrastructure projects and the anticipation of upcoming large-scale infrastructure projects, the country was able to see a substantial increase in investments into the construction industry. A significant development in the infrastructure industry in 2020 is the recent approval by the National Economic and Development Authority of the Metro Rail Transit 4, Edsa Greenways Project, and 6 other new projects worth PHP547.6 billion. The approval of these projects is expected to create more jobs and to improve connectivity between areas in the Philippines.

Mining

The Philippines is one of the top 5mineral-rich countries in the world for gold, nickel, copper and chromite.

It has an estimated USD840 billion worth of untapped mineral wealth and 9 million hectares of land with high mineral potential.

The Philippines has a total land area of 30 million hectares, out of this, 9 million hectares have been identified as having high mineral potential.
As of May 2020, the Philippines has 50 metallic mines, 54 non-metallic mines, 5 processing plants and 3,389 small quarries and sand & gravel operations in operation.

In 2019, the Philippines exported a total of USD4.38billion worth of metallic and non-metallic minerals and mineral products. Gold, nickel, and copper were the country's primary mineral commodities generating a total of PHP47.36billion, PHP63.71billion, and PHP18.46billion respectively, of products produced in 2019. These mineral products were mostly exported to Japan, Australia, Canada, and China.

As of May 2020, mining companies have committed PHP358.22 billion and PHP3.99 billion for the implementation of approved plans, programs, projects and activities under the Environmental Protection and Enhancement Program and Final Mine Rehabilitation and/or Decommissioning Plan, respectively.

Business Processing Outsourcing ("BPO")

The BPO industry is a major contributor to Philippine economic

growth. According to the World Bank, earnings from BPO services as of June 2018 amounted to USD23.8 billion. Based on the 2022 Roadmap of the IT & Business Processing Association of the Philippines ("**IBPAP**"), the industry is expected to generate 1.8 million direct jobs, and USD40 billion in revenues by 2022.

Manufacturing

The manufacturing industry is currently one of the best-performing segments not only in the Philippines, but in Southeast Asia as a whole. Compared to other countries however, the Philippines has a distinct advantage for its relatively low-cost yet highly educated labor force.

Agriculture

In the fourth quarter of 2019, agriculture inched up by 0.4% percent, as crops, poultry and fisheries posted increases in production. Mainly due to the El Nino phenomenon in 2019, the World Bank projects that the agriculture sector is not expected to significantly recover in 2019. Further, in the medium term, agricultural growth will continue to be hampered by the sector's unresolved productivity challenges and vulnerability to weather-related shocks.

For the first quarter of 2020, agriculture posted a 1.2% decline with crops and fisheries contributing to the contraction for the quarter. However, livestock and poultry recorded increases in production. Crop production decreased by 2.1% during the quarter while livestock inched up by 0.5% in output. The production of poultry was 3.9% higher in the first3 months of 2020; while fisheries dropped 5.2% dropped during the first quarter of 2020. Based on the current prices, the value of agricultural production amounted to PHP441.2 billion, up by 3.4% from last year's level.

Under new leadership, the Department of Agriculture aims to double the income of farmers and fisherfolks in the next 5 years, through its "New Thinking" approach. It is also in the process of developing the "Agriculture 4.0" program through which the farming and agribusiness would be digitalized.

II. FOREIGN INVESTMENTS

Foreign investments are highly encouraged in the Philippines.

It is a declared state policy to attract, promote, and welcome productive investments from foreign individuals and corporations in activities which significantly contribute to national industrialization and socioeconomic development, to the extent the foreign investment is allowed by the Constitution and relevant laws.

Within this welcoming investment environment, investors are entitled to various basic rights including: (1) the right to repatriation of investment; (2) the right to remittance of earnings; and (3) freedom from expropriation (except for public use or in the interest of national welfare and defense and upon payment of just compensation).

Certain areas of the economy are reserved to Filipinos or corporations controlled by Filipinos. The Foreign Investment Negative List("**FINL**") summarizes the limitations imposed on foreign ownership of equity in these businesses. The Foreign Investments Act ("**FIA**") and the Anti-Dummy Law apply certain restrictions on the participation of foreign investors and foreign nationals in the governance and management of nationalized businesses.

The Philippines provides fiscal and non-fiscal incentives to encourage foreign investments in the Philippines. The 2017 IPP sets forth the government's preferred activities for investments, which may be registered for investments incentives under the Omnibus Investment Code of 1987. Thus:

TABLE 1. THE 2017 IPP PREFERRED AREAS OF INVESTMENT

I. Preferred List of Activities

1. **All Qualified Manufacturing Activities Including Agro-Processing:**
    a. Industrial goods;
    b. Processing of agricultural and fishery products (including Halal and Kosher food) into:
        i. Semi-finished/intermediate goods for use as inputs in the production of other goods; or
        ii. Finished products or consumer goods for final consumption;
    c. Modular housing components; and
    d. Machinery and equipment, parts, and components.

*Except for modernization projects, only projects located outside Metro Manila may qualify for registration.

2. **Agriculture, Fishery, and Forestry:**
    a. Commercial production;
    b. Production of seeds and seedlings;
    c. Establishment of nurseries and hatcheries;
    d. Support services and infrastructures, such as:
        i. Facilities for drying;
        ii. Cold chain storage;
        iii. Blast freezing;
        iv. Bulk handling and storage;
        v. Harvesting, plowing, and spraying/dusting;
        vi. Packing houses;
        vii. Trading centers;
        viii. Ice plants in less developed areas;
        ix. AAA slaughterhouse; and
        x. AAA dressing plant.

*Except for modernization projects, only projects located outside Metro Manila may qualify for registration. Modernization projects include those for agricultural support services and infrastructure only.

3. **Strategic Services:**
    a. Integrated circuit design;
    b. Creative industries/knowledge-based services;
    c. Maintenance, repair and overhaul of aircraft;

    d. Charging or refueling stations for alternative energy vehicles;
    e. Industrial waste treatment;
    f. Telecommunications; and
    g. State-of-the-art Engineering, Procurement and Construction.

4. **Healthcare Services including Drug Rehabilitation Centers;**
5. **Mass Housing;**
6. **Infrastructure and Logistics including Local Government Units-Public Private Partnerships;**
7. **Innovation drivers;**
8. **Inclusive Business Models;**
9. **Environment or Climate Change related projects; and**
10. **Energy.**

II. Export Activities

1. **Production and manufacture of export products;**
2. **Services exports; and**
3. **Activities in support of exporters.**

III. Special Laws

1. **Industrial tree planting;**
2. **Mining (limited to capital equipment incentive);**
3. **Publication or printing of books/textbooks;**
4. **Refining, storage, marketing, and distribution of petroleum products;**
5. **Rehabilitation, self-development, and self-reliance of persons with disability;**
6. **Renewable Energy; and**
7. **Tourism.**

IV. Autonomous Region of Muslim Mindanao ("ARMM") List

1. **Export activities;**
2. **Agriculture, agribusiness/aquaculture, and fishery;**
3. **Basic industries;**
4. **Infrastructure and services;**
5. **Industrial service facilities;**
6. **Engineering industries;**
7. **Logistics;**
8. **Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area trade and investment enterprises;**
9. **Tourism;**
10. **Health and Education Services and Facilities;**
11. **Halal Industry;**
12. **Banking and Non-Bank Financial Institutions and Facilities; and**
13. **Energy.**

A. Foreign Equity and Participation

Foreign investment is permissible in all areas of investment except in economic activities where the Philippine Constitution or existing laws prohibit or limit foreign equity to a specific percentage.

1. Foreign Investment Negative List

As a general rule, foreign investors may own up to 100% equity in export and domestic market enterprises, except for areas included in the FINL.

The FINL delineates:

- Areas where foreign equity is prohibited or limited by mandate of the Constitution and specific laws (List A); and
- Areas where foreign ownership is limited for security, defense, health, and moral reasons as well as to protect small- and medium-scale enterprises (List B).

List A may be amended any time to reflect changes in the law on foreign equity participation in any specific area of economic activity. Amendments to List B may be not be made more often than once every 2 years. The current FINL, promulgated on 29 October 2018, is set forth in Table 2.

TABLE 2. ELEVENTH REGULAR FOREIGN INVESTMENT NEGATIVE LIST
[Promulgated under Executive Order No. 65 on October 29, 2018]

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

NO FOREIGN EQUITY ALLOWED

1. Mass media except recording and internet business;
2. Practice of professions, including:
   a. Radiologic and x-ray technology;
   b. Criminology;
   c. Law; and
   d. Marine Deck Officers and Marine Engine Officers.
3. Retail trade enterprises with paid-up capital of less than USD2,500,000.00;
4. Cooperatives;
5. Organization and operation of private detective, watchmen or security guard 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 25% FOREIGN EQUITY

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

UP TO 30% FOREIGN EQUITY

1. Advertising

UP TO 40% FOREIGN EQUITY

1. Subject to applicable regulatory frameworks, contracts for construction of locally-funded public works, except:
   a. Infrastructure/development projects covered in RANo. 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 residents, or for short-term high-level skills development that do not form part of the formal educational 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 ENTERPRISE

UP TO 40% FOREIGN EQUITY

1. Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police 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. Certain ingredients used in making explosives; and
    f. Telescopic sights, sniper scope, and other similar devices.
2. Manufacture, repair, storage, and/or distribution of products requiring Department of National Defense ("DND") clearance:
    a. Guns and ammunition for warfare;
    b. Military ordinance 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 system;
    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.
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 the Philippine Amusement and Gaming Corporation;
6. Domestic market enterprises with paid-in equity capital of less than the equivalent of USD200,000.00; and
7. Domestic market enterprises which involve advanced technology or employ at least 50 direct employees with paid-in equity capital of less than the equivalent of USD100,000.00.

ANNEX ON PROFESSIONS

A. Foreigners are allowed to practice the following professions in the Philippines provided that their home country allows Filipinos to be admitted to the practice of these professions:

1. Accountancy;
2. Aeronautical engineering;
3. Agricultural and biosystems engineering;
4. Agriculture;
5. Architecture;
6. Chemical engineering;
7. Chemistry;
8. Civil engineering;
9. Customs brokers;
10. Dentistry;
11. Electrical engineering;
12. Electronics engineering;
13. Electronics technician;
14. Environmental planning;
15. Fisheries;
16. Forestry;
17. Geodetic engineering;
18. Geology;
19. Guidance and counseling;
20. Interior design;
21. Landscape architecture;
22. Librarianship;
23. Master plumbing;
24. Mechanical engineering;
25. Medical technology;
26. Medicine;
27. Metallurgical engineering;
28. Midwifery;
29. Mining engineering;
30. Naval architecture;
31. Nursing;
32. Nutrition and dietetics;
33. Optometry;
34. Pharmacy;
35. Physical and occupational therapy;
36. Psychology;
37. Respiratory therapy;
38. Sanitary engineering;
39. Social work;
40. Teaching at elementary and secondary levels;
41. Veterinary medicine; and
42. Other professions as may be provided by law or by treaty where the Philippines is a party.

B. Corporate practice is allowed in the following professions, subject to the requirements and conditions under the pertinent professional regulatory law:

1. Aeronautical engineering;
2. Agricultural and biosystems engineering;
3. Architecture;
4. Chemistry;
5. Electronics engineering;
6. Environmental planning;
7. Forestry;
8. Guidance and counseling;
9. Interior design;
10. Landscape architecture;
11. Naval architecture;
12. Psychology;
13. Real estate service (real estate consultant, real estate appraiser, real estate assessor, real estate broker and real estate salesperson);
14. Sanitary engineering; and
15. Social work.

2. Anti-Dummy Law

The Philippine Constitution and laws impose caps on foreign equity ownership in various business activities (See Table 2). The Anti-Dummy Law prohibits and penalizes acts that violate foreign ownership restrictions. Among those prohibited are: allowing the use of one's name or citizenship to evade citizenship requirements for the exercise of a right, franchise or privilege, the simulation of minimum capital stock, and other acts deemed tantamount to the unlawful use, exploitation or enjoyment of a right, franchise, privilege, property or business which has been expressly reserved to Filipino citizens. Under the Anti-Dummy Law, a foreigner cannot be elected to a management position of a domestic corporation engaged in nationalized or partially nationalized activities. They may, however, be elected as members of the Board of Directors of the corporation in proportion to their equity participation (i.e. not more than the allowable foreign participation). Any person who violates the Anti-Dummy Law may be punished by imprisonment for not less than 5 nor more than 15 years, and by a fine in an amount not less than PHP5,000.00.

Badges of "dummy status" have been identified by the Department of Justice as follows: (1) if the foreign investor provides practically all the funds for the joint investment undertaken by the Filipino businessmen and their foreign partner; (2) if the foreign investors undertake to provide practically all the technological support for the joint venture ("**JV**"); or (3) if the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies. In the landmark case of *Roy III vs Herbosa (G.R. No. 207246, 2016 and 2017 En Banc),* the Supreme Court categorically ruled that in order for a corporation to comply with the nationality restrictions, full Filipino beneficial ownership of 60% of the outstanding capital stock of the corporation, coupled with 60% of the voting rights owned by Filipinos is required.

3. Land Ownership and Lease

Ownership limitation. The Philippine Constitution limits the ownership of lands to Philippine nationals or corporations which are at least 60% Filipino-owned.

Lease of private lands to foreigners or foreign-owned corporations. Nevertheless, foreigners or foreign-owned corporations are allowed to enter into long-term leases of private lands.

*Republic Act ("**RA**") No. 7652 (Investors' Lease Act).* If the lease of private lands by foreign investors is made under the Investors' Lease Act for the establishment of industrial estates, factories, assembly/processing plants, agro-industrial enterprises, and other similar priority productive endeavors, the lease term may be for a maximum period of 50 years, renewable once for a period of not more than 25 years. The law allows such long-term lease of private lands subject to certain conditions, namely that:

- The leased area shall be used solely for the purpose of the investment upon the mutual agreement of the parties; and
- The leased premises shall comprise such area as may reasonably be required for the purpose of the investment subject, however, to the Comprehensive Agrarian Reform Law and the Local Government Code.

The leasehold right acquired under long-term lease contracts may be sold, transferred, or assigned. However, when the buyer, transferee, or assignee is a foreigner or a foreign-owned enterprise, the conditions and limitations in respect to the use of the leased property as provided for under the law shall continue to apply.

4. Foreign Exchange Regulations

For Profit Remittance and Capital Repatriation. In general, there is no need for inward foreign direct investments to be registered with the BSP. Registration is necessary where the foreign exchange to fund the repatriation of the investment or the remittance of profit or dividends is to be sourced from the Philippine banking system. Where the foreign exchange for such repatriation and remittance is to be sourced outside of the Philippine banking system, registration of such inward investment with the BSP is not required.

<u>For Foreign Loan Payments.</u> Foreign loans or borrowings must be registered with the BSP if foreign exchange will be purchased from the Philippine banking system in order to service payments for these loans. Where the foreign exchange for the loan payments will be sourced outside the banking system (e.g., from foreign exchange dealers or money changers), registration of the foreign loan is not required. Last 22 December 2017, the BSP issued Circular No. 984, dispensing with the prior BSP approval requirement for purely private sector loans (i.e. those without guarantee from/exposure of any public-sector entity). The Circular took effect on 15 January 2018.

For Payment of Imports. Authorized Agent Banks and their subsidiary/affiliate foreign exchange corporations may sell foreign exchange to service payments for imports, without need of prior BSP approval (but subject to certain reportorial requirements), under any of the arrangements prescribed by the BSP. These arrangements include letters of credit, documents against payment, documents against acceptance, direct remittance, advance payment, and open account arrangements including intercompany netting arrangement among non-bank related parties.

5. Financing and Capital Raising

Philippine banks are generally allowed to lend to residents without need of prior BSP approval, subject only to the credit exposure limits prescribed under the Manual of Regulations for Banks. Peso financing to non-residents may require prior BSP approval for use in projects, or for purposes, that are legitimate and not contrary to laws, regulations, public order, public health, public safety or public policy. In such case, the creditor bank shall submit to the BSP International Operations Department its application for approval of proposed peso financing program to non-residents (Sec. 31.4, Manual of Regulations on Foreign Exchange Transactions).

Security may be created through a mortgage over real properties and chattels, a pledge over movable property, or an assignment by way of security of certain intangible assets, rights and interests in existing contracts or financial assets. Certain formalities are required for the

perfection of security. A mortgage over real properties should appear in a public instrument (i.e. notarized) and must be registered with the Registry of Deeds in order to bind third parties. Security interest over movable properties should be covered by a written agreement signed by parties and must be perfected in accordance with the requirements under RA No. 11057, otherwise known as the “Personal Property Security Act”; i.e., through any of the following means: (a) registration of a notice with the registry, (b) possession of the collateral by the secured creditor, or (c) control of investment property or deposit account.

Issuance of securities is regulated under the Securities Regulation Code (“**SRC**”). The SRC was enacted in 2000 to promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, and minimize insider trading and other devices that create distortions in the free market.

Securities may not be sold or offered for sale or distribution within the Philippines without the same being registered and approved by the SEC. Securities include, among others, shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities, investment contracts, fractional undivided interests in oil, gas or other mineral rights, derivatives, certificates of assignments, certificates of participation, proprietary or non-proprietary membership certificates in corporations.

Certain securities and transactions are exempt from the registration requirement. Exempt securities are those issued by the Philippine government, by a foreign government with which the Philippines maintains diplomatic relations, or by entities regulated by other government authority other than the SEC. Exempt transactions include, among others, private placements (i.e., sale of securities by an issuer to fewer than 20 persons in the Philippines during any 12-month period), and sale of securities to qualified buyers. Qualified buyers include banks, registered investment houses, insurance companies, pension or retirement plan maintained by the Philippine government or managed by a bank, investment company, or such other person as the SEC may by rule determine. The SRC 2015 Implementing Rules and Regulations (“**SRC Rules**”) has further liberalized capital raising by expanding the list of qualified buyers, and easing registration requirements by introducing shelf registration. Under the SRC Rules, an issuer may now register for the issuance of securities in tranches (i.e., for multiple, and future offerings), which allows companies to raise capital without separate registration for each offering, and may use the registration statement approved by the SEC to offer securities for up to 3 years after the effective date of the registration statement.

In the Philippines, the trading platform for fixed income government and corporate securities is operated by the Philippine Dealing and Exchange Corp. (“**PDEx**”) while the Philippine Stock Exchange (“**PSE**”) operates the secondary market for equity securities. PDEx and PSE are both registered with the SEC as self-regulatory organizations, mandated to make and enforce its own rules, monitor and enforce compliance with securities laws and regulations, and enforce fair and ethical practices in the securities market.

B. Foreign Investment Vehicles

A foreign company wishing to establish a business presence in the Philippines may do so through the following investment vehicles:

- Branch;
- Subsidiary;
- Representative Office;
- Regional/Area Headquarters (“**RHQ**”); or
- Regional Operating Headquarters (“**ROHQ**”).

In choosing which vehicle to use, the investor must consider the activities to be undertaken by the entity. The conduct of revenue-generating activities would require setting up a branch or a subsidiary. If the foreign company is a multinational intending to provide qualifying services to its affiliates in the Asia Pacific region, it may establish an ROHQ. If the foreign company intends merely to undertake coordination or liaison functions but not income generation, it may establish a representative office or an RHQ.

To establish any of the investment vehicles in the Philippines, a foreign company must apply for registration and secure a license to do business from the Securities and Exchange Commission (“**SEC**”).

1. Branch

A branch is an extension of the personality of the foreign enterprise and has no juridical personality separate from its parent. It is the business of the head office that it carries out and from which it derives income from the Philippines as its host country.

If the branch office is considered a domestic market enterprise, the foreign parent must assign a minimum of USD200,000.00 as the capital of the branch. For an export market enterprise, the minimum required capital is PHP5,000.00.

The SEC fees to secure a license to do business as a branch are:

- Basic filing fee of 1% of the actual inward remittance of the corporation converted into Philippine currency but not less than PHP3,000.00; and
- Legal research fee (“**LRF**”) of 1% of the filing fee but not less than PHP10.00.

2. Subsidiary

Unlike a branch, the subsidiary has juridical personality separate and distinct from its owners. Thus, its shareholders are liable for the debts of the corporation only to the extent of their capital contribution. It is organized as a standard corporation under the RA No. 11232 or the Revised Corporation Code of the Philippines (“**RCC**”) (See Part III(A)(1) below).

If the activities to be undertaken by the subsidiary are not subject to nationality restrictions, then it may be wholly owned by non-Filipinos. Otherwise, it has to be organized with a qualified Philippine partner.

A subsidiary is organized as a domestic corporation, the formation of which is further detailed in Part III (A) below.

There is no minimum paid-up capital requirement for corporations with less than 40% foreign equity, unless otherwise specifically provided by special law. However:

- A corporation with more than 40% foreign equity and which is considered a domestic market enterprise has a minimum paid-up capital requirement of USD200,000.00.The minimum paid-up capital requirement is reduced to USD100,000.00 when:
  - the corporation’s activities involve advanced technology, or it employs at least 50 direct employees;
  - if the corporation is an export enterprise, the minimum paid-up capital is PHP5,000.00; and
  - in certain cases, a higher minimum paid-up capital is required by law (e.g., retail trade).

Setting up a subsidiary requires payment of the following SEC fees:

- Basic filing fee of 1/5 of 1% of the authorized capital stock or the subscribed capital stock, whichever is higher but not less than PHP2,000.00;
- LRF of 1% of the basic filing fee; and
- Other nominal fees.

3. Representative Office

Like a branch, a representative office has no separate personality and is only an extension of the foreign company it represents. Unlike a branch, however, it does not derive income from the Philippines and is fully subsidized by its head office. The usual activities of a representative office are dissemination of information, promotion of company products, and quality control of products.

In the course of the SEC application for a license to do business in the Philippines, the foreign company must show that it has inwardly remitted at least USD30,000.00 to cover the representative office expenses.

The following SEC fees must be paid for the processing of the license:

- Basic filing fee of 1/10 of 1% of the actual inward remittance of the corporation converted into Philippine currency but not less than PHP2,000.00 is required;
- LRF of 1% of the basic filing fee; and
- Other nominal fees.

4. Regional Headquarters

Multinational companies or foreign companies with business establishments in 2 or more countries have the option of setting up Regional Headquarters in the Philippines.

Regional/Area Headquarters

Multinational companies may establish an RHQ in the Philippines.

The purpose of an RHQ is limited to supervising, superintending, inspecting, and/or coordinating all of its subsidiaries, affiliates and branches in the Asia-Pacific region.

An RHQ is licensed by the SEC upon the favorable recommendation of the Board of Investments ("**BOI**").

An RHQ is a mere administrative branch and is not allowed to do business or derive any income from sources within the Philippines. Neither is it allowed to participate in any manner in the management of any subsidiary or branch that it might have in the Philippines.

Since an RHQ is not allowed to earn income from any source within the Philippines, its operations must be fully subsidized by way of inward remittances from its head office. For this purpose, the law requires an inward remittance of not less than USD50,000.00 a year or its equivalent in other acceptable foreign currency.

SEC filing fees are:

- Basic filing of PHP5,000.00 for each application to obtain a RHQ license; and
- LRF of 1% of the basic filing fee.

Regional Operating Headquarters

A foreign business entity may also set up an ROHQ in the Philippines to service its own affiliates, subsidiaries, or branches in the Philippines, in the Asia-Pacific region and other foreign markets. Unlike an RHQ, an ROHQ is allowed to derive income by

performing qualifying services to its affiliates, branches, or subsidiaries (such as general administration and planning, corporate finance advisory services, and business development).

An ROHQ needs to secure a license from the SEC, upon the favorable recommendation of the BOI. ROHQs of banking and financial institutions are required to secure licenses from the SEC and the Bangko Sentral ng Pilipinas ("**BSP**").

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

The applicant foreign company is required to initially remit at least USD200,000.00 or its equivalent in other acceptable foreign currency to cover its ROHQ operations in the Philippines.

The SEC filing fees are:

- Basic filing fee is 1% of the actual remittance but not less than 1% of the peso equivalent of USD200,000.00 at the time of remittance; and
- LRF of 1% of the basic filing fee.

III. SETTING UP OF BUSINESS IN THE PHILIPPINES

A. Business Organizations

The common legal structures available for setting up a business in the Philippines are: (1) corporations; (2) partnerships (general or limited); and (3) sole proprietorships.

1. Corporation

Among these legal structures, the corporation is predominantly used in the Philippines.

A corporation may be stock or non-stock. A corporation with capital stock divided into shares provides the protection of limited liability for shareholders, allows free transferability of investment units (shares of stock), and centralizes the exercise of management powers, among others.

In general, corporations shall be governed by RCC. There are special laws that govern special types of corporations in areas such as banking and insurance. The RCC introduced many changes that are intended to facilitate the ease of doing business in the country. Among the most notable changes are: the removal of the minimum number of incorporators and directors; the removal of the residency requirement for directors; the removal of the minimum capital stock (unless there is a special law that provides a minimum capitalization for corporations engaged in specific industries); the removal of the 50 years limit on the term of existence of corporations; and, the new provisions governing the formation of One Person Corporations (“**OPC**”), as discussed below.

Under the RCC, the following are the requirements for the formation of ordinary stock corporations:

- Any person, partnership, association, or corporation, singly or jointly with others but not more than 15, may organize a corporation for any lawful purpose or purposes;
- There is no minimum capital stock required, unless otherwise specified under special laws;
- The corporate name must not be confusing, deceptive, illegal, or identical or similar with an existing business or corporate name;
- Directors, who shall number not more than 15, must each own at least 1 share in the capital stock. If the corporation is one vested with public interest, such as listed companies, public companies, banks, quasi-banks, pawnshops, and companies engaged in money service, independent directors must constitute at least 20% of the composition of the board of directors; and
- The corporation must have the following corporate officers: a president who must also be a director, a treasurer who must be a resident of the Philippines, and a secretary who must be a resident and also a citizen of the Philippines.

A corporation acquires juridical personality upon the issuance of a Certificate of Incorporation by the SEC. Further registration may be required for entities wishing to undertake business activities requiring secondary licenses or permits to operate.

A corporation enjoys the right of succession and its legal existence is not affected by the death, withdrawal, insolvency, or other incapacity of its shareholders. The RCC now provides that a corporation shall have a perpetual term of existence unless the articles of incorporation ("**AOI**") provides otherwise. Corporations established prior to the RCC are also granted perpetual existence unless the corporation notifies the SEC that it elects to retain its specific corporate term indicated in its AOI.

A corporation may be dissolved voluntarily or involuntarily. A corporation is dissolved voluntarily through shortening its corporate term or by the Board of Directors and shareholders with SEC approval.

A corporation may be dissolved involuntarily by the SEC *motu proprio* or upon a verified complaint by any interested party. The following may be grounds for dissolution of the corporation:

- Non-use of corporate charter;
- Continuous inoperation for a period of at least 5 consecutive years;
- Upon receipt of a lawful court order dissolving the corporation;
- Upon a finding by final judgment that the corporation procured its incorporation through fraud;
- Upon a finding by final judgment that the corporation:
  - was created for the purpose of committing, concealing or aiding the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices;
  - committed or aided in the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices, of which the stockholders were aware; and
  - repeatedly or knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers, or employees.

One Person Corporation. The RCC now allows the formation of an OPC. The OPC is a corporation with a single stockholder who must be a natural person, trust, or an estate. The single stockholder shall be the sole director and president. The single stockholder

cannot act as corporate secretary but may be the self-appointed treasurer upon posting a bond with the SEC. A foreign natural person may put up an OPC, subject to the applicable capital requirement and constitutional and statutory restrictions on foreign participation in certain investment areas or activities.

Banks and quasi-banks, pre-need, trust, insurance, public and publicly-listed companies, and non-chartered government-owned and controlled corporations may not incorporate as an OPC. Additionally, a natural person who is licensed to practice a profession is not allowed to set up an OPC for purposes of practicing his profession.

Foreign Corporations or Equivalent Legal Entities. Foreign corporations may opt to register directly with the SEC as a branch, representative office, RHQ or ROHQ. It may also incorporate another corporation as a wholly- or partly owned subsidiary or acquire shares in a previously established corporation.

2. Partnerships

Under the Philippine Civil Code, partnerships are created when two or more persons, by contract, bind themselves to contribute money, property, or industry to a common fund with the intention of dividing the profits among themselves.

Like a corporation, a partnership has juridical personality separate from the people composing it. However, unlike in a corporation where shareholders are only liable to creditors to the extent of their capital contribution, partners may be held to personally answer to creditors for the debts of the partnership not sufficiently covered by partnership assets.

Mere agreement of the parties is sufficient to give a partnership juridical personality. It may also be constituted in any form except that:

- A public instrument is necessary where immovable property or real rights are contributed to the partnership; and
- Where the partnership capital is PHP3,000.00 or more, the partnership contract must appear in a public instrument, which must be recorded in the SEC.

3. Sole proprietorships

Sole proprietorships are businesses owned or managed by a single individual. Control of the business belongs only to the owner who is unrestrained by the formalities and requirements generally required of partnerships and corporations. This form of business organization however comes with the disadvantage of not having the limited liability protection provided in a corporation.

Sole proprietorships must be registered with the Department of Trade and Industry ("**DTI**").

B. Incorporation/Registration Requirements and Process

Foreign companies intending to do business in the Philippines are required to register with the SEC. Application for company registration or license to do business in the Philippines may now be submitted through the SEC's online Company Registration System ("**CRS**").The CRS was launched in November 2017 to streamline the registration of businesses operating in the Philippines.

1. Documentary Requirements

The documents required to be submitted to the SEC for purposes of incorporation or registration depend on the corporate vehicle that will be registered.

(a) Wholly-owned subsidiary

For the incorporation of a wholly-owned Philippine subsidiary, the following documents must be submitted with the SEC:

- Online reservation and approval of the corporate name;
- AOI which must contain the corporate name, primary and secondary purposes of the corporation, principal place of business, corporate term, names, nationalities, and residences of the incorporators, number of directors, amount of authorized capital stock of the corporation, the number off subscribed shares, and the name of the treasurer-in-trust of the corporation;
- By-Laws – this is signed by the incorporators and contains the manner by which the corporation will be governed, including the issuance and transfer of shares, conduct of the stockholders' and directors' meetings, election and replacement of directors, and election of officers.
- Treasurer's Affidavit;
- Joint Undertaking to Change Name; and
- FIA Form F-100 - FIA application for corporations with more than 40% foreign equity.

Company registration that is done through the SEC's CRS may accomplish the name reservation in the same online application form.The CRS may likewise automatically generate the draft of the charter documents (AOI and By-Laws), Treasurer's Affidavit, and FIA application.

(b) Branch Office/Representative Office

Application for a License to do Business in the Philippines as a branch or representative office requires submission of the following to the SEC:

- Online reservation and approval of the corporate name;
- FIA Application Form – F-103 for stock branch office, F-104 for stock representative office, or F-108 for non-stock branch/ representative office;
- Authenticated copy of the Board Resolution of the parent company authorizing the establishment of the branch or representative office in the Philippines, designating the Resident Agent to whom summons and other legal processes may be served in behalf of the foreign corporation, and stipulating that in the absence of such agent or upon cessation of its business in the Philippines, any summons or legal processes may be served to the SEC as if the same is made upon the corporation at its home office;
- Audited Financial Statements ("**AFS**") for the immediately preceding year at the time of filing of the application that is audited by an independent certified public accountant ("**CPA**") of the home country

of the foreign corporation, and authenticated before the Philippine consulate/ embassy. In case the AFS is not required in the home country of the foreign corporation, an authenticated unaudited financial statement as of the date not exceeding 1 year immediately prior to the filing of the application, may be submitted and must be accompanied by an authenticated certification signed under oath by an officer of a responsible regulatory institution or by the applicant's legal counsel that the applicant is not required to prepare and submit an AFS, with a citation of the law or regulation on which it is based;

- Compliance with financial ratios – A stock branch office is required to comply with a solvency ratio of 1:1, Liquidity Ratio of 1:1, and Debt to Equity Ratio of 3:1. Stock representative office, non-stock branch office, and non-stock representative office need to comply with a solvency ratio of 1:1;
- Notarized proof of Inward Remittance such as a bank certificate of inward remittance or credit advances;
- Affidavit of undertaking to change corporate name;
- Resident Agent's acceptance of appointment; and
- Endorsement or clearance from appropriate government agencies, if applicable – for entities that will engage in activities that require endorsement from relevant government authority prior to registration.

RHQ/ROHQ

Application for a License to do Business as RHQ or ROHQ requires the submission of the following documents to the SEC:

- Online reservation and approval of the corporate name;
- Application Form;
- Certification from the Philippine Consulate/Embassy or the Philippine Commercial Office or from the equivalent office of the Philippine DTI in the applicant's home country that the applicant foreign firm is an entity engaged in international trade with affiliates, subsidiaries or branch offices in the Asia Pacific Region and other foreign markets;
- Authenticated certification from the principal officer of the foreign entity to the effect that the said foreign entity has been authorized by its Board of Directors or governing body to establish its RHQ/ROHQ;
- Affidavit of undertaking to change corporate name;
- Endorsement of the BOI; and
- Endorsement/Clearance from appropriate government agencies, if applicable.

2. Registration with the Securities and Exchange Commission

In November 2017, the SEC launched the CRS, which is the full automation and online pre-processing of applications for the registration of corporations and partnerships, licensing of foreign corporations, amendments of the AOI and other corporate applications requiring SEC approval. Through the CRS, applicants are able to upload copies of its charter documents and other documentary requirements for evaluation and pre-processing. After evaluation and the pre-processing are completed, the applicant will be directed to pay the SEC filing fee and submit the hard copies to the SEC Main Office or to any of the SEC Satellite Offices. After submission, the SEC will issue the Certificate of Incorporation for wholly-owned subsidiaries, or a License to do Business in the Philippines for branch, representative office, RHQ, or ROHQ.

C. Post-Registration Requirements

After SEC registration, the new business must also register with other government agencies.

Some enterprises, by the nature of their operations, are required to secure special clearances, licenses, or permits from other government agencies such as the Department of Health-Food and Drugs Administration for food, cosmetics, chemicals and health-related businesses; the Department of Agriculture for certain businesses dealing with fisheries and aquatics; the Department of Labor and Employment ("**DOLE**")-Philippine Overseas Employment Administration for recruitment agencies for overseas placement; the Energy Regulatory Commission ("**ERC**") for power and energy; Philippine Economic Zone Authority ("**PEZA**") for qualified entities who desires to transact its business within any of the country's special economic zones ("**Ecozones**") and so on.

In general, the typical post-registration process would involve the following:

1. Tax registration

Businesses must register with the Bureau of Internal Revenue ("**BIR**") for purposes of national internal revenue tax compliance. Taxpayers must secure a taxpayer identification number ("**TIN**") for use on tax returns and filings. Books of accounts, invoices, and receipts must be registered with the appropriate BIR revenue district office before they are used by the taxpayer.

Under the National Internal Revenue Code ("**NIRC**"), all corporations, partnerships, or persons required by law to pay internal revenue taxes, and whose gross annual sales, earnings, receipts or output exceed PHP3,000,000.00 must have their books of account audited and examined yearly by independent CPAs.

2. Local Business Permits and Licenses

Permits and licenses must also be obtained from the local government units ("**LGU**") where the business is located. LGUs levy and collect taxes and other fees from businesses operating within their jurisdiction.

3. Registration under Employee Welfare and Related Laws

As employers, business enterprises must likewise comply with employee-welfare and related laws by undergoing registration with the appropriate government agencies and allowing regular remittance of contributions to the Social Security System ("**SSS**"), the Philippine Health Insurance Corporation ("PhilHealth"), and the Home Development and Mutual Fund ("**HDMF**").

4. Importer accreditation

Entities desiring to engage in, or whose operations involve the importation of goods into the Philippines must secure an accreditation as an Importer from the Bureau of Customs ("**BOC**").

D. Reportorial Requirements

General information sheet ("GIS"). The SEC requires all registered enterprises (including foreign corporations, e.g., branch offices, representative offices, RHQs, or ROHQs) to annually submit a GIS.

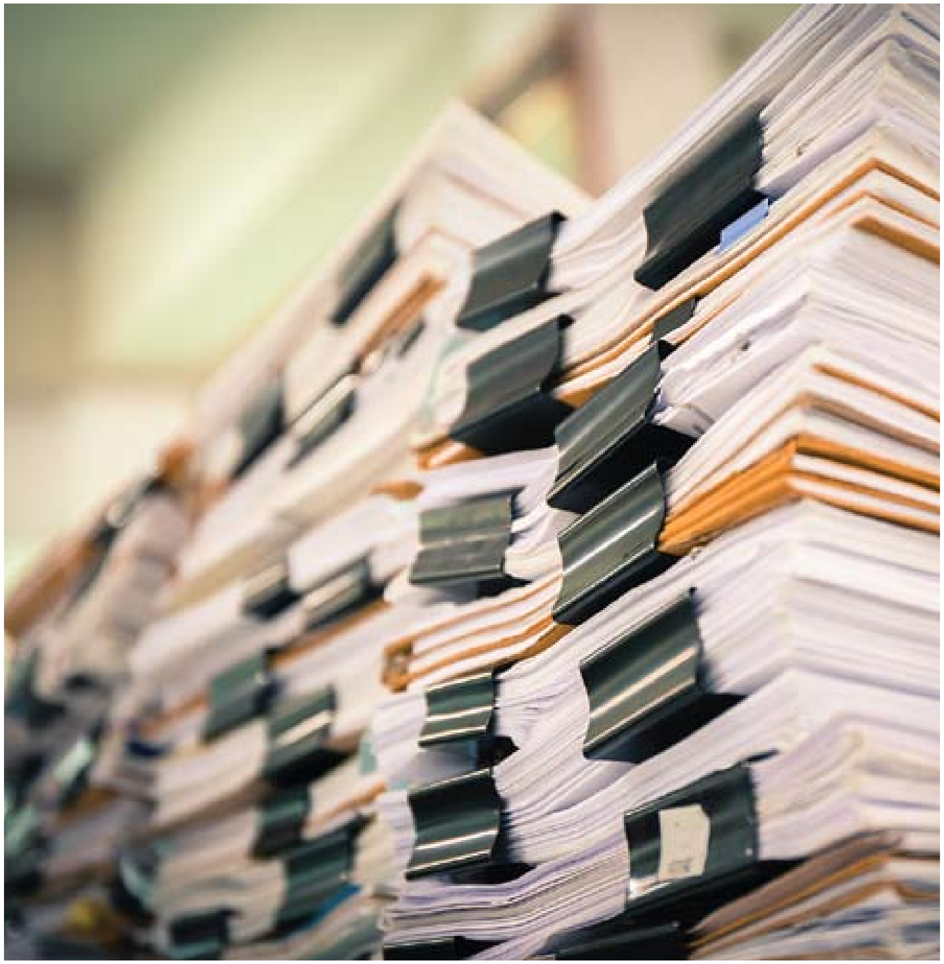
The period for filing the GIS is 30 days counted from (1) the date of the annual stockholder's meeting (in case of a domestic corporation); or (2) the anniversary date of the issuance of the certificate of registration/license (in case of ROHQs, RHQs, or branches and representative offices).

Financial statements. The SEC requires the annual submission of financial statements, which must be stamped "received" by the BIR. The filing period is within 120 days of the last day of the

fiscal year of the corporation. The annual financial statement must be audited by an independent CPA; provided that if the total assets or liabilities of the corporation are less than PHP600,000.00, the financial statement shall be certified under oath by the corporation's treasurer or chief financial officer.

Corporations vested with public interest must also submit: (1) a director or trustee compensation report; and (2) a director or trustee appraisal or performance report and the standards or criteria used to assess each director or trustee.

The SEC may place the corporation under delinquent status if it fails to comply with the reportorial requirements 3 times, consecutively or intermittently, within a period of 5 years.



IV. TAXATION

Taxation in the Philippines is divided between two levels of government— the national and the local.

The national government derives tax revenues from two main sources: the NIRC which was amended by RA No. 10963 or the Tax Reform for Acceleration and Inclusion (“**TRAIN**”),and the Tariff and Customs Code (“**TCC**”) as amended by RA No. 10863 or the Customs Modernization and Tariff Act. The NIRC imposes income taxes, estate and donor’s taxes, value-added tax (“**VAT**”), other percentage taxes, excise taxes, documentary stamp taxes (“**DST**”), and such other taxes as may be imposed and collected by the BIR. The TCC, administered by the BOC, imposes taxes and duties on exports and imports.

LGUs have the authority, under the Local Government Code, to levy:(1) business taxes for the privilege of engaging in business or occupation; (2) annual *ad valorem* taxes on real property; and (3) transfer taxes covering the sale, donation, barter, or other mode of transfer of real property.

A. Income Tax

The main direct tax levied on both individuals and corporations, whether resident or non-resident, by the NIRC is the income tax.

1. Corporations

Corporate Income Tax

In general, corporate income tax is imposed as follows:

- Domestic corporations established under the laws of the Philippines [including foreign-owned subsidiaries are taxed at 30% of net taxable income from worldwide sources.

- Resident foreign corporations, such as a branch, are taxed only on net income from Philippines sources at the same rate as a domestic corporation (30%).

- Generally, non-resident foreign corporations are taxed at 30% of the gross amount of Philippine-source income such as interests, dividends, rents, royalties, compensation, annuities, and emoluments. This tax is withheld at source.

Passive income (royalties, interest) received by domestic and resident foreign corporations are subject to various specified tax rates. The TRAIN increased the tax rate on the interest income derived by a domestic corporation from a depositary bank under the expanded foreign currency system from 7 ½% to 15%.
Cash and/or property dividends received by a domestic or resident foreign corporation from a domestic corporation (intercorporate dividends) are not taxable.

Moreover, there are special income tax rates for certain types of entities and income, including the following:

- RHQs are exempt from income tax;

- ROHQs are liable to 10% tax on their net taxable income;

- International carriers doing business in the Philippines are subject to 2.5% final tax on Gross Philippine Billings subject to exemption in cases where the home countries provide a similar tax exemption to Philippine carriers;

- Foreign Currency Deposit Units (“**FCDUs**”) and Offshore Banking Units (“**OBUs**”) are exempt from all taxes on income from foreign currency transactions with non-residents, other OBUs, local commercial banks, including branches of foreign banks authorized by the BSP to transact business with OBUs; and

- Interest income of FCDUs and OBUs from foreign currency loans granted to residents other than FCDUs and OBUs are subject only to a final tax of 10%.

Capital Gains Tax

Net capital gains realized by a domestic corporation during the taxable year from the sale, barter, exchange or other disposition of shares of stocks in a domestic corporation not traded in the stock exchange are subject to a final tax at a rate of 15%. For resident foreign corporation and non-resident foreign corporation sellers, net capital gains on the such disposition of shares of stocks in a domestic corporation not traded in the stock exchange are subject to a tax at the rate of 5% of the net capital gain not exceeding PHP100,000.00, and at the rate of 10% on the excess.

In addition, a final tax of 6% on the gross selling price or current fair market value, whichever is higher, is imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines.

Branch Profits Remittance Tax ("BPRT")

In general, any profit remitted by a branch to its head office is subject to a 15% BPRT. For this purpose, the law specifically excludes those activities which are registered with the PEZA.

The BPRT is based on the total profits applied or earmarked for remittance without any deduction for the tax component. The 15% BPRT may be reduced further under applicable tax treaties.

Minimum Corporate Income Tax ("MCIT")

Under the law, a MCIT of 2% of the gross income as of the end of the taxable year is imposed on a corporation subject to normal income tax (30%) beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations. The MCIT must be paid if the corporation has zero or negative taxable income or the MCIT is greater than the regular corporate income tax liability for the taxable year.

Any excess of the MCIT over the regular income tax as computed is carried forward and credited against the regular income tax for the3 immediately succeeding taxable years.

There are cases when the imposition of the MCIT may be suspended by the Secretary of Finance, such as where the corporation sustained substantial losses on account of a prolonged labor dispute, force majeure, or legitimate business losses.

Improperly Accumulated Earnings Tax

A 10% tax is imposed on the improperly accumulated earnings of domestic corporations, except in the case of publicly held corporations, banks, and other non-bank financial intermediaries and insurance companies. The fact that a corporation allows its earnings or profits to accumulate beyond its reasonable needs, is considered definitive of its purpose to avoid the tax upon its stockholders, unless it proves the contrary. However, note that a branch is not covered by the rule against improperly accumulated earnings.

2. Individuals

Individual income tax

The citizenship and residence of an individual determine how he is taxed for income tax purposes, thus:

- A resident citizen is taxed on compensation, business, and other income derived from worldwide sources;
- Non-resident citizens (including those working and deriving income from abroad such as overseas contract workers and seamen who derive compensation for services rendered abroad as members of a complement of vessels engaged exclusively in international trade) are taxed only on income derived from sources within the Philippines;
- Resident aliens are taxed only on income from sources within the Philippines;
- Non-resident aliens engaged in trade or business in the Philippines are taxed like citizens and resident aliens but only on Philippine-source income; and
- Non-resident aliens not engaged in trade or business are taxed on the gross amount of Philippine-source income.

For purposes of determining whether the non-resident alien is engaged in trade or business, the NIRC adopts the 180day rule such that if he stays in the Philippines for 180 days or less during the calendar year, he is deemed not doing business in the Philippines regardless of whether he actually engages in trade or business in the country. If, however, his stay exceeds 180 days during the calendar year, he will be deemed engaged in trade or business in the Philippines even if, in actuality, he is not so engaged.

Generally, for compensation income earners, the graduated tax rates of 20% to 35%apply to resident citizens, non-resident citizens, resident aliens and non-resident aliens engaged in trade or business between 1 January 2018 to 31 December 2022 (and 15% to 35% thereafter). However, non-resident aliens not engaged in trade or business in the Philippines are subject to the income tax rate of 25% on gross income.

TAXATION

TABLE 3. TAX SCHEDULE EFFECTIVE 1 JANUARY 2018 UNTIL 31 DECEMBER 2022

Not over PHP250,000.00	0%
Over PHP250,000.00 but not over PHP400,000.00	20% of the excess over PHP250,000.00
Over PHP400,000.00 but not over PHP800,000.00	PHP30,000.00 + 25% of the excess over PHP400,000.00
Over PHP800,000.00 but not over PHP2,000,000.00	PHP130,000.00 + 30% of the excess over PHP800,000.00
Over PHP2,000,000.00 but not over PHP8,000,000.00	PHP490,000.00 +32% of the excess over PHP2,000,00.00
Over PHP8,000,000.00	PHP2,410,000.00 + 35% of the excess over PHP8,000,000.00

The TRAIN provides that purely self-employed and professional individuals whose gross sales/ receipts and other non-operating income do not exceed the PHP3,000,000.00 threshold are granted the option to be taxed at 8% of total gross income in excess of PHP250,000.00, in lieu of the graduated rates and any applicable percentage taxes.

Mixed income earners are taxed at graduated rates on their (i) compensation income, and (ii) income from trade or business/profession exceeding the PHP3,000,000.00 threshold. However, if their income from trade or business/profession falls below the threshold, mixed income earners are: (i) taxed applying the graduated tax rates on the compensation income, and (ii) given the option to be taxed at 8% of the total gross income from trade or business/ profession, in lieu of the graduated rates and percentage taxes.

Similar to corporations, passive income (e.g., royalties, interest, dividends, among others) received by individuals are likewise subject to final taxes of various specified rates.

Personal Exemptions

The TRAIN removed the basic personal exemption and additional exemption for dependents. It, nonetheless, increased the exempt income of individuals earning purely compensation income and/ or self-employed individuals to PHP250,000.00.

Withholding Taxes

The Philippines requires the withholding of income tax on compensation income, on certain income payments made to residents, and on income payments made to non-resident taxpayers. In such cases, the withholding entity acts as an agent of the government for the collection of the tax to ensure its payment.

Withholding taxes are classified as either final or creditable. Under the final withholding tax system, the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. The payee is not required to file an income tax return for the particular income. On the other hand, under the Creditable Withholding Tax ("**CWT**") system, income payments made by a Philippine resident to another resident is subject to specific withholding tax rates. The tax withheld may be creditable against the income tax liability of the income recipient. This system is one where the taxes withheld are meant to equal or approximate the total tax due from the recipient for the specific income.

The current CWT rates under the NIRC are between 1% to 15% of the income payment.

3. Application of Tax Treaties

Generally, the provisions of the NIRC would apply on the income, gain, or profit of any person liable to Philippine income tax.

However, the Philippines is signatory to several tax treaties with other States. Under these treaties, specific types of income earned by non-resident foreign entities may be exempt from Philippine income taxes or subject to lower preferential treaty rates where applicable.

The Philippines has tax treaties with the following countries:

TABLE 4. PHILIPPINE TAX TREATIES

Australia	Finland	Mexico	South Korea
Austria	France	The Netherlands	Spain
Bahrain	Germany	New Zealand	Sri Lanka
Bangladesh	Hungary	Nigeria	Sweden
Belgium	India	Norway	Switzerland
Brazil	Indonesia	Pakistan	Thailand
Canada	Israel	Poland	Turkey
People's Republic of China	Italy	Qatar	United Arab Emirates
	Japan	Romania	United Kingdom
Czech Republic	Kuwait	Russia	United States
Denmark	Malaysia	Singapore	Vietnam

The BIR simplified tax treaty relief procedures in respect of dividend, interest and royalty income of non-residents. Under Revenue Memorandum Order ("**RMO**") No. 8-2017, which amends RMO No. 72-2010,non-residents need not file a BIR tax treaty relief application to claim preferential tax treatment on dividend, interest, and royalty income. Instead, the preferential treaty rates on such income may already be applied and used outright by withholding agents upon submission of prescribed certificates of residence forms, and subject to compliance check and post reporting validation.

4. Thin Capitalization Rules

The Philippines does not have explicit thin capitalization statutes. However, there are restrictions on the allowable deduction for interest expense under the tax arbitrage rule, which reduces a taxpayer's otherwise allowable deduction for interest expense by 33% of the interest income subjected to final tax.

B. Value-Added Tax

The Philippines imposes a VAT on the sale, barter, exchange, or lease of goods and properties, importation of goods and sale or performance of services, in the course of trade or business within the Philippines. The standard VAT rate is 12%.

There are transactions (mainly export sales) subject to the 0% VAT. There are also transactions exempt from VAT (e.g., sale of agricultural and marine food products in their original state, sale of fertilizer, sale of livestock and, sale of drugs and medicines prescribed for diabetes, high cholesterol and hypertension).

The registration threshold for VAT purposes was increased by TRAIN toPHP3,000,000.00 in gross sales or receipts over a 12-month period.

C. Other Business Taxes

Other internal revenue taxes of interest to investors include:

Excise Tax. The Philippines imposes excise taxes on certain goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, as well as on certain imported goods. Excisable goods include alcohol products, tobacco products, petroleum products, mineral products, motor vehicles, and non-essential goods such as jewelry.

TRAIN increased the excise tax rates on certain products such as cigars/cigarettes and manufactured oils and other fuels. It also amended the excise tax schedule for automobiles.

A new excise tax on sweetened beverages was passed, with beverages using purely caloric sweeteners and purely non-caloric sweeteners or a mixture of both now subject to an excise tax of PHP6.00 per liter, and beverages using purely high fructose corn syrup or in combination with any caloric or non-caloric sweeteners taxed at PHP12.00 per liter. Sweetened beverages using purely coconut sap sugar/purely steviol glycosides as sweeteners are exempt from this tax.

TRAIN likewise imposes a new excise tax on non-essential services namely the performance of invasive cosmetic procedures, surgeries, and body enhancements directed solely towards improving, altering, or enhancing the patient's appearance and which do not meaningfully promote the proper function of the body or prevent or treat illness or disease. The excise tax on such non-essential services is 5% based on gross receipts.

Percentage Tax. Certain persons or entities not subject to VAT, including domestic common carriers of passengers, international carriers on their transport of cargo from the Philippines to another country, and those in the amusement business are subject to percentage tax on gross receipts or gross income. The rates of percentage tax range from below 1% up to 30%.

Included under percentage taxes are the Stock Transaction Tax ("STT") and the Initial Public Offering Tax ("IPO tax"). The STT is imposed on the sale or disposition of shares listed and traded through the PSE other than the sale by a dealer in securities. The STT rate is 6/10 of 1% of the gross selling price or gross value in money of the shares disposed. The IPO tax is imposed on the sale or disposition through an initial public offering of shares of stock in closely held corporations.

The IPO tax rates, based on the gross selling price or gross value in money of the shares disposed (in accordance with the proportion of shares disposed to the total outstanding shares after the PSE listing), are:

Proportion of shares disposed to the total outstanding shares	Tax rate
Up to 25%	4%
Over 25% but not over 33 1/3 %	2%
Over 33 1/3%	1%

Documentary Stamp Tax. DST applies to certain documents, agreements, and other instruments evidencing business transactions, acceptances, sales, and transfers of obligations, rights, or property. The liability for the DST falls on the maker, signor, issuer, accepter, or transferor of the document.

TRAIN increased the DST on certain transactions, which include but are not limited to the following: (i) original issuance of shares which was increased to PHP2.00 on each PHP200.00 (from the previous

PHP1.00 on each PHP200.00) of par value or actual consideration for no-par shares; (ii) sales, agreements to sell, memoranda of sales, deliveries or transfers of shares or certificates of stock, which was increased to PHP1.50 on each PHP200.00 (from the previous PHP0.75 on each PHP200.00) of the par value or 50% of the DST paid upon original issuance of no-par shares; and (iii) original issue of debt instruments, which was increased to PHP1.50 on each PHP200.00 (from the previous PHP1.00 on each PHP200.00) of the issue price.

D. Local Taxes and Real Property Taxes

Provinces, cities, municipalities, and barangays where a business is operating may also impose annual business taxes based on the annual gross sales or receipts of the taxpayer. Real property taxes may also be imposed on land, building, machinery, and other improvements owned or used for the business, by the province, city or municipality where the properties are located. The basic real property taxes are levied at a rate between 1% to 2% of the assessed value of the real property. A local transfer tax is imposed on the sale, donation, barter or other mode of transferring ownership or title of real property. Provinces may impose this tax at a rate not more than 50% of 1% the total consideration involved in the acquisition of the property or of the fair market value in case the monetary consideration involved in the transfer is not substantial, whichever is higher.

E. Transfer Pricing Rules

The Commissioner of Internal Revenue is empowered to distribute, apportion or allocate gross income or deductions between or among related parties in order to prevent evasion of taxes or to clearly reflect the income of each related party. Pursuant to this power, the BIR issued the Philippine transfer pricing regulations which took effect on 9 February 2013. The Philippine transfer pricing rules apply to both domestic and cross-border related party transactions.

The regulations are largely based on the Organization for Economic Cooperation and Development Transfer Pricing Guidelines. Basically, the rules require related party transactions to be conducted at arm's length (i.e., transactions are made under comparable conditions and circumstances as a transaction with an independent party).

TAXATION

To show that the related party transactions are conducted at arm's length, taxpayers are required to maintain a contemporaneous transfer pricing documentation. It is contemporaneous if it exists or is brought into existence at the time the associated enterprises develop or implement any arrangement that might raise transfer pricing issues or review these arrangements when preparing tax returns.

Taxpayers engaged in cross-border transactions are given the option of obtaining Advance Pricing Arrangements ("**APAs**"), which are agreements entered into by the BIR and the taxpayer to determine in advance the appropriate set of criteria for ascertaining transfer prices of controlled transactions over a period of time.

The regulations state that the BIR shall issue separate guidelines on the application of APAs. While these APA guidelines are yet to be issued, they are accorded top priority by the tax authority.

Recently, the BIR issued Revenue Regulation 19-2020, effective 25 July 2020, which requires taxpayers engaged in related party transactions to complete and attach the BIR Form No. 1709 or the Information Return on Related Party Transactions (Domestic/Foreign) to the Annual Income Tax Return of the company. The said regulation likewise requires the following attachments:

1. Certified true copy of the relevant contracts or proof of transactions;

2. Withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR;

3. Proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident;

4. Certified true copy of APAs, if any; and

5. Any transfer pricing documentation.

Failure of the taxpayers to support the arm's length nature of their transfer prices may result in an adjustment of their income or expenses. These adjustments may later translate to deficiency taxes (e.g., income taxes, VAT, among others) with the resulting penalties (i.e., interests, surcharges).

Unlike other countries, the BIR does not require taxpayers to prepare and maintain a Master File and a Country-by-Country Report.

V. INCENTIVES

There are a host of incentives available to foreign investors under Philippine laws, primarily those under Executive Order No. 226 or the Omnibus Investments Code of 1987 and the laws covering Ecozones.

There are a host of incentives available to foreign investors under Philippine laws, primarily those under Executive Order No. 226 or the Omnibus Investments Code of 1987 and the laws covering Ecozones.

Under the Omnibus Investments Code, an investor may avail of fiscal and non-fiscal incentives by registering with the BOI. The overarching goal of this law is to encourage investments in the enumerated desirable areas of economic activity.

The Philippines likewise has Ecozones or state-created economic enclaves designed to attract investment for the purpose of economic growth and development in the region.

A. BOI-Registered Enterprises

The Omnibus Investments Code provides incentives to enterprises engaged in activities falling under the government's priority or preferred areas of investment as well as those which export a certain minimum percentage of their production. Preferred areas of investment are listed under the IPP, the overall plan prepared by BOI and submitted to the President for approval yearly.

Investors that engage in priority areas of investment under the IPP *(Please refer to IPP Table 1 in II.A above)* may avail of the incentives under the Omnibus Investments Code upon registration with the BOI.

To qualify for registration with the BOI and obtain incentives, investors must meet certain qualifications under the law.

Subject to certain conditions, BOI-registered enterprises may enjoy the following tax and non-tax special incentives:

Fiscal Incentives

- Income tax holiday ("**ITH**") for 6 years from the start of commercial operations for pioneer firms and 4 years for non-pioneer firms (subject to extension in certain cases with BOI approval but not for more than eight years);
- Tax and duty exemption on imported capital equipment and accompanying spare parts of new and expanding BOI-registered enterprise, subject to certain conditions;
- Additional deduction from taxable income of 50% of the wages corresponding to the increment in the number of direct labor for skilled and unskilled workers, for the first 5 years from registration;
- Exemption from taxes and duties on the importation of breeding stocks and genetic materials within 10 years from the date of registration or commercial operation of the enterprise;
- Tax credit equal 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;
- Exemption from any wharfage due, and export tax, duty, impose, and fees of exports by a registered enterprise of its non-traditional export products; and
- Exemption from local business taxes for 6 years from registration for pioneer firms and 4 years in the case of non-pioneer firms.

INCENTIVES

Non-Fiscal Incentives

- Simplified customs procedures for the importation of equipment, spare parts, raw materials and supplies, and exports of processed products by registered enterprises ;

- Option to employ foreign nationals in supervisory, technical, or advisory positions for a 5-year period; and

- Access to the utilization of the bonded warehousing system in all areas required by the project.

B. Philippine Economic Zone Authority Enterprises

RA No. 7916 created the PEZA to operate, administer, manage, and develop Ecozones.

Businesses registered with the PEZA and located or operating within PEZA Ecozones in compliance with the terms and conditions of their registration are entitled to fiscal and non-fiscal incentives under the law.

These incentives include, in general, the following (some of which are subject to certain conditions):

- ITH of 6 years from start of commercial operations for new registered pioneer firms and 4 years for non-pioneer firms;
- Upon expiration of the ITH, a special tax rate of 5% on gross income in lieu of all national and local taxes;

- Tax and duty-free importation of capital equipment, raw materials, spare parts, supplies, breeding stocks, and genetic materials;

- Tax credit for import substitution;

- Tax credit on domestic capital equipment, breeding stocks, and genetic materials;

- Exemption from wharfage duties and any export tax, duty, impost, and fee;

- For Philippine branches, exemption from BPRT;

- Additional deduction of half of the value of training expenses incurred in developing skilled or unskilled labor or for managerial or other management development programs;

- Exemption from local business taxes for 6 years from the start of commercial operations for pioneer firms and 4 years in the case of non-pioneer firms;

- Simplification of customs procedure;

- Unrestricted use of consigned equipment; and

- Employment of foreign nationals.

C. Subic/Clark and Other Special Economic/Freeport Zones

Incentives are available to investors locating in special economic and free port zones created under special laws.

Two of the most attractive investment locations in the Philippines are the Subic and Clark zones which used to cover areas occupied by United States military reservations.

Subic. Enterprises registered as Subic Special Economic Zone enterprises are entitled to the 5% special tax on gross income earned, in lieu of national and local taxes. Enterprises registered as Subic Freeport Zone enterprises are entitled to (1) tax and duty-free importation subject to the guidelines issued by the Department of Finance and(2) 5% special tax on gross income earned, in lieu of national and local taxes.

Clark. Registered Clark Freeport Zone enterprises are entitled to the following incentives: (1) tax and duty-free importation of goods and capital equipment under the regulations and (2) 5% special tax on gross income earned, in lieu of national and local taxes.

Other Ecozones. Various special laws created other Ecozones such as the Cagayan Special Economic Zone, the Zamboanga City Special Economic Zone, the Freeport Area of Bataan and the Aurora Special Economic Zone. Tourism Economic Zones were also created under RA No. 9593 or the Tourism Act of 2009. Incentives granted to enterprises located within these Ecozones are similar to those granted to PEZA-registered enterprises.

VI. EMPLOYMENT

The Philippine Constitution affirms the role of labor as a primary social economic force and emphasizes the policy of the State to afford it full protection.

Presidential Decree ("**PD**") No. 442 as amended, or the Philippine Labor Code, is the primary legislation governing labor standards and employment in the Philippines. This law underscores the basic State policy to afford protection to labor, promote full employment, ensure equal work opportunities, regulate the relations between workers and employers, and assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

Under the Labor Code's own provisions, all doubts in its implementation and interpretation shall be resolved in favor of labor.

A. Labor Standards

1. Working hours

In the Philippines, the normal hours of work are 8 hours a day or 48 hours a week. Time-off for meals of at least 60 minutes must be provided by the employer. This meal break is not included in the computation of the normal hours of work.

Overtime work. Work exceeding the normal work hours (8 hours a day) must be paid an overtime rate. These overtime rates vary depending on when the overtime work is performed: on regular days, holidays, rest days, or during the night shift. The overtime premium on a regular day is equivalent to the regular wage plus at least 25%. If the overtime work is performed on a holiday or rest day, the employees must be paid an additional compensation equal to the rate of the first 8 hours on a holiday or rest day plus at least 30% thereof.

Night shift differential. Every employee shall be paid a night shift differential of not less than 10% of his regular wage for each hour of work performed between 10 p.m. and 6 a.m.

Rest day. The employer shall provide each of his employees a rest period of not less than 24 consecutive hours after every 6 consecutive normal workdays. Work performed on the rest day shall be paid an additional compensation of at least 30% of the regular wage of the employee.

Holidays and Holiday pay. National holidays in the Philippines are classified as either regular or special.

On regular holidays, an employee is entitled to receive his regular daily wage without performing work. For work done on such regular holiday, an employee shall be paid an amount twice his regular rate. If the employee works on a regular holiday which is also his rest day, he is entitled to additional compensation of at least 30% of his regular holiday wage rate.

Work performed on special non-working days must be paid an additional compensation of at least 30% of the regular wage of the employee. When the employee works on such special holiday which also happens to be his scheduled rest day, he is entitled to an additional compensation of at least 50% of his regular daily wage.

TABLE 5. OFFICIAL PHILIPPINE HOLIDAYS IN 2020

New Year's Day	Regular Holiday	1 January
Chinese New Year	Special Non-Working Day	25 January
EDSA People Power Revolution Anniversary	Special Non-Working Day	25 February
Araw ng Kagitingan	Regular Holiday	9 April
Maundy Thursday	Regular Holiday	9 April
Good Friday	Regular Holiday	10 April
Black Saturday	Special Non-Working Day	11 April
Labor Day	Regular Holiday	1 May
Independence Day	Regular Holiday	12 June
Ninoy Aquino Day	Special Non-Working Day	21 August
National Heroes Day	Regular Holiday	31 August
All Saint's Day	Special Non-Working Day	1 November
Bonifacio Day	Regular Holiday	30 November
Feast of the Immaculate Conception of Mary	Special Non-Working Day	8 December
Christmas Day	Regular Holiday	25 December
Rizal Day	Regular Holiday	30 December
Last Day of the Year	Special Non-Working Day	31 December
Eidul Fitr	Regular Holiday	Movable Date
Eidul Adha	Regular Holiday	Movable Date
Additional Special Non-Working Days		2 November 24 December

2. Wages

The Philippines has a Wage Rationalization Act setting forth the mechanism and standards for wage determination to ensure a decent standard of living for the workers and their families.

Under the Wage Rationalization Act, minimum wage rates for agricultural and non-agricultural employees are prescribed by the Regional Tripartite Wages and Productivity Boards for each region. Among other relevant factors these Boards consider in prescribing these minimum wage rates are:

- The demand for living wages;
- Wage adjustment vis-à-vis the consumer price index;
- The cost of living and changes or increases therein;
- The needs of workers and their families;
- The need to induce industries to invest in the countryside;
- Improvements in standards of living;
- The prevailing wage levels;
- Fair return of the capital invested and capacity to pay of employers;
- Effects on employment generation and family income; and
- The equitable distribution of income and wealth along the imperatives of economic and social development.

A summary of the current daily minimum wage rates per region as of July2020 is provided in Table 6:

TABLE 6. DAILY MINIMUM WAGE RATES PER REGION

REGION	DATE OF EFFECTIVITY	NON-AGRICULTURE (in PHP)	AGRICULTURE (in PHP)	
			PLANTATION	NON-PLANTATION
NCR	22 November 2018	500.00 – 537.00	500.00	500.00
CAR	18 November 2019	340.00 – 350.00	340.00 – 350.00	340.00 – 350.00
I	30 April 2019	282.00 – 340.00	295.00	282.00
II	16 March 2020	370.00	345.00	345.00
III	1 January 2020	369.00 – 420.00	354.00 – 390.00	342.00 – 374.00
IV-A	28 April 2018	317.00 – 400.00	303.00 – 370.00	303.00 – 356.00
IV-B	27 November 2018	294.00 – 320.00	294.00 – 320.00	294.00 – 320.00
V	21 September 2018	310.00	310.00	310.00
VI	26 November 2019	310.00 – 395.00	315.00	315.00
VII	5 January 2020	356.00 – 404.00	351.00 – 394.00	351.00 – 394.00
VIII	18 August 2019	325.00	295.00	295.00
IX	30 July 2018	316.00	303.00	303.00
X	1 November 2018	343.00 – 365.00	331.00 – 353.00	331.00 – 353.00
XI	16 August 2018	396.00	391.00	391.00
XII	2 February 2020	336.00	315.00	315.00
CARAGA	1 May 2019	320.00	320.00	320.00
ARMM	1 January 2020	300.00 – 325.00	290.00 – 300.00	290.00 – 300.00

Wages must be paid at least once every 2 weeks or twice a month at intervals not exceeding 16 days.

13th month Pay. Under PD No. 851, as amended by Memorandum Order No. 28, all employers are required to pay their rank and file employees 13th month pay, regardless of the nature of their employment, provided they worked for at least 1 month during the calendar year. The payment of the 13th month pay must be made not later than 24 December of every year.

The 13th-month pay shall not be less than 1/12 of the total basic salary of an employee within a calendar year.

Service Incentive Leave ("SIL"). As a general rule, every employee who has rendered at least 1 year of service is entitled to SIL of 5 days with pay.

Maternity Leave. Under RANo. 11210, or the 105-Day Expanded Maternity Leave Law, all female employees shall be granted 105 days maternity leave with full pay, and an option to extend for an additional 30 days without pay. In case the worker qualifies as a solo parent under RA No. 8972, or the "Solo Parents' Welfare Act", the worker shall be granted an additional 15 days maternity leave with full pay. Enjoyment of maternity leave cannot be deferred but should be availed of either before or after the actual period of delivery in a continuous and uninterrupted manner, not exceeding 105 days, provided that the compulsory postnatal leave shall not be less than 60 days. Maternity leave shall be granted to female workers in every instance of pregnancy, miscarriage or emergency termination of pregnancy, regardless of frequency. However, in cases of miscarriage or emergency termination of pregnancy, 60 days maternity leave with full pay shall be granted.

Any female employee entitled to maternity leave benefits may, at her option, allocate up to 7 days of said benefits to the child's father, regardless if they are married or not. In the event of death, absence, or incapacity of the female employee, the benefit may be allocated to an alternate caregiver who may be a relative within the 4th degree of consanguinity or the current partner of the female employee sharing the same household, upon the election of the mother taking into account the best interests of the child.

Because the maternity benefit is now 105 days with full pay, employers have the statutory obligation to pay the difference between what the SSS will shoulder as maternity benefit and the usual salary of the female employees. However, this rule does not apply to the following:

a. Distressed establishments;

b. Retail/service establishments and other enterprises employing not more than 10 workers;

c. Micro-business enterprises and engaged in the production, processing or manufacturing of products or commodities including agro-processing, trading and services, whose total assets are not more that PHP3,000,000.00 in accordance with the Barangay Micro Business Enterprises Act of 2002; and

d. Enterprises already providing similar or more than the benefits provided in RA No. 11210.

Entitlement to the maternity benefits shall be subject to the following conditions:

a. The female worker shall have notified her employer of her pregnancy and the probable date of her childbirth, which notice shall be transmitted to the SSS in accordance with the rules and regulations it may provide;

b. The full payment shall be advanced by the employer within 30 days from the filing of the maternity leave application;

c. Payment of daily maternity benefits shall be a bar to the recovery of sickness benefits provided under RA No. 1161, as amended, for the same period for which daily maternity benefits have been received;

d. The SSS shall immediately reimburse the employer of 100% of the amount of maternity benefits advanced to the female worker by the employer upon receipt of satisfactory and legal proof of such payment; and

e. If a female worker should give birth or suffer a miscarriage or emergency termination of pregnancy without the required contributions having been remitted for her by her employer to the SSS, or without the latter having been previously notified by the employer of the time of the pregnancy, the employer shall pay to the SSS damages equivalent to the benefits which said female member would otherwise have been entitled to.

In case the employee qualifies as a solo parent under RA No. 8972, or the "Solo Parents' Welfare Act", the employee shall be paid an additional maternity benefit of 15 days.

Special leave under RA No. 9710 or the Magna Carta of Women. A woman employee having rendered continuous aggregate employment service of at least 6 months for the last 12 months shall be entitled to a special leave benefit of 2 months with full pay based on her gross monthly compensation following surgery caused by gynecological disorders.

Leave under RA No. 9262 or the Anti-Violence Against Women and their Children Act. In addition to other paid leaves, women who have been victims of violence shall be entitled to a leave of up to 10 days with full pay, consisting of basic salary and mandatory allowances.

Parental leave for single parents under RA No. 8972 or the Solo Parents' Welfare Act of 2000. A solo parent who has rendered at least 1 year of service is given fully paid leave privileges of an additional 7 working days every year. If the solo parent is eligible for maternity leave pursuant to RA No. 11210, she is also entitled to an additional maternity benefit of 15 days.

Paternity Leave. Married male employees in the private sector, regardless of their employment status (e.g., probationary, regular, contractual, or project basis) are allowed to avail of paternity leave after the wife's delivery. The paternity leave benefit is given for 7 calendar days, with full pay, for the first 4 deliveries of the employee's lawful wife with whom he is cohabiting.

3. Health and Safety Rules

Employment of Night Workers under RA No. 10151

A night worker is any employed person whose work covers the period from 10 p.m. to 6 a.m. the following morning, provided the worker works for not less than 7 consecutive hours.

At their request, night workers shall have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work:

- Before taking up an assignment as a night worker;
- At regular intervals during such an assignment; and
- If they experience health problems during such an assignment.

Except for a finding of unfitness for night work, the findings of such assessments shall be confidential and shall not be used to their detriment, subject however to applicable company policies.

Night workers who are certified by competent physicians as unfit to render night work due to health reasons shall be transferred to a job for which they are fit to work. The transfer of the employee must be to a similar or equivalent position and in good faith. If such transfer is not practicable or the workers are unable to render night work for a continuous period of at least 6 months, they shall be granted the same company benefits as other workers who are unable to work due to illness. A night worker certified as temporarily unfit for night work for a period of less than 6 months shall be given the

same protection against dismissal or notice of dismissal as other workers who are prevented from working for health reasons.

The law also requires the following facilities to be made available for night workers:

- Suitable first-aid and emergency facilities;
- Lactation station;
- Separate toilet facilities for men and women;
- Facility for eating with potable drinking water; and
- Facilities for transportation and/or properly ventilated temporary sleeping or resting quarters, separate for male and female workers, except where any of the following circumstances is present:
  - Where there is an existing company guideline, practice or policy, collective bargaining agreement or any similar agreement between management and workers providing for an equivalent or superior benefit; or
  - Where the start or end of the night work does not fall within 12 midnight to 5 o'clock in the morning; or
  - Where the workplace is located in an area that is accessible 24 hours to public transportation; and
  - Where the number of employees does not exceed a specified number as may be provided for by the Secretary of Labor and Employment in subsequent issuances.

Should the night worker become pregnant or is a nursing employee, the employers shall ensure that measures shall be undertaken to provide an alternative to night work. The measures may include the transfer to day work, where possible, provision of social security benefits or an extension of maternity leave.

Occupational safety and health measures for workers who have to spend long hours sitting

All employers and/or establishments are directed to institute appropriate measures to address the risks to safety and health of workers who spend long hours sitting at work. These measures include:

- Providing regular 5-minute breaks every 2 hours from sitting;
- Encouraging workers to reduce sedentary work by interrupting sitting time and substituting it with standing and walking;
- Ensuring that the workstation is designed appropriately for the type of work;

- Changing work systems;
- Redesigning work tasks, if possible, to enable greater variability in movement of posture;
- Organizing health promotion activities that will allow workers to do more physical activities after work;
- Conducting awareness raising on the health effects of prolonged sitting and sedentary work; and
- Conducting medical surveillance among workers who are at risk of getting deleterious health effects of prolonged sitting and sedentary work.

The employers, in consultation with the workers, may adopt other measures to address the concerns of the workers.

Occupational safety and health measures for workers who have to stand

All employers and/or establishments shall institute appropriate control measures to address the risks to safety and health of workers while standing at work or frequently walking. These measures include:

- Implementing rest periods or cutting the time spent on standing or walking;
- Installing appropriate flooring or mats that will mitigate the impact of frequent walking and prevent fatigue;
- Providing tables or work surfaces with adjustable heights to allow workers to alternately sit and stand while performing their tasks;
- Providing readily accessible seats to be used during rest periods or even during work hours, provided the employees can perform their duties in this position without detriment to efficiency; and
- Implementing the use of footwear which is practical and comfortable.

The employers, in consultation with the workers, may adopt other measures to address the concerns of the workers.

Mental Health Workplace Policies

It is mandatory for all workplaces and establishments to formulate a Mental Health Workplace Policy and Program which must: (a) raise awareness, prevent stigma and discrimination, provide support to workers who are at risk and/or with mental health condition and facilitate access to medical health services; (b) promote workers' well-being towards healthy and productive lives; and (c) be jointly prepared by management and workers' representatives and be made an integral part of the company's occupational safety and health policies and programs.

Telecommuting

This refers to a work from an alternative workplace with the use of telecommunications and/or computer technologies. An employer in the private sector may agree on a telecommuting program with its employees on a voluntary basis or as a result of collective bargaining, upon such terms and conditions as they may mutually agree upon. The terms and conditions must comply with the minimum labor standards set by law. The employer has the duty to notify the DOLE on the adoption of a telecommuting work arrangement.

The employer and employees must agree and adhere to a policy or telecommuting agreement which must stipulate for the following provisions:

- Eligibility;
- Applicable code of conduct and performance evaluation and assessment;
- Appropriate alternative workplace/s;
- Use and cost of equipment;
- Work days and/or hours;
- Conditions of employment, compensation, and benefits particularly those unique to telecommuting employees;
- Non-diminution of benefits;
- Occupational health and safety;
- Observance of data privacy policy;
- Dispute settlement; and
- Termination or change of work arrangement.

4. Separation from employment

Security of tenure. The right to security of tenure is Constitutionally enshrined. Therefore, in cases of regular employment, an employer may not terminate the services of an employee except for a just cause or when authorized by the law and after observance of procedural due process.

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The entitlement to separation pay shall depend on the reason or ground for termination.

Just causes of termination. An employer may terminate an employment for any of the following causes:

- Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- Gross and habitual neglect by the employee of his duties;
- Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- 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; and
- Other analogous causes.

No separation pay is due to the employee separated due to just causes.

Authorized causes of termination. The employer may also terminate the employment of any employee due to the following:

- Installation of labor-saving devices;
- Redundancy;
- Retrenchment to prevent losses; or
- Closing or cessation of operation of the establishment or undertaking.

In case of termination due to the installation of labor-saving devices or redundancy, separation pay is equivalent to at least his 1-month pay or to at least 1-month pay for every year of service, whichever is higher. In retrenchment to prevent losses and closures or cessation of operations, the separation pay is 1-month pay or at least 1/2 month pay for every year of service, whichever is higher.

In case of termination due to closure or cessation of business operation not due to serious business losses, separation pay is equivalent to 1 month pay or at least 1/2month pay for every year of service, whichever is higher. Where closure is due to serious business losses or financial reverses, no separation pay is required.

Disease as ground for termination. 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. Severance pay of at least 1-month salary or 1/2-month salary for every year of service, whichever is greater, must be paid.

Procedural Due Process. In a termination for just cause, due process involves the 2-notice rule:

- A notice of intent to dismiss specifying the ground for termination, and giving said employee reasonable opportunity within which to explain his or her side;
- Ample opportunity must be given to the employee to respond to the charge, present evidence, or rebut the evidence presented against him or her; and
- A notice of dismissal indicating that upon due consideration of all the circumstances, grounds have been established to justify termination.

In a termination for an authorized cause, due process means a written notice of dismissal to the employee and to the Regional Office of the DOLE where the employer is located specifying the grounds at least 30 days before the date of termination.

Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

If there is no retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee, upon reaching the age of 60 years or more (but not beyond 65 years which is the compulsory retirement age), and having served at least 5 years in the said establishment, may retire and be entitled to retirement pay equivalent to at least ½-month salary for every year of service. Unless the parties provide for broader inclusions, ½-month salary shall mean 15 days plus 1/12 of the 13th month pay and the cash equivalent of not more than 5 days of service incentive leaves.

Exempted from the payment of retirement benefits are retail, service, and agricultural establishments or operations employing not more than 10 employees or workers.

B. Labor Relations

Right to self-organization and collective bargaining. Under Philippine law, employees have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining.

It is a policy of the State to promote collective bargaining, the settlement of labor disputes through conciliation, mediation, and arbitration, free trade, unionism, establishment of strong and united labor movement, education of workers on their rights and obligations and participation of workers in decision and policy-making processes affecting their rights, duties, and welfare. The relation between capital and labor is not merely contractual but is impressed with public interest.

C. Social Welfare Legislation

Other social welfare legislation includes the Social Security Law, Employees' Compensation and State Insurance Fund ("SIF"), Home Development Mutual Fund, and National Health Insurance Act.

Social Security System. The SSS is meant to promote social justice and provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden. Membership in the SSS is compulsory for all private employees. Contribution to the SSS is deducted from the monthly salary of the employees. The employer also contributes to the SSS on behalf of his employees.

Employees' Compensation and State Insurance Fund. The SIF is a government fund designed to provide compensation to public and private sector employees or their dependents in the event of work-related sickness, injury, disability, or death. Membership is mandatory for all employees.

Home Development Mutual Fund. The HDMF is a mutual provident savings system for private and government employees and other earning groups, supported by matching mandatory contributions of their respective employers with housing as the primary investment. Coverage in the HDMF is mandatory for all employees covered by the SSS and the Government Service Insurance System.

National Health Insurance Program or Philippine Health Insurance Corporation. The PhilHealth is the compulsory health insurance program of the government which shall provide universal health insurance coverage and ensure affordable, acceptable, available, and accessible health care services for all citizens of the Philippines. PhilHealth coverage is compulsory for all citizens of the Philippines.

VII. INTELLECTUAL PROPERTY

Investors can rely on an established legal framework for Intellectual property ("**IP**") rights protection in the Philippines.

IP laws that were promulgated or administered in the country during Spanish colonial times and the American occupation influenced the IP legal framework that emerged after the Philippines gained political independence in 1946.

In 1947, the Philippines passed 2 laws protecting patents and trademarks. Over the years, additional laws were passed, and regulations promulgated. The state policy to protect and secure IP was later on enshrined in the 1973 and the 1987 Constitutions.

In 1995, the Philippines ratified the Uruguay Round of the General Agreement on Tariffs and Trade and, in doing so, committed to the Agreement on Trade-Related Intellectual Property Rights (“**TRIPs**”).

To comply with TRIPs obligations, the Philippines in 1997 enacted RA No. 8293 or the Intellectual Property Code (“**IP Code**”) of the Philippines. All the legal issuances on IP rights protection in the Philippines were codified into this law which took effect on 1 January 1998.

The IP Code stresses the importance of an effective IP system to, among others, attract foreign investments. It created the Intellectual Property Office (“**IPO**”) which administers and implements the state policies on IP, with functions ranging from registration to administrative adjudication.

The IP Code upholds the principles of reciprocity and reverse reciprocity of foreign laws.

The IP Code was amended by RA No. 10372 which created a Bureau of Copyright and other Related Rights to resolve copyright disputes and provide copyright and related rights services.

The Philippines is a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and the Paris Convention for the Protection of Industrial Property.

Following the Philippines’ accession in 2012 to the Madrid Agreement Concerning the International Registration of Marks (the “Madrid Protocol”), international registration of trademarks may now be done in this territory. The Madrid System is a centralized system for registering and managing trademarks worldwide through the filing of one application, in one language, and paying one set of fees to protect a mark in the territories of members of the system selected by the applicant.

A. Intellectual Property Rights

The IP Code defines “intellectual property rights” (“**IPRs**”) as consisting of: (1) Copyright and Related Rights, (2) Trademark and Service Marks, (3) Geographic Indications, (4) Industrial Designs, (5) Patents, (6) Layout Designs (Topographies) of Integrated Circuits, and (7) Protection of Undisclosed Information. IPRs are recognized and protected in the Philippines.

Copyright pertains to original literary and artistic works and is protected from the moment of its creation. Registration of a work is not necessary in order for copyright to attach. However, for evidentiary purposes, the author or creator of the work, his heirs or assignees may apply for a certificate of copyright registration by depositing a copy thereof with the IPO (acting as receiving agent of the National Library), filing the necessary documents, and paying the registration fees. Copyright is protected during the life of the author and for 50 years after his death.

<u>Trademarks and service marks.</u> Trademarks and service marks are protected upon registration validly made in accordance with law. This is without prejudice to the protection of marks pursuant to reciprocal rights extended by the Philippines to nationals of foreign countries that are parties to any convention, treaty or agreement relating to IPRs or the repression of unfair competition to which the Philippines is also a party. A certificate of registration of a mark is prima facie evidence of the validity of the registration and of the registrant’s ownership of the mark and its exclusive right to use the same on the goods or services as specified in the certificate. The registration is valid for 10 years, provided that the registrant shall file a declaration of actual use and evidence of the same within 3 years from the filing date of the application, and within 1 year from the 5thanniversary of the date of registration of the mark.

<u>Industrial Designs.</u> They are registrable if they are new or original creations. The standard of novelty under Section 23 and Section 25 of the IP Code applies to industrial designs. The term of the registration of an industrial design is 5 years from the filing date of the application and may be renewed for not more than 2 consecutive periods of 5 years each by paying the renewal fee.

<u>Patents.</u> Only new and inventive technical solution of a problem in any field of human activity which is industrially applicable is patentable. An invention is not considered new if it forms part of a prior art and it is only deemed inventive if, having regard to prior art, it is not obvious to a person skilled in the art at the time of the patent application. Application for patent registration may be filed with the IPO. A patent takes effect on the date of the publication of the grant of patent in the IPO Gazette. The term of a patent is 20 years from the filing date of the application. In order to maintain the patent, an annual fee is required to be paid to the IPO upon the expiration of 4 years from the date the patent application was published, and on each subsequent anniversary of such date.

<u>Lay-out Design.</u> Defined as a three-dimensional disposition 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 three-dimensional disposition prepared an integrated circuit for manufacture. Only lay-out designs that are new or ornamental may be registered. Only lay-out designs of integrated circuits that are original are protected under the IP Code. It is considered original if it is the result of its creator's own intellectual effort and is not commonplace among creators of lay-out designs and manufacturers of integrated circuits at the time of creation. The registration of a lay-out design shall be valid for 10 years, without renewal, from the date of the first commercial exploitation anywhere in the work, if the application for registration is filed within 2 years from such date of first commercial exploitation, or from the filing date accorded to the application for registration, if the lay-out design has not been previously exploited commercially anywhere in the world.

Geographic Indications. Although Geographic Indications are listed among the IPRs protected by Philippine law, there have been no other laws, rules, or regulations expounding on such protection. The IP Code penalizes "False Designations of Origin," specifically false designation of geographic origin, under Section 169.1 (b), while Section 9.1 assigns the Bureau of Trademarks the task of examining applications for registration of geographic indications. But beyond these, there is no other mention of the protection granted to geographic indications. The IPO has drafted a set of separate rules and regulations on this area, but these have yet to be officially promulgated.

Currently, applicants who wish to register geographic indications would have to submit these as "collective marks" under Rule 100 (b) of the Trademark Regulations, which are given the same protection as Trademarks.

Protection of Undisclosed Information. In the same manner, there is no other clear or direct provision in the IP Code or its implementing rules and regulations with respect to Protection of Undisclosed Information. The only protection can be found in Section 78, which requires a court, in case of competing patents when it becomes necessary to examine the manufacturing process of the defendant, to adopt measures to protect, as far as practicable, the defendant's manufacturing and business secrets.

But unlike Geographic Indications, the protection of trade secrets has been affirmed and confirmed in various laws and Supreme Court decisions. Some of these laws include the Revised Penal Code, which penalizes the unauthorized revelation of industrial secrets by an employee, and the unauthorized discovery and/or revelation of any secret by a public officer who gains access to such secret because of his public functions. The SRC prohibits the SEC from requiring any trade secret to be revealed in any submission. Meanwhile, the NIRC penalizes an officer or employee of the BIR who discloses to any person any trade secret which he is able to discover or access because of this functions, and/or any other person who causes or procures such officer or employee to make the disclosure.

Lastly, in *Air Philippines Corp. vs. Pennswell, Inc.,* the Supreme Court held that trade secrets are not only confidential, but also privileged—which means that they cannot be the subject of compulsory disclosure before any court or government agency.

Intellectual Property of research and development institutes and/or institutions ("RDIs") that perform government-funded research and development. The ownership of IP and IPRs shall, in general, be vested in the RDI that actually performed the research, except when it falls within the circumstances provided under the law. In case of collaborative research where 2 or more RDIs conducted the research, the RDIs shall own the IPRs jointly or as otherwise stipulated in the research agreement between them.

B. Voluntary Licensing

Technology transfer arrangements ("**TTAs**") are encouraged in the Philippines, provided they comply with the provisions of the IP Code. TTAs refer 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." In order to be enforceable in the Philippines, TTAs must comply with the requirements of Section 87 and 88 of the IP Code. Section 87 of the IP Code lists down the prohibited clauses (i.e., those that are deemed prima facie to have an adverse effect on competition and trade), while Section 88 provides for the mandatory clauses to be included in the TTA. In exceptional cases, such as where substantial benefits will accrue to the economy, exemption from any of these requirements may be allowed by the IPO, on a case to case basis. TTAs that conform with Section 87 and Section 88 of the IP Code need not be registered with the IPO. However, in case the parties would like to seek exemption from these required provisions, the TTA will have to be registered with the Documentation, Information and Technology Transfer Bureau of the IPO. Otherwise, the same will be deemed unenforceable in the Philippines. Exemption may be allowed in exceptional or meritorious cases, such as the following:

- High technology content;

INTELLECTUAL PROPERTY

- Increase in foreign exchange earnings;
- Employment generation;
- Regional dispersal of industries;
- Substitution with or use of local raw materials; and/or
- Pioneer status registration with the BOI.

Where substantial benefits will accrue to the economy.

An applicant may be issued either one of the following: (a) Certificate of Registration, (b) Certificate of Compliance or (c) Certificate of Clearance. A Certificate of Registration and Certificate of Compliance carry a maximum validity of 10 years from the date of effectivity of the TTA or from the date of issuance of the certificate, whichever is earlier. On the other hand, a Certificate of Clearance has a maximum validity of 10 years but not exceeding the expiration of the Trademark registration itself, as it appears in the Trademark Registration certificate.

C. Compulsory Licensing

The IPO may grant a license to exploit a patented invention, even without the agreement of the patent owner in favor of a person who has shown capability of exploiting the same, under any of the following circumstances:

- National emergency, or other circumstances of extreme urgency;
- When public interest so requires;
- When it is determined by any judicial or administrative body that the owner's exploitation of the patent or license is anti-competitive;
- In case of public non-commercial use of the patent by the patentee, without satisfactory reason; or
- If the patented invention is not being worked in the Philippines on a commercial scale, even if capable of being worked, without satisfactory reason.

A compulsory license will only be granted after the petitioner has made efforts to obtain authorization from the patent owner on reasonable commercial terms and conditions but such efforts have not been successful within a reasonable period of time. This rule does not apply where the ground for the compulsory licensing is to remedy an anti-competitive act of the owner, as determined judicially or administratively by competent authority, in cases of national emergency or other circumstances of extreme urgency, or in cases of public non-commercial use.

VIII. ENVIRONMENT

The Philippines has in place an Environmental Impact Statement ("**EIS**") System to determine whether proposed investment projects or undertakings will cause significant negative environmental impact.

Under the EIS System, no person, partnership, or corporation may undertake or operate Environmentally Critical Projects ("**ECP**") or projects in Environmentally Critical Areas ("**ECAs**") without first securing an Environmental Compliance Certificate ("**ECC**") from the Department of Environment and Natural Resources ("**DENR**").

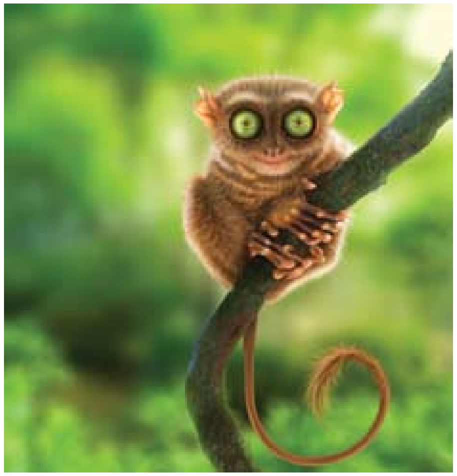
An ECP is defined as a project or program that has high potential for significant negative environmental impact. An ECA is an area delineated as environmentally sensitive such that significant environmental impacts are expected if certain types of projects or programs are located, developed, or implemented therein. The ECPs and ECAs include:

TABLE 8. CRITICAL AREAS AND CRITICAL PROJECTS

CRITICAL PROJECTS	CRITICAL AREAS
1. Heavy and other processing/manufacturing industries: • Non-Ferrous Metal Industries; • Iron and Steel Mills; • Petroleum and Petrochemical Industries; • Smelting Plant; • Chemical Industries; • Agriculture, Food and related industries; and • Other Processing/Manufacturing Industries. 2. Resource extractive industries: • Mining and Quarrying Projects; • Forestry Projects; and • Fishery Projects – Dikes for/and Fishpond Development Projects. 3. Infrastructure projects: • Dams, Water Supply and Flood Control Project; • Power Plants; • Reclamation and other land restoration projects; • Roads and bridges; • Other transport facilities (i.e. airports, land transport terminal); • Buildings, including Housing, Storage Facilities and Other Structures; • Pipeline and other similar projects; and • Waste management projects. 4. Golf courses and other tourism projects; and 5. Other projects: • Telecommunication projects; • Cottage industries; and • Service industries.	1. All areas declared by law as national parks, watershed reserves, wildlife preserves and sanctuaries; 2. Areas set aside as aesthetic potential tourist spots; 3. Areas which constitute the habitat for any endangered or threatened species of indigenous Philippine Wildlife; 4. Areas of unique historic, archaeological, or scientific interests; 5. Areas which are traditionally occupied by cultural communities or tribes; 6. Areas frequently visited and or hard-hit by natural calamities; 7. Areas with critical slopes; 8. Areas classified as prime agricultural lands; 9. Recharged areas of aquifers; 10. Water bodies; 11. Mangrove areas; and 12. Coral reefs.

Project proponents are required to conduct an Environmental Impact Assessment to evaluate and predict the likely impacts of a project on the environment during construction, commissioning, operation, and abandonment. It also includes designing appropriate preventive, mitigating, and enhancement measures addressing these consequences to protect the environment and the community's welfare.

The ECC that needs to be secured prior to the commencement of the project certifies that (1) based on the representations of the proponent, the proposed project or undertaking will not cause significant negative environmental impact and (2) the proponent has complied with all the requirements of the EIS System and has committed to implement its approved Environmental Management Plan. The ECC contains specific measures and conditions that the project proponent has to undertake before and during the operation of a project, and, in some cases, during the project's abandonment phase to mitigate identified environmental impacts.



IX. SPECIAL SECTORS AND ISSUES

A. Power Industry

The Electric Power Industry Reform Act ("**EPIRA**") in 2001 brought about major changes to the Philippine power industry. The EPIRA provided the framework for the restructuring of the electric power industry, including the privatization of assets owned by the National Power Corporation, a government-owned and controlled corporation.

1. Electric Power Industry

Overview of the electric power industry

Regulation of the electric power industry resides in the ERC while matters of policy are handled by the Department of Energy ("**DOE**"). One of the mandates of the ERC is to promote true market competition and prevent harmful monopoly and market power abuse. The electric power industry is divided into 4 sectors: generation, transmission, distribution, and supply.

Generation sector. The generation sector is imbued with public interest and shall remain competitive and open. However, the generation sector is not considered a public utility and is not required to secure a legislative franchise.

The EPIRA provides limits on concentration of ownership, operation, or control of installed generating capacity. No company, related group or independent power producer administrator, singly or in combination, can own, operate, or control more than 30% of the installed generating capacity of a grid and/or 25% of the national installed generating capacity. Related group includes a person's business interests, including its subsidiaries, affiliates, directors, or officers or any of their relatives by consanguinity, or affinity, legitimate or common law, within the 4th civil degree.

Transmission sector. All the transmission lines and assets related to transmission operations are owned by the National Transmission Corporation, a government-owned and controlled corporation. The transmission facilities and operation of the grid are being undertaken by a concessionaire, the National Grid Corporation of the Philippines ("**NGCP**"). In December 2008, the NGCP was granted a legislative franchise to operate, maintain, and manage the transmission system for a period of 50 years.

Distribution sector. The distribution sector is classified as a common carrier and requires a national franchise.

Supply sector. The supply sector is a business affected with public interest. All suppliers to the contestable market shall secure a license from the ERC.

Energy Investment Coordinating Council.

In order to streamline the energy regulatory process and further encourage potential investors to invest in energy, President Rodrigo Duterte signed Executive Order No. 30 which establishes the Energy Investment Coordination Council ("**EICC**"). The EICC was established to spearhead and coordinate the Philippine Government's efforts to harmonize, integrate and streamline the regulatory processes, requirements, and forms relevant to the development of energy investments in the Philippines. Among the EICC's directives is to simplify the approval process and harmonize the relevant rules and regulations of the different government agencies involved in obtaining permits and regulatory approvals. The EICC is also responsible for finding ways to expedite the development and implementation of Energy Projects of National Significance ("**EPNS**").

EPNS are major energy projects involving power generation, transmission and/or ancillary services including those required to maintain grid stability and security. EPNS possess the following attributes:

- significant capital investment of at least PHP3.5 Billion;
- significant contribution to the country's economic development;
- significant consequential economic impact;
- significant potential contribution to the country's balance of payments;
- significant impact on the environment;
- complex technical processes and engineering designs; and/or
- significant infrastructure requirements.

Electricity market

Another major change introduced by the EPIRA is the creation of the Wholesale Electricity Spot Market ("**WESM**"). The WESM provides the platform for the competitive trading of electricity. The commercial operation of the WESM began on 26 June 2006. The Philippine Electricity Market Corporation ("**PEMC**") runs the operations of the WESM. The PEMC was constituted as the Autonomous Group Market Operator ("**AGMO**") to undertake the preparatory work and initial operation of the WESM.

The EPIRA mandates that not later than 1 year after the implementation of the WESM, the AGMO shall transfer its functions, assets, and liabilities to the Independent Market Operator ("**IMO**"). The EPIRA's Implementing Rules and Regulations specifies that the IMO shall be financially and technically capable, with proven experience and expertise of not less than 2 years as a leading IMO of similar or larger size electricity market.

By virtue of the 19 September 2018 Operating Contract executed between the Independent Electricity Market Operator of the Philippines Inc. and PEMC, the transfer from the AGMO to the IMO was completed.

2. Renewable Energy ("RE")

RE is included in the 2017 Investment Priority Plan of the BOI.

In 2008, the legislature passed RA No. 9513 or the Renewable Energy Act of 2008.Its Implementing Rules and Regulations were promulgated in 2009. In 2017, as part of the Philippine Government's policy to improve the ease of doing business in the country, the DOE prescribed new guidelines for the processing of applications for REservice/operating contracts. These new guidelines substantially reducethe time it takes to obtain the necessary permits to engage in RE activities.

Government share. The government's share on existing and new RE development projects shall be equal to 1% of the gross income of RE resource developers resulting from the sale of RE produced and such other income incidental to and arising from the RE generation, transmission, and sale of electric power. For indigenous geothermal energy, the government's share shall be at 1.5% of gross income.

Incentives for RE projects and activities. Developers of RE facilities, including hybrid systems, in proportion to and to the extent of the RE component for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

a. *ITH for the first 7 years of its commercial operations.* The duly registered RE developer shall be exempt from income taxes levied by the national government.

b. *Duty-free importation.* There shall be duty-free importation within the first 10 years upon the issuance of a certification of an RE developer of RE machinery, equipment, and materials that will be directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy. The DOE certification must be obtained before the importation of such machinery, equipment, materials, and parts are made.

c. *Special realty tax rates on equipment and machinery.* Any law to the contrary notwithstanding, 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 1.5% of their original cost less accumulated normal depreciation or net book value.

d. *Net operating loss carry-over **("NOLCO")**.* The NOLCO of the RE Developer during the first 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 7 consecutive taxable years immediately following the year of such loss.

e. *Corporate tax rate of 10% on net taxable income.* After 7 years of ITH, RE Developers shall pay a corporate tax of 10%. The RE Developer shall pass on the savings to the end-users in the form of lower power rates.

f. *Accelerated depreciation.* 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 and be taxed based on such.

g. *Zero percent VAT rate.* The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent VAT. All RE Developers shall be entitled to zero-rated VAT on their purchases of local supply of goods, properties, and services needed for the development, construction, and installation of their plant facilities. This shall also apply to the whole process of exploring and developing RE sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

h. *Cash incentive of RE developers for missionary electrification.* An RE developer, established after the effectivity of the RE Law, shall be entitled to a cash generation-based incentive per kilowatt hour rate generated, equivalent to 50% of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification;

i. *Tax exemption of carbon credits.* All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes;

j. *Tax credit on domestic capital equipment and services.* A tax credit equivalent to 100% of the value of the VAT 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. Prior approval by the DOE must be obtained by the local manufacturer. The acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract.

B. Infrastructure/Public-Private Partnerships

Public Private Partnerships ("**PPP**") in the Philippines may be undertaken either through a build-operate-transfer ("**BOT**") scheme or a JV arrangement ("**JVA**"). BOT projects are governed by RA No. 6957, as amended by RA No. 7718, which is otherwise known as the "BOT Law". Its implementing rules and regulations ("**BOT Law IRR**") provide the details on the implementation of PPPprojects, including the approval and procurement process.

JV projects may be undertaken under the 2013 "Revised Guidelines and Procedures for Entering into JVAs Between Government and Private Entities" ("**NEDA JV Guidelines**") with government-owned and/or government-controlled corporations, government corporate entities, government instrumentalities with corporate powers, government financial institutions, and state universities and colleges, which are expressly authorized by law or their respective charters to enter into JVAs. While the NEDAJV Guidelines expressly excludes LGUs from its coverage, LGUs are not prevented from entering into JVAs with any private entity for its local infrastructure project. JV with LGUs is allowed under the Local Government Code, and by its local PPP Code, if any.

1. BOT Law

PPPs under the BOT Law may be undertaken by any national government agency, government-owned and controlled corporation, or any LGU, on a wide variety of infrastructure and development projects, which include but are not limited to roads and transportation (highways, railways, mass transit facilities, port infrastructure, airports, and other transport facilities), energy and power (power generation, transmission, sub-transmission, distribution, and related facilities), social infrastructure (education and health infrastructure, markets, slaughterhouses, warehouses and post-harvest facilities, public fishports and fish ponds, government buildings, and housing projects), communications (telecommunications, backbone network, terrestrial and satellite facilities, information technology and data base infrastructure), real estate (land reclamation, dredging, industrial and tourism estates or townships, terrestrial and coastal/ marine nature parks), and water and sanitation (irrigation, water supply, sewerage, drainage, environmental and solid waste management facilities, climate change mitigation, and adaptation infrastructure).

There is a broad range of PPP contractual arrangements allowed under the BOT Law. While the BOT Law enumerates several contractual schemes, other forms of contractual arrangements not expressly set out in the BOT Law and the BOT Law IRR may also be permitted provided the same is approved by the President of the Philippines. The PPP contractual schemes expressly listed under the BOT Law IRR are as follows:

SPECIAL SECTORS AND ISSUES

TABLE 9. BOT LAW CONTRACTUAL SCHEMES

Contractual Arrangement	Role of Private Partner	Role of the Government
Build-transfer	Financing and construction of a project. Turns over the project after completion to the implementing agency.	Acquires ownership of the project after construction. Pays private project proponent on an agreed schedule, its total investment on the project plus a reasonable rate of return.
Build-lease-transfer	Financing and construction of the project. Turns over the project after completion to the implementing agency on a lease arrangement for a fixed term after which ownership of the facility is automatically transferred to the implementing agency.	Pays private project proponent by way of rental fees. Acquires ownership of the project at the end of the lease period.
Build-operate-transfer	Financing and construction of a project and the operation and maintenance thereof for a fixed term which shall not exceed 50 years. Turns over the project at the end of the fixed term to the implementing agency. Collects tolls, fees, rentals and charges from facility users to recover its investment.	Regulates activities of the private project proponent as operator of the project. Acquires ownership of the project at the end of the fixed term.
Build-own-operate	Financing and construction of the project and the operation and maintenance thereof in perpetuity. Collects tolls, fees, rentals and charges from facility users to recover its investment. May assign operation and maintenance of the project to a facility operator.	
Build-transfer-operate	Financing and construction of the project on a turnkey basis and turns over the project after satisfactory commissioning to the implementing agency. Operates and maintains the project after commissioning.	Acquires ownership of the project after commissioning.
Contract-add-operate	Adds to an existing infrastructure project which it is renting from the implementing agency and operates the expanded project over an agreed franchise period.	Collects rental payment on agreed terms. Regains control of the project at the end of the lease term.
Develop-operate-transfer	Right to develop adjoining property of a new infrastructure project to be built. Turns over the project at the end of the cooperation period to the implementing agency.	Regains control of the project at the end of the cooperation period.
Rehabilitate-operate-transfer	Refurbishes, operates and maintains the project for an agreed franchise period. Turns over the project at the end of the agreed franchise period to the implementing agency.	Acquires ownership of the project at the end of the agreed franchise period.
Rehabilitate-own-operate	Refurbishes and operates the project with no time limitation imposed on ownership. As long as the private project proponent is not in violation of its franchise, it can continue to operate the project in perpetuity.	Turns over the project to private project proponent.

The BOT Law and BOT Law IRR are further supplemented by PPP Governing Board Policies and Directives, which further clarify government policies in terms of implementing the PPP program, with the goal of standardizing government internal process on evaluation and approval of PPP projects, PPP structure, and implementation of PPP contracts.

There are 2modes of procurement for PPPs undertaken under the BOT arrangements-- (1) the solicited proposal route, or the (2) unsolicited proposal route. Solicited projects originate from the Government and are part of the priority projects of the government implementing agency concerned. Unsolicited projects are submitted by a private proponent and the government is allowed to accept them, provided the following conditions are met: (1) the project involves a new concept or technology and/or not part of the list of priority projects of the government, (2) no direct government guarantee, subsidy or equity is required, and (3) the government has invited by publication, for 3 consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of 60 working days. The private proponent is provided a right to match in the event that another proponent submits a lower price proposal.

Given the preference of the Philippine government to implement PPP projects through the unsolicited proposal route, the PPP Governing Board has approved and issued PPP Governing Board Resolution No. 2017-08-03 dated April 19, 2018, the "Guidelines on Managing Unsolicited Proposals under RA No. 6957, as amended by RA No. 7718" in order to guide both the government agencies and the private sector in the submission and evaluation of unsolicited proposals to the government.

2. JV Arrangements

The NEDA JV Guidelines. The NEDA JV Guidelines define a JV as "an arrangement whereby a private sector entity or a group of private sector entities on one hand, and a Government Entity or a group of Government Entities on the other hand, contribute money/capital, services, assets (including equipment, land, IP or anything of value), or a combination of any or all of the foregoing to undertake an investment activity. "The guidelines apply to all government-owned and/or government-controlled corporations, government corporate entities, government instrumentalities with corporate powers, government financial institutions, and state universities and colleges which are expressly authorized by law or their respective charters to enter into a JVA. JV activities of LGUs, transactions of government financial institutions in the ordinary course of business as part of their normal and ordinary banking, financial or portfolio management operations and transactions of government corporate entities in the exercise of their primary mandate to dispose government assets or properties are not covered by the NEDA JV Guidelines.

The infrastructure and development projects that may be subject to a JV with the government include, but are not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, commercial/ real estates, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging and other infrastructure and development projects authorized by the government.

The JV may be a contractual JV or a corporate JV, provided that in case a JV company will be incorporated as a stock corporation, the government may own up to 50% of the outstanding capital stock of the JV company. It is required that the JV contract and/ or the incorporation documents of the JV company must provide for: (1) clearly defined business objectives; (2) specified degree of participation and the management roles of each party in the JV activity; (3) defined contribution of capital and ownership rights to property; (4) specified division of the profits, risks and losses; (5) identified dispute mechanism to avoid management impasses that may produce deadlock or litigation; (6) specified termination/ liquidation of the JV Company and indicate buy-out provisions; (7) specified confidentiality terms; and (8) stipulated indemnification mechanisms.

The NEDA JV Guidelines differentiates projects undertaken under the BOT Law from JV projects, such that ownership of the asset/business or project under the BOT Law remains with the government (with the exception of projects with a build-own-operate contractual arrangement), while in a JVA, the private sector may be allowed to own the project in its entirety, after the government divests itself of any interest in the JV.

For JVA, a JV partner may be selected by the Government either through (1) competitive selection, or (2) negotiated JV selection. Competitive Selection pertains to the procurement by the Government of a JV partner based on transparent criteria, and open to participation by any interested and qualified private entity. Negotiated JV pertains to a JV proposal originating from a private proponent or originating from the government but the latter has failed to identify an eligible private partner for a desired activity after subjecting the project to at least 2 rounds of competitive selection process.

Local Government Code and Local PPP Codes. Section 18 of RA No. 7160, otherwise known as the Local Government Code, empowers LGUs to create their own sources of revenue, and to acquire, lease, develop, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise of their governmental or proprietary powers and functions. LGUs are given the power to enter into contracts on their own, provided it has the prior authorization of the local legislative council (sanggunian) concerned, and are given full autonomy in the exercise of their proprietary functions, and in the management of their economic enterprise.

Thus, while LGUs are not covered by the NEDA JV Guidelines, they may enter into a JVA with private entities, provided that the same is approved by the local legislative council. The LGUs provide for the specific rules on implementing a JV project through the enactment of its local PPP Code. Local PPP Codes provide for the requirements for approval and the procurement process for a JVA with the private sector.

C. Mining

Mineral resources are owned by the State. Consequently, the exploration, development, utilization, and processing of mineral resources are under State control and supervision. These activities may be undertaken by the State on its own, or it can enter into (1) mineral agreements with qualified persons or (2) a financial or technical assistance agreement ("**FTAA**").

1. Mineral Agreements

For purposes of entering into a mineral agreement with the government, a qualified person can be:

- any citizen of the Philippines with the capacity to contract; or
- a corporation, partnership, association, or cooperative organized or authorized to undertake mining activities and with 60% of its capital owned by Filipino citizens.

Mineral agreements give the qualified person the exclusive right to conduct mining operations and extract all mineral resources found in the contract area. These agreements may be a mineral production sharing agreement ("**MPSA**"), co-production agreement ("**CA**"), or a JVA. These agreements are given a term not exceeding 25 years from their respective dates of execution, and renewable for another term not exceeding 25 years under the same terms and conditions unless such changes have been mutually agreed upon by the parties. Mineral exploration can be undertaken by a qualified person either under the terms of an exploration permit only or as part of the exploration period under the terms of a mineral agreement. The exploration permit is valid for 2 years within which its holder must determine the commercial viability of the project.

The State is entitled to a government share which varies depending on the mineral agreement utilized between the State and the contractor:

- In an MPSA, government share consists of the 4% excise tax on mineral products.
- In CAs and JVAs, the government share is negotiated between the parties and shall consider some factors such as capital expenditure, risks, and contribution of the project to the economy.

If the development and utilization activities are undertaken in mineral reservations, 10% of all royalties and revenues to be derived by the State shall be additionally allocated as the share of the DENR-Mines and Geosciences Bureau (**"DENR-MGB**") and will form part of the special projects fund. If mining operations are done in ancestral lands, royalty must also be paid to the indigenous cultural community.

2. Financial or Technical Assistance Agreement

In cases of large-scale mining operations, a foreign-owned corporation can enter into an FTAA directly with the State. The FTAA has a term not exceeding 25 years and is renewable for another 25 years. A minimum investment of USD50Million is required for the infrastructure and development of the contract area (maximum allowable contract area is 1,000 meridional blocks onshore, and 4,000 meridional blocks offshore). The FTAA contractor has the option to convert it into a mineral agreement at any time during the term of the FTAA if the contractor has determined that the project is not economically viable as a large-scale mining operation. The mineral agreement shall only be for the remainder of the term of the FTAA. If the qualified person which converts its contract from an FTAA to a mineral agreement is a foreign-owned corporation, it must reduce its equity to 40% to comply with nationality requirements.

For FTAAs, government share consists of corporate income tax and excise tax, among others, after the FTAA contractor has recouped its pre-operating expenses. Similar to the mineral agreements, the DENR-MGB shall be entitled to 10% of all royalties and revenues in the event that the mining activities cover a mineral reservation.

For purposes of entering into an FTAA, a foreign-owned corporation is also qualified to apply for an exploration permit, valid for 2 years, but extendible to 4 (for non-metallic mineral exploration) or 6 (for metallic mineral exploration) years, within which its holder must determine the commercial viability of the project. It is also qualified to apply for a mineral processing permit.

Auxiliary Rights of Mining Investors

Qualified persons who conduct mining operations are guaranteed auxiliary rights needed to undertake the operations. These include water rights, right to possess explosives, and easement rights. Mining operations are also entitled to the fiscal and non-fiscal incentives offered under the Omnibus Investment Code, provided the requirements for registration have been complied with.

Additionally, qualified persons who invest in mining operations are guaranteed the following:

- repatriation of investments;
- remittance of earnings in the currency originally used;
- freedom from expropriation of properties of the enterprise (except in instances where expropriation is made for public use or defense) or those represented by investments or loans; and
- freedom from requisition of investment.

D. Banking

The Philippine banking industry is regulated by RA No. 8791 or the General Banking Law of 2000. The operations and activities of banks are

subject to the supervision of the BSP. The BSP also provides policy direction in the areas of money, banking, and credit.

The powers and functions of the BSP are exercised by the Monetary Board, composed of 7 members who are all appointees of the Philippine President. Each member of the Monetary Board serves for a term of 6 years, subject to only 1 reappointment. The chairperson of the Monetary Board is the Governor of the BSP.

Under the law, banks are classified into:

- Universal banks;
- Commercial banks;
- Thrift banks, composed of: (1) savings and mortgage banks, (2) stock savings and loan associations, and (3) private development banks, as defined in the Thrift Banks Act;
- Rural banks, as defined in the Rural Banks Act;
- Cooperative banks, as defined in the Cooperative Code;
- Islamic banks as defined in RA No. 6848, otherwise known as the Charter of Al Amanah Islamic Investment Bank of the Philippines; and
- Other classifications of banks as determined by the Monetary Board of the BSP.

Foreign banks in the Philippines

Section 2 of RA No. 7721, as amended by RA No. 10641, provides that the Monetary Board may authorize foreign banks to operate in the Philippine banking system through any one of the following modes of entry:

- By acquiring, purchasing or owning up to 100% of the voting stock of an existing stock;
- By investing in up to one 100% of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; and
- By establishing branches with full banking authority.

Capital requirements for foreign banks

- *Locally incorporated subsidiaries.* The minimum capital shall be equal to that prescribed by the Monetary Board for domestic banks of the same category.
- *Branches of foreign banks.* Foreign banks shall permanently assign capital of an amount not less than the minimum capital required for domestic banks of the same category,

which amount shall be inwardly remitted and converted into Philippine currency.

In approving the entry of foreign banks, the Monetary Board shall:

- Ensure geographic representation and complementation;
- Consider strategic trade and investment relationships between the Philippines and the country of incorporation of the foreign bank;
- Study the demonstrated capacity, global reputation for financial innovations, and stability in a competitive environment of the applicant;
- See to it that reciprocity rights are enjoyed by Philippine banks in the applicant's country; and
- Consider willingness to fully share their technology.

In addition to the foregoing criteria, the Monetary Board shall ensure that:

- Only established, reputable and financially sound foreign banks shall be allowed entry;
- The foreign bank applicant must be widely owned and publicly listed in its country of origin, unless the foreign bank applicant is owned and controlled by the government of its country of origin; and
- Measures are adopted to ensure that the control of at least 60% of the resources or assets of the entire banking system is held by domestic banks which are majority owned by Filipinos.

X. PHILIPPINE COMPETITION POLICY

Section 19, Art. XII of the 1987 Constitution provides that "The State shall regulate or prohibit monopolies when the public interest so requires. No combination in restraint of trade or unfair competition shall be allowed". Pursuant to this constitutional provision, Congress enacted the Philippine Competition Act ("**PCA**") in 2015. The Implementing Rules and Regulations of the PCA were approved shortly after its enactment on 31 May 2016.

Further, the passage of this law affirms the Philippines' commitment to the Association of Southeast Asian Nations ("**ASEAN**") and the establishment of an ASEAN Economic Community ("**AEC**"). Under the AEC Economic Blueprint adopted by ASEAN member countries in 2007, and the resulting Regional Guidelines on Competition Policy, all ASEAN member countries committed to introduce competition policy by 2015.

Despite being the last of the 5 founding members of the ASEAN to pass an integrated, comprehensive competition statute, the Philippines already has several competition policies set forth in provisions of some laws and regulations. Apart from the Constitution, the Revised Penal Code punishes combinations in restraint of trade and unlawful monopolizations. Other statutes prohibit the manipulation of prices that restrict competition, for instance in the trade of medicines, as well as in the downstream oil industry. Unfair practices and anti-competitive acts are also proscribed under the EPIRA and the Consumer Act.

Along with the enactment of the PCA, the Philippine Competition Commission ("**PCC**") was constituted as the regulatory and a quasi-judicial agency to implement the National Competition Policy and attain the PCA's objectives and purposes. In enforcing the PCA, the PCC shall, *motu proprio*, upon the filing of a verified complaint by an interested party, or upon referral by a regulatory agency, have the sole and exclusive authority to initiate and conduct a fact-finding or preliminary inquiry which shall be completed within 90 days from date of submission of verified complaint, referral, or initiation. In addition, the PCC may undertake, but only upon court order, inspections of business premises, land and vehicles, as used by the entity, where it reasonably suspects that relevant books, tax records, or other documents are kept in order to prevent their removal, concealment, tampering with, or destruction.

The PCA shall be enforceable against any person or entity engaged in any trade, industry, and commerce in the Philippines, and to international trade having direct, substantial, and reasonably foreseeable effects in the trade, industry, or commerce in, including those that result from acts done outside the Philippines. However, the PCA shall not apply to employees' combinations or activities nor to agreements or arrangements with their employers, designed solely to facilitate collective bargaining on conditions of employment.

Moreover, the PCA prohibits anti-competitive agreements, abuse of dominant position and merger or acquisition agreements that substantially prevent, restrict, or lessen competition in the relevant market.

A. Anti-Competitive Agreements

The PCA provides that an "agreement" refers to any type or form of contract, arrangement, understanding, collective recommendations, or concerted action, whether formal or informal, explicit or tacit, written or oral. The PCA also enumerates the Agreements which are prohibited, as follows:

1. Those per se prohibited between or among competitors:

    i. Those that restrict competition as to price, components, or other terms of trade; and

    ii. Those that fix the price at an auction or in any form of bidding, including covering bidding, bid suppression, bid rotation, and market allocation, and analogous practices of bid manipulation.

2. Those between or among competitors which have the object or effect of substantially preventing, restricting, or lessening competition:

    i. Those setting, limiting, or controlling production, markets, technical development, or investment; and

    ii. Those dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means.

3. Other than those mentioned above, agreements which have the object or effect of substantially preventing, restricting, or lessening competition.

However, those which contribute to improving the production or distribution of goods and services, or of promoting technical or economic progress, while allowing consumers a fair share of the benefits, may not necessarily be deemed in violation of this Act.

B. Abuse of Dominant Position

The PCA provides that "dominant position" refers to a position of economic strength that an entity holds which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, consumers, or suppliers.

Moreover, the PCA prohibits entities from abusing their dominant position in their relevant markets by engaging in conduct that substantially prevents, restricts, or lessens competition, including:

- Selling goods or services below cost with the object of driving competition out of the relevant market;
- Imposing barriers to entry or committing acts that prevent competition from growing within the market in an anti-competitive manner except as a result of superior product, process, business acumen, or legal rights;
- Making a transaction subject to acceptance by the other parties of other obligations which by their nature or by commercial usage have no connection with the transaction;
- Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services;
- Imposing restrictions on the lease or contract for sale or trade of goods or services, concerning where, to whom, or in what forms goods or services may be sold or traded;
- Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;
- Directly or indirectly imposing unfairly low purchase prices for the goods or services of marginalized producers and providers;
- Directly or indirectly imposing unfair purchase or selling prices on competitors, customers, suppliers, or consumers; and
- Limiting production, markets, or technical development to the prejudice of consumers except as a result of superior product, process, business acumen, or legal rights.

C. Mergers and Acquisitions

The PCC is empowered to review mergers, acquisitions, and JVs based on factors it deems relevant.

Parties to a merger or acquisition that meet the thresholds provided under the PCA and its Implementing Rules and Regulations are required to notify the PCC within 30 days from signing of definitive agreements relating to the merger or acquisition but prior to any acts of consummation. The current notification thresholds are PHP6 Billion for the size of the party and PHP2.4 Billion for the size of the transaction.

Upon the submission of the Notification Form, the PCC has 15 days to determine the sufficiency of the Notification Form. The 30-day Phase 1 review period shall commence only upon the PCC's determination of sufficiency.

Before the expiration of the30-day (Phase 1)review period, the PCC may request for reasonably necessary and directly relevant information from the parties. Such request has the effect of extending the period (during which the agreement may not be consummated) for an additional 60 days (Phase 2). The total period for review shall not exceed 90 days from notification.

When the periods have expired, and no decision has been promulgated for whatever reason, the merger or acquisition shall be deemed approved and the parties may implement or consummate it.

Where notification is required, parties are prohibited from consummating their agreement until the lapse of the PCC's review period or the PCC makes a decision that the agreement is not anti-competitive. An agreement consummated in violation of this compulsory notification requirement shall be considered void and shall subject the parties to a basic fine of 3% of the value of transaction. The basic fine may be increased or decreased, depending upon the gravity and duration of the violation. In no case, however, should the fine adjustments exceed 5% nor be less than 1% of the value of the transaction.

In the case of banks, trust companies, insurance companies, public utilities, educational institutions, and other corporations governed by special laws, a favorable or no-objection ruling by the Commission shall not be construed as dispensing of the RCC requirement for a favorable recommendation by the appropriate government agency.

Merger or acquisition agreements that substantially prevent, restrict, or lessen competition in the relevant market or in the market for goods and services, are prohibited under the PCA. There are exceptions to these prohibited mergers where the parties establish either of the following:

- The concentration has brought about or is likely to bring about gains in efficiency greater than the effects of any limitation on competition; or

- A party to the merger or acquisition is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement.

D. Enforcement and Penalties

The PCC shall exercise broad powers and functions including:

- Conducting inquiry, investigating, hearing, and deciding violations of the PCA and other competition laws;
- Reviewing proposed mergers and acquisitions;
- Monitoring and undertaking consultation with stakeholders and agencies to understand market behavior;
- Conducting administrative proceedings, imposing sanctions, fines, and penalties for noncompliance;
- Issuing *subpoena duces tecum* and subpoena *ad testificandum;*
- Issuing advisory opinions and guidelines on competition matters for effective enforcement of the PCA; and
- Monitoring compliance by the person or entity concerned with the cease and desist order or consent judgment.

The PCC may impose the following administrative fines on any entity found to have violated the provisions of the PCA on anti-competitive agreements, abuse of dominant position, compulsory notification, and prohibited mergers and acquisitions:

- First offense: a fine of up to PHP100 Million; and
- Second offense: a fine of not less than PHP100 Million but not more than PHP250 Million.

Under the PCA, criminal penalties may be imposed where an entity enters into any anti-competitive agreement. Each and every violation is punished by imprisonment from 2 to 7 years and a fine of not less than PHP50 Million but not more than PHP250 Million. The penalty of imprisonment shall be imposed on the responsible officers, directors, or employees holding managerial positions who are knowingly and willfully responsible for such violation.

XI. DATA PRIVACY

The Philippine legislature enacted RA No. 10173 or the Data Privacy Act of 2012 ("**DPA**"), "to protect the fundamental human right of privacy of communication while ensuring free flow of information to promote innovation and growth."

The DPA applies to the processing of all types of personal information and to any natural and juridical person involved in personal information processing including personal information controllers and processors who, although not found or established in the Philippines, use equipment located in the Philippines or maintain an office, branch or agency in the Philippines, or process the personal information of a Philippine citizen or resident.

The DPA treats certain personal information – namely, those about an individual's race, ethnic origin, marital status, age, color, religious, philosophical or political affiliations, health, education, genetic or sexual life, any proceeding for any offense committed or alleged to have been committed by an individual and the disposal of or the sentence of the court in such proceedings, and specific personal information issued by government agencies peculiar to an individual (e.g. social security numbers, health records, licenses, tax returns) - as sensitive personal information. The processing of sensitive personal information is prohibited except in certain cases, such as where the data subject has given his consent specific to the purpose prior to the processing.

The DPA provides for the general data privacy principles of transparency, legitimate purpose and proportionality and lists the rights of data subjects to (i) be informed of personal information processing (ii) reasonable access (iii) correction (iv) suspend, withdraw or order the blocking, removal or destruction of his personal information (v) be indemnified for damages due to inaccurate, incomplete, outdated, false, unlawfully obtained or unauthorized use of personal information; and (v) data portability.

The DPA requires personal information controllers to implement reasonable and appropriate organizational, physical and technical measures intended for the protection of personal information against accidental or unlawful destruction, alteration and disclosure, as well as against any other unlawful processing.

The DPA sets forth the specific

penalties for violations of its provisions which include fines from PHP100,000.00 up to PHP5 Million, and imprisonment ranging from 6 months to 7 years.

The DPA created the National Privacy Commission ("**NPC**"), the regulatory agency that administers and implements data privacy law and regulations. The NPC promulgated the DPA Implementing Rules and Regulations ("**IRR**") on 24 August 2016. A number of advisories and circulars to implement the DPA have also since been issued by the NPC, including rules and guidelines relating to the registration of data processing systems, appointment of data protection officers, execution of data sharing agreements (involving government agencies), privacy impact assessments, personal data breach management, and security incident and personal data breach reportorial requirements.

Registration of Data Processing Systems

Under the DPA, the IRR and other relevant issuances of the NPC, all personal information controllers ("**PICs**"), and personal information processors ("**PIPs**") that employ at least 250 employees are required to register their data processing systems ("**DPS**") with the NPC.

PICs and PIPs with fewer than 250 employees are not required to register their DPS, unless any of the following conditions exist:

1. The processing includes sensitive personal information of at least 1,000 individuals;
2. The processing is likely to pose a risk to the rights and freedoms of data subjects; or
3. The processing is not occasional.

Moreover, note that DPS that involve automated decision-making shall in all instances be registered with the NPC.

The NPC in *Memorandum Circular No. 17-01* identified the following initial list of sectors or institutions subject to mandatory registration:

1. Government branches, bodies, or entities;
2. Banks and non-bank financial institutions, including pawnshops and non-stock savings and loan associations;
3. Telecommunications networks, internet service providers, and other entities providing similar services;
4. Business Process Outsourcing companies;
5. Universities, colleges, and other institutions of higher learning and all other schools and training institutions;
6. Hospitals, including primary care facilities,

multi-specialty clinics, custodial care facilities, diagnostic or therapeutic facilities, specialized out-patient facilities, and other organizations processing genetic data;

7. Providers of insurance undertakings, including pre-need companies and insurance brokers;

8. Businesses involved mainly in direct marketing, networking, and companies providing rewards cards and loyalty programs;

9. Pharmaceutical companies engaged in research; and

10. PIPs processing personal data for PICs included in the preceding items and DPS involving automated decision-making.

The above list is subject to regular review and may be updated by the NPC through subsequent issuances.

The registration process is completed in 2 phases.

Phase I registration is the appointment of a Data Protection Officer and the submission of the prescribed application form. Phase II is the registration of the PIC/PIP's DPS. Note that a PIC or PIP covered by mandatory registration must register its DPS within 2 months of the commencement of such system.

The NPC shall issue a Certificate of Registration ("**COR**") in favor of a PIC or PIP that has successfully completed the registration process. A COR, once issued, shall be valid only until the 8th day of March of the next following year. An application for renewal should be filed within 2 months prior to, but not later than the 8th day of March of every year.

Note that the NPC has suspended the requirement to renew existing registrations and extended the validity of existing registrations a few times. In its most recent announcement on 6 March 2020 the NPC extended the validity of existing registrations of PICs and PIPs **until 7 March 2021.**

Breach Notification

Notification of personal data breach shall be required when:

1. The personal data involves sensitive personal information or any other information that may be used to enable identity fraud;

2. There is reason to believe that the information may have been acquired by an unauthorized person; and

3. The PIC or NPC believes that the unauthorized acquisition is likely to give rise to a real risk of serious harm to any affected data subject.

PICs must notify the NPC within 72 hours upon knowledge of or the reasonable belief by the PIC or PIP that a personal data breach has occurred. Notification may only be delayed to the extent necessary to determine the scope of the breach, to prevent further disclosures, or to restore reasonable integrity to the information and communications system. However, delay for any reason shall not be allowed if the breach involves at least 100 data subjects or the disclosure of sensitive personal information will harm or adversely affect the data subject. In both instances, the NPC shall be notified within the 72-hour period based on available information. The full report of the personal data breach must be submitted within 5 days, unless the PIC is granted additional time by the NPC to comply.

The data subjects must likewise be notified within 72 hours upon knowledge of or reasonable belief by the PIC or PIP that a personal data breach has occurred. The notification may be made on the basis of available information within the 72-hour period if the personal data breach is likely to give rise to a real risk to the rights and freedoms of data subjects. It may be supplemented with additional information at a later stage on the basis of further investigation. If it is not reasonably possible to notify the data subjects within the prescribed period, the PIC shall request the NPC for an exemption from the notification requirement or the postponement of the notification.

If the PIC fails to notify the NPC or data subjects or there is unreasonable delay to the notification, the NPC shall determine if such failure or delay is justified. Failure to notify shall be presumed if the NPC does not receive notification from the PIC within 5 days from knowledge of or upon a reasonable belief that a personal data breach occurred.

Reportorial Requirements

The rules require that an Annual Security Incident Report, which is a general summary of written reports of all security incidents and personal data breaches (including those not covered by the breach notification requirements), must be submitted to the NPC annually. However, the NPC on 21 March 2019 postponed the submission of the report for calendar year 2018 and advised PICs and PIPs to continue documenting security incidents as usual and stay updated

XII. CORPORATE REHABILITATION

RA No. 10142, otherwise known as the "Financial Rehabilitation and Insolvency Act of 2010" ("**FRIA**"), defines rehabilitation as "the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated."

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Proceedings under the FRIA are considered in rem, since the jurisdiction over all persons affected shall be considered as acquired upon publication of the notice of the proceedings in any newspaper of general circulation pursuant to the financial rehabilitation rules.

Moreover, proceedings under the FRIA are summary and non-adversarial and do not contemplate adjudication of claims that must be threshed out in ordinary court proceedings.

The FRIA allows for three kinds of rehabilitation proceedings: court-supervised, pre-negotiated, or out-of-court.

A. Court-supervised Rehabilitation

A court-supervised rehabilitation may either be voluntary or involuntary. It is initiated by filing a verified petition with a special commercial court in the city or municipality where the principal office of the insolvent debtor is located.

Voluntary rehabilitation is initiated by a petition filed by an insolvent

debtor. An involuntary rehabilitation is initiated by a petition filed by one or more creditors whose claim or aggregate claim is at least PHP1,000,000.00 or at least 25% of the subscribed capital stock, whichever is higher, and provided either one of the following conditions is present:

1. There is no genuine issue of fact or law on any of the claims and the debts are due and demandable and have remained unpaid for at least 60 days or the debtor has failed generally to meet its liabilities as they fall due; or

2. At least one secured creditor (other than the petitioner/s), has initiated foreclosure proceedings against the debtor that will prevent the debtor from paying its debts as they fall due and will render it insolvent.

When the court finds that the petition for voluntary or involuntary rehabilitation is sufficient in form and substance it will issue a Commencement Order and set the date of the initial hearing. The Commencement Order has the following effects:

1. It suspends all actions or proceedings for the enforcement of all claims against the debtor;

2. It suspends all actions to enforce any judgments, attachment or other provisional remedies against the debtor;

3. It prohibits the debtor from selling, encumbering, transferring or disposing in any manner any of its properties, except in the ordinary course of business;

4. It prohibits the debtor from making any payment of its liabilities outstanding as of the commencement date;

5. It exempts the debtor from the imposition of national and local government taxes, including penalties, interests and charges; and

6. It consolidates the jurisdiction of the Rehabilitation Court to resolve all legal proceedings filed by or against the debtor.

The Commencement Order continues in force until one of the following events occurs:

1. The Rehabilitation Plan is approved;

2. The rehabilitation proceedings are terminated; or

3. The Rehabilitation Court lifts the Commencement Order.

The Commencement Order will be published in a newspaper of general circulation in the Philippines once a week for at least two weeks, with the first publication to be made within 7 days from the date of its issuance. All persons who have a claim against the debtor and whose claims are not listed in the schedule of debts

and liabilities must file their verified Notice of Claims at least 5 days before the date of the initial hearing. A creditor who fails to file a claim may not participate in the proceedings but may still be entitled to receive payments upon the recommendation of the rehabilitation receiver in accordance with the confirmed Rehabilitation Plan.

The court will set the case for initial hearing within 40 days from the date of filing of the petition. At the initial hearing, the petitioner will present proof that it has complied with the publication requirement and has sent copies of the petition to the debtor and other creditors, including foreign creditors (the "jurisdictional requirements"). After the jurisdictional requirements are established, the court will determine the claimants who have timely filed their notices of claims and will hear any objections or comments on the nominated receiver. If there are no objections, the court will confirm the appointment of the receiver.

The receiver is responsible for preparing the registry of claims and must make a report to the court on whether:

1. The debtor is actually insolvent;

2. There is a substantial likelihood that it may be successfully rehabilitated;

3. The proposed Rehabilitation Plan is feasible and reasonable; and

4. The petition should be granted due course, dismissed, or converted into one for liquidation.

Based on the receiver's recommendation, the court will either:

1. Grant due course to the petition;

2. Dismiss the petition; or

3. Convert the proceedings into one for liquidation.

If the court grants due course then the receiver shall prepare the Rehabilitation Plan.

The Rehabilitation Plan must be approved by all classes of creditors whose rights or interests would be adversely affected by it. It is deemed approved when the creditors holding at least 50% of the total claims for the said class of creditors vote in favor of the Rehabilitation Plan. Once approved by the creditors, the court has a maximum period of 1 year from the date of filing of the petition to confirm the Rehabilitation Plan.

If the creditors reject the Rehabilitation Plan, the receiver may still file the same in court. The court may, on its own or upon motion of an interested party, confirm the Rehabilitation Plan if all of these four conditions are present: (a) the Rehabilitation Plan complies with the minimum requirements set by the law; (b) the receiver recommends the confirmation of the Rehabilitation Plan; (c) the shareholders or owners of the debtor lose at least their controlling interest as a result of the Rehabilitation Plan; and (d) the Rehabilitation Plan would likely provide the objecting class of creditors with compensation, the net present value of which is greater that what it would receiver if the debtor undergoes liquidation.

The court-approved Final Rehabilitation Plan shall be binding on the debtor, creditors and other interested parties, whether or not they participated in the rehabilitation proceedings. Upon successful implementation of the Rehabilitation Plan, the court will terminate the proceedings and discharge the receiver.

If a Rehabilitation Plan is not confirmed within one (1) year from the filing of the petition, then the court may declare that there was a failure of rehabilitation and convert the proceedings into one for liquidation.

B. Pre-negotiated Rehabilitation Plan

A Pre-Negotiated Rehabilitation Plan is negotiated between the insolvent debtor and the creditors holding at least 2/3 of the total liabilities of debtor, including secured creditors holding more than 50% of the total secured claims and unsecured creditors holding more than 50% of the total unsecured claims. The Pre-Negotiated Rehabilitation Plan must be approved by the court to make it legally binding. Either the debtor alone or jointly with any of its creditors must then file a verified petition for the confirmation of the Pre-Negotiated Rehabilitation Plan. If the court finds that the petition is sufficient in form and substance it will issue a Suspension or Stay Order and direct all creditors and other interested parties to file their objections or comments within 20 days from the date of the second publication of the order. The Order will also confirm the appointment of the rehabilitation receiver named in the Pre-Negotiated Rehabilitation Plan.

The Suspension or Stay Order has the same effect as a Commencement Order issued in a court-supervised rehabilitation proceeding and continues in force for 120 days from the filing of the petition, unless earlier lifted by the court when either one of the following happens:

- The Pre-Negotiated Rehabilitation Plan is approved; or
- The court terminates the rehabilitation proceedings.

If any creditor files an objection or comment, the court will set a hearing. If the court finds merit in the objection or comment, it may either direct the petitioner to cure any defect or, if the objection is non-curable, convert the proceedings into one for liquidation. The court may also convert the proceedings into one for liquidation when the it finds that the debtor or creditors who approved the Pre-Negotiated Rehabilitation Plan acted in bad faith.

The court must either approve or disapprove the Pre-Negotiated Rehabilitation Plan within 120 days from the date of filing of the petition. If approved, the Pre-Negotiated Rehabilitation Plan would have the same effect as a Rehabilitation Plan approved under a court-supervised rehabilitation. If disapproved, the court may convert the proceedings into one for liquidation. If the court fails to take any action within the 120-day period then the Pre-Negotiated Rehabilitation Plan is deemed approved.

C. Out-of-Court or Informal Restructuring Agreement or Rehabilitation Plan

An Out-of-Court or Informal Restructuring Agreement or Rehabilitation Plan (“**OCRA**”) is quite similar to a Pre-negotiated Rehabilitation given that this would require the agreement among the debtor and its creditors. The difference is that an OCRA does not require a confirmation or approval from the court. However, an OCRA, in order to be valid, must be approved by all of the following:

1. The debtor;
2. Creditors representing at least 67% of the secured obligations;
3. Creditors representing at least 75% of the unsecured obligations; and
4. Creditors holding at least 85% of the total liabilities, secured and unsecured.

While the debtor and creditors are negotiating or finalizing an OCRA, they may agree to a Standstill Period whereby the parties agree to hold in abeyance any action to enforce a claim against the debtor. To be valid, the standstill agreement must comply with the following requirements:

1. It is approved by the creditors representing more than 50% of the total liabilities of the debtor;
2. A notice of the standstill agreement is published in a newspaper of general circulation once a week for 2 consecutive weeks; and
3. The standstill period shall not exceed 120 days from the date of effectivity.

The standstill period expires when any one of the following events occurs:

1. The expiration of the 120-days period;

2. The OCRA comes into effect; or

3. The creditors representing more than 50% of the total liabilities of the debtor declare the termination of the negotiations for the OCRA.

Once the debtor and the creditors have agreed on an OCRA, the parties must publish a notice once a week for at least 3 consecutive weeks in a newspaper of general circulation in the Philippines. After the lapse of 15 days from the date of last publication of the notice, the OCRA becomes effective. The OCRA would have the same effect as a confirmed rehabilitation plan under a court-supervised rehabilitation.

While court approval is not required for the effectivity of OCRA, any party may file a petition in court to seek its assistance in executing or implementing the standstill agreement or the OCRA. This petition may be filed in the Regional Trial Court ("**RTC**") of the city or municipality where the principal office of the debtor is located.

D. Voluntary and Involuntary Liquidation

Where there is no reasonable probability that the distressed corporation could be revived into a state of solvency then liquidation becomes the appropriate recourse. Liquidation proceedings may either be voluntary or it may be involuntary. A voluntary liquidation is initiated by a verified petition filed the insolvent debtor, while an involuntary liquidation is initiated by a verified petition filed by 3 or more creditors whose aggregate claim is at least PHP1,000,000.00 or at least 25% of juridical debtor's subscribed capital, whichever is higher. The verified petition must be filed in the special commercial court in the city or municipality where the principal office of insolvent debtor is located.

In the case of an involuntary liquidation, the court will make a preliminary evaluation on whether the petition is sufficient in form and substance. If so, the court will direct the publication of the petition in a newspaper of general circulation once a week for 2 consecutive weeks, and the debtor, all known creditors and other interested parties will be given a period of time to file their respective comments. No such publication is required in a voluntary liquidation.

The court will act on the petition by either issuing a Liquidation Order or dismissing the petition. The Liquidation Order has the following effects:

1. The juridical debtor shall be deemed dissolved and its corporate or juridical existence is terminated;

2. Legal title to and control of all the assets of the debtor, except those that may be exempt from execution, shall be deemed vested in the liquidator or, pending his election or appointment, with the court;

3. All contracts of the debtor shall be deemed terminated and/or breached, unless the liquidator, within 90 days from the date of his assumption of office, declares otherwise and the contracting party agrees;

4. No separate action for the collection of an unsecured claim shall be allowed. Any pending action will be transferred to the Liquidator for him to accept and settle or contest; and

5. No foreclosure proceeding shall be allowed for a period of 180 days.

The Liquidation Order shall not affect the right of a secured creditor to enforce his lien in accordance with the applicable contract or law.

However, the secured creditor has the option to waive its rights under the security or lien and instead prove its claim in the liquidation proceedings.

A liquidator will be elected by the creditors or appointed by the court. The liquidator shall be responsible for preparing the registry of claims and the Liquidation Plan. After the Liquidation Plan is approved by the court, the liquidator shall sell the assets of the debtor and make payments to creditors in accordance with the approved Plan. After the court determines that the liquidation has been completed, it shall issue an order ordering the SEC to remove the debtor from the registry of legal entities. The court shall issue an order terminating the proceedings upon receipt of evidence that the debtor has been removed from the registry of legal entities at the SEC.

XIII. LITIGATION AND ARBITRATION

The Philippine Judiciary is a hierarchical organization with four levels - Courts of First Level, Courts of Second Level, Collegiate Courts, and Supreme Court.

Each court has the mandated duty to settle actual controversies involving rights, which are legally demandable and enforceable. However, lower courts shall initially decide a case before it is considered by a higher court. A higher court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of its primary jurisdiction. Within each level, the courts are coordinate and equal and do not enjoy review of jurisdiction over each other's decisions, resolutions, writs, and processes.

A. Courts

In order for each court to have the power and authority to hear, try, and settle actual controversies, it should acquire, among others, jurisdiction over the subject matter, which is conferred by law and not by consent or acquiescence of any or all of the parties.

1. Courts of First Level

In the first tier are the Courts of the First Level consisting of the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts. The exclusive original jurisdiction of the aforesaid courts, in civil cases pertains to the following:

a. Civil actions, admiralty/ maritime cases, and probate proceedings where the value of the personal property, estate, or amount of demand does not exceed PHP300,000.00 (outside Metro Manila), or does not exceed PHP400,000.00 (Metro Manila), exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs;

b. Forcible entry and unlawful detainer cases;

c. Civil actions involving title to or possession of real property, or any interest therein, where the assessed value does not exceed PHP20,000.00 (outside Metro Manila), or does not exceed PHP50,000 (Metro Manila).

In addition, these courts have delegated jurisdiction in cadastral and land registration cases where there is no controversy or opposition or the value of the contested land does not exceed PHP100,000.00.

2. Courts of Second Level

The second tier consists of the RTCs, which have exclusive jurisdiction over civil actions where:

a. The subject of the litigation is incapable of pecuniary estimation;

b. The demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs exceeds PHP300,000.00 (outside Metro Manila), or more than PHP400,000.00 (Metro Manila);

c. The title to or possession of real property, or any interest therein, where the assessed value exceeds PHP20,000.00 (outside Metro Manila), or more than PHP50,000.00 (Metro Manila); and

d. The case is not within the exclusive jurisdiction of any court, tribunal, person, or body exercising judicial or quasi-judicial functions.

The RTCs have appellate jurisdiction

over all cases decided by the Courts of First Levels in their respective territorial jurisdiction except the latter's decisions in the exercise of delegated jurisdiction.

3. Collegiate Courts

At the third tier is the Court of Appeals and special courts such as Court of Tax Appeals and Sandigan bayan. For civil cases, the Court of Appeals principally exercises exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of RTCs and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution. It has also exclusive appellate jurisdiction over decisions of the Courts of First Levels in cadastral or land registration cases.

4. Supreme Court

At the top of the hierarchy is the Supreme Court, the court of last resort, which is created by the Constitution itself. The Supreme Court exercises appellate jurisdiction over cases decided by the Collegiate Courts and the RTCs.

B. Arbitration

Philippine Commercial Arbitration

Philippine courts are heavily congested as a result of the indiscriminate filing coupled with various motions filed by counsels that delayed the disposition of cases.

Thus, the enactment of RA No. 876 (Arbitration Law) and RA No. 9285 (Alternative Dispute Resolution ["**ADR**"] Act of 2004), plays an important factor in the administration of justice specially in decongesting courts' cases and promoting party autonomy in the resolution of their disputes.

To underscore the state policy in favor of arbitration, the Supreme Court promulgated Administrative Matter No. 076-11-08-SC, also known as the Special Rules of Court on Alternative Dispute Resolution (special ADR Rules), which provided for the procedural guidelines on domestic and international arbitration. Further, in highlighting the importance of arbitration, the Supreme Court adopted the principle of competence, which means that the arbitral tribunal may initially rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any condition precedent to the filing of a request for arbitration. Thus, where the parties have agreed to submit their dispute to arbitration, courts shall refer the parties to arbitration bearing in mind that such arbitration agreement is the law between the parties and that they are expected to abide by it in good faith.

Arbitration, as defined, is a voluntary dispute resolution process in which one or more arbitrators, appointed

in accordance with the agreement of the parties, or in accordance with the rules promulgated pursuant to the said Act, resolve a dispute by renderingan award.

Construction Arbitration

With respect to construction disputes, the Construction Industry Arbitration Commission ("**CIAC**") has the original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, which may involve government or private contracts. Construction disputes may range from violation of specifications for materials and workmanship, violation of the terms of the agreement, interpretation and/or application of contractual time and delays, maintenance and defects, payment, default of employer or contractual and changes in contract cost.

ADR Mechanisms and Government Contracts

Under Executive Order No. 78 series of 2012, implementing agencies both from national and local government are mandated to include in all contracts, involving public-private partnership, built-operate and transfer projects, JVAs entered into by the government, a provision to use ADR mechanisms.

Under the said order, the parties are given the complete freedom to choose which venue and forum shall govern, their dispute, as well as the rules or procedures to be followed in resolving the same.

C. Amendments to the Rules of Civil Procedure

To expedite and simplify the litigation process in the Philippines, the Supreme Court on 15 October 2019 issued A.M. 19-10-20-SC which amends the 1997 Rules of Civil Procedure ("**Amended Rules**") The amendments, which took effect on 1 May 2020, have taken into account the recent developments in procedural and substantive laws, jurisprudence, and digital technology, as well as international conventions.

The following are the notable changes introduced by the Supreme Court:

1. Certification by counsel's signature

Under the old rules, the signature of counsel signifies that he has read the pleading and to the best of his knowledge, information, and belief, there is good ground to support it and it is not interposed for delay.

The Amended Rules modified the import of counsel's signature to constitute a certification that he has read the pleading and that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (a) the pleading is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (b) the claims, defenses, and other legal contentions are warranted by existing law or jurisprudence, or by a non-frivolous argument for extending, modifying, or reversing existing jurisprudence; (c) the factual contentions have evidentiary support, or if specifically so identified, will likely have evidentiary support after availment of the modes of discovery under the rules; and (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

In case the court determines, on motion or on its own, that the above certification has been violated, it may impose an appropriate sanction or refer such violation to the proper office for disciplinary action, on any attorney, law firm, or party that violated the rule. Absent exceptional circumstances, a law firm shall be held jointly and severally liable for a violation committed by its partner, associate, or employee. Such penalties may include, but will not be limited to, non-monetary directive or sanction; an order to pay a penalty in court; or,

if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation of the said certification. The Amended Rules particularly point out that the lawyer or law firm cannot pass on the monetary penalty to the client.

2. Mandatory submission of secretary's certificate or special power of attorney, and additional attestations in the verification

The Amended Rules now mandate that the secretary's certificate or special power of attorney authorizing the affiant to act on behalf of a party to be attached to the pleading. Further, in the verification, the affiant is required to attest to the following: (a) the allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents; (b) the pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and (c) the factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

3. Evidence must be submitted upon filing of the pleading stating a party's claims or defenses.

The Amended Rules have included a new provision which now requires that, aside from stating the party's claims or defenses, every pleading must state: (a) the names of witnesses who will be presented to prove a party's claim or defense; (b) a summary of the witnesses' intended testimonies, with their judicial affidavits attached to the pleading;

and (c) the documentary and object evidence in support of the allegations contained in the pleading.

Further, the new provision states that only witnesses whose judicial affidavits are attached to the pleading shall be presented during trial. No other witness or affidavit shall be heard or admitted, except for meritorious reasons.

4. Extension of time in filing responsive pleadings

The Amended Rules extended the time for the party to file his/her responsive pleadings as follows:

TABLE 10. PERIODS TO FILE RESPONSIVE PLEADINGS

PLEADING	OLD RULES	AMENDED RULES
Answer	15 days from the service of summons	30 calendar days after service of summons
Answer (in case the defendant is a foreign private juridical entity)	30 days after receipt of summons	60 calendar days after receipt of summons
Answer (in case an amended complaint is filed as a matter of right)	15 days after being served with a copy of the amended complaint	30 calendar days after being served with a copy of the amended complaint
Answer (in case an amended complaint is filed but not as a matter of right)	10 days from notice of the order admitting the amended complaint	15 calendar days from notice of order admitting the amended complaint
Counterclaim or cross-claim	10 days from service	20 calendar days from service
Reply	10 days from service	If allowed, 15 calendar days from service
Answer to Supplemental Complaint	10 days from notice of the order admitting the supplemental complaint	20 calendar days from notice of the order admitting the supplemental complaint

The party may only be allowed to file 1 motion for an extension of time to file an answer for meritorious reasons and for an additional period of not more than 30 calendar days.

5. Pleadings and other submissions to the court may be filed and served by electronic means.

Electronic filing of pleadings and other court submissions may be authorized by the Court in places where the court is electronically equipped. In this case, the date of electronic transmission shall be considered as the date of filing.

On the other hand, service by electronic means and facsimile shall be made if the parties concerned consents to such modes of service. Electronic service shall be made by sending an e-mail to the party's or counsel's electronic mail address, or through other electronic means of transmission as the parties may agree on, or upon direction of the court. Further, service by electronic means is complete at the time of the electronic transmission of the document, or when available, at the time that the electronic notification of service of the document was sent. Electronic service is not effective or complete if the party serving the document learns that it did not reach the addressee or person to be served.

However, the Amended Rules provide that there are still orders, pleadings, and other documents which must be served or filed personally. These are initiatory pleadings and initial responsive pleadings, *subpoenae*, protection orders and writs, appendices and exhibits to motions, or other documents that are not readily amenable to electronic scanning and sealed and confidential documents or records.

The Amended Rules also state that the court may electronically serve orders and other documents to all the parties in the case. A paper copy of the order or other document electronically served shall be retained and attached to the record of the case.

6. The court can authorize the plaintiff to serve summons.

The Amended Rules provide that in cases where the sheriff, his deputy, or other proper court officer fails to serve summons on the defendant, the court *may* authorize the plaintiff to serve the summons together with the sheriff. Further, if the summons is to be served outside the judicial region of the court where the case is pending, the plaintiff *shall* be authorized to cause the service of summons.

If the plaintiff is a juridical entity, it shall notify the court, in writing, of the name of its authorized representative and state his or her authority to serve the summons on behalf of the plaintiff. A board resolution or secretary's certificate should be attached when the plaintiff notifies the court of such information.

7. Substituted service in cases where the sheriff was refused entry

In the Amended Rules, the person serving the summons is allowed to leave copies of the summons, if refused entry upon making his or her authority and purpose known, with any of the officers of the homeowners' association or condominium corporation, or its chief executive officer in charge of the community or the building where the defendant may be found.

Further, sending an electronic mail to the defendant's electronic mail address may be considered as substituted service, if allowed by the court.

8. New ways to serve summons on juridical entities

When the defendant is a domestic private juridical entity, service of summons may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel of the corporation wherever they may be found, or in their absence or unavailability, on their secretaries. If such service cannot be made upon any of the foregoing persons, it shall be made upon the person who customarily receives the correspondence for the defendant at its principal office.

In case the domestic juridical entity is under receivership or liquidation, service of summons shall be made on the receiver or liquidator, as the case may be.

Moreover, service of summons may be made electronically, if allowed by the court, if the corporate officials, their secretaries, the person who customarily receives correspondence, or the receiver or liquidator, refuse to receive the summons.

On the other hand, if the defendant is a foreign private juridical entity which has transacted or is doing business in the Philippines, as defined by law, service may be made on its resident agent designated in accordance with law for that purpose, or if there be no such agent, on the government official designated by law to that effect, or on any of its officers, agents, directors, or trustees within the Philippines.

If the foreign private juridical entity is not registered in the Philippines or has no resident agent but transacted in the Philippines, service may, with leave of court, be effected outside of the Philippines by (a) personal service coursed through the appropriate court in a foreign country with the assistance of the Department of Foreign Affairs, (b) publication in a newspaper of general circulation in the country where the defendant may be found and serving copy of the summons and the court order by registered mail at the last known address of the defendant, (c) facsimile, (d) electronic means, or (e) such other means as the court may direct.

9. New Duty of Counsel of Record

In the event that the summons was improperly served, the Amended Rules mandate the deputation of the counsel making a special appearance on behalf the defendant for the purpose of questioning the validity of service of summons, among others, to serve the summons to his or her client.

10. Motions are classified as litigious or non-litigious

The Amended Rules have defined and classified motions as either litigious or non-litigious.

Litigious motions include: (a) motion for bill of particulars; (b) motion to dismiss; (c) motion for new trial; (d) motion for reconsideration, (e) motion for execution pending appeal; (f) motion to amend after a responsive pleading has been filed; (g) motion to cancel statutory lien; (h) motion for an order to break in or for a writ of demolition, (i) motion for intervention; (j) motion for judgment on the pleadings; (k) motion for summary judgment; (l) demurrer to evidence; (m) motion to declare defendant in default; and (n) other similar motions. Such motions shall be served either by personal service, accredited private courier or registered mail, or electronic means so as to ensure its receipt by the other party.

Unlike the old rules, a hearing on the motion is no longer necessary. Instead, the opposing party is given a period of 5 calendar days from receipt of the litigious motion to file his or her opposition. The Amended Rules, however, provide that the court may, in its discretion, call a hearing as regards a litigious motion if deemed necessary for its resolution.

On the other hand, non-litigious motions are those which the court may act upon without prejudicing the rights of adverse parties. These motions shall not be set for hearing and shall be resolved by the court within 5 calendar days from receipt thereof.

Non-litigious motions include: (a) motion for the issuance of an alias summons; (b) motion for extension to file answer; (c) motion for postponement; (d) motion for the issuance of a writ of execution; (e) motion for the issuance of an alias writ of execution; (f) motion for the issuance of a writ of possession, (g) motion for the issuance of an order directing the sheriff to execute the final certificate of sale, and (h) other similar motions.

11. Grounds for motion to dismiss have been reduced

The Amended Rules, as a general rule, prohibit parties from filing a motion to dismiss except on the following grounds: (a) the court has no jurisdiction over the subject matter; (b) there is another action pending between the same parties for the same cause; (c) the cause of action is barred by prior judgment or by the statute of limitations. Other grounds for dismissal allowed in the previous rules may be pleaded as an affirmative defense in the Answer, which the court will resolve within 30 calendar days from the filing of the Answer.

If a motion to dismiss is allowed to be filed, it shall be resolved within 15 calendar days upon the court's receipt of the opposition or upon expiration of the period within which to file an opposition thereto.

12. Incorporation of Court-Annexed Mediation and Judicial Dispute Resolution

There has been a change in the process or procedure under the Amended Rules as the court is now mandated to refer the parties to mandatory court-annexed mediation after the pre-trial and after the issues are joined. The court-annexed mediation shall not exceed 30 calendar days without further extension.

In case the court-annexed mediation fails, and the presiding judge is convinced that settlement is still possible between the parties, the case may be referred to another judge for judicial dispute resolution. The judicial dispute resolution shall be conducted within a non-extendible period of 15 calendar days from notice of the court-annexed mediation.

If judicial dispute resolution fails, trial before the original court shall proceed on the dates agreed upon.

13. Court action on motion for judgment on the pleadings and summary judgments

The Amended Rules provide that the court may on its own or on motion render judgment on the pleadings, if it is apparent that the answer fails to tender an issue, or otherwise, admit the material allegations in the adverse party's pleading.

As regards summary judgments, the Amended Rules mandate that the motion praying for summary judgment cite the supporting affidavits, depositions or admissions, and the specific law relied upon. The adverse party is then given a non-extendible period of 5 calendar days from receipt of the motion to file a comment and serve opposing affidavits, depositions, or admissions. Unless the court orders the conduct of a hearing, judgment sought shall be rendered if the pleadings, supporting affidavits, depositions and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

The Amended Rules further provide that any action of the court on motion for judgment on the pleadings or summary judgment shall not be subject of an appeal or petition for certiorari, prohibition, or mandamus.

LITIGATION AND ARBITRATION

D. Amendments to the Rules on Evidence

On 8 October 2019, the Supreme Court issued Resolution A.M. 19-08-15-SC amending the Revised Rules on Evidence ("**Amended Rules on Evidence**"). The amendments took effect on 1 May 2020.

Notable changes introduced by the Supreme Court include the following:

1. Documentary evidence

The definition of a documentary evidence was amended to include recordings and photographs or any material containing letters, words, sounds, numbers, figures, or symbols, or their equivalent. The term "photograph" was further defined to include still pictures, drawings, stored images, x-ray, films, motion pictures, or videos.

2. Removal of the disqualification of witnesses due to mental incapacity or immaturity

The previous rule provided that those whose mental condition at the time of their production for examination is such that they are incapable of intelligently making known their perceptions to others and children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully cannot be witnesses.

The Amended Rules on Evidence have removed the aforementioned disqualifications. With respect to child witnesses in particular, the Supreme Court has already previously recognized their qualification be witnesses under the Rule on Examination of a Child Witness (A.M. No. 004-07-SC).

3. Disqualification by reason of privileged communication

The Amended Rules on Evidence have introduced the following changes with respect to disqualification by reason of privileged communication:

a. The attorney-client privilege now covers a person who is reasonably believed by the client to be licensed to engage in the practice of law, as well as any other person assisting the attorney. The privileged communication will not apply in the following instances:

i. *The furtherance of crime or fraud.* If the services or advice of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

ii. *Claimants through the same deceased client.* Communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate or by *inter vivos* transaction;

iii. *Breach of duty by lawyer or client.* Communication relevant to an issue of breach of duty by the lawyer to his or her client, or by the client to his or her lawyer;

iv. *Document attested by the lawyer.* Communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

v. *Joint clients.* Communication relevant to a matter of common interest to two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients, unless they have expressly agreed otherwise.

b. The scope of the physician-patient privileged communication was extended to include a psychotherapist, and a person reasonably believed by the patient to be authorized to practice medicine or psychotherapy.

A psychotherapist was defined under the amended rules as a person licensed:

i. To practice medicine, engaged in the diagnosis or treatment of a mental or emotional condition; or

ii. As a psychologist by the government while similarly engaged.

The privilege also applies to persons, including members of the patient's family who have participated in the diagnosis or treatment of the patient under the direction of the physician or psychotherapist.

The Amended Rules on Evidence still maintained the limitation that the privilege will only apply to civil cases.

Further, the new rule provides that the privilege pertains to any confidential communication made for the purpose of diagnosis or treatment of the patient's physical, mental, or emotional condition, including alcohol or drug addiction, between the patient and his or her physician or psychotherapist, regardless of whether the information would blacken the reputation of the patient.

c. The disqualification of the communication between a minister or priest and a penitent was broadened to include any person reasonably believed to be a minister or priest. The privilege also now covers any communication and not just confession made to or advice given, in the course of discipline enjoined by the church to which the minister or priest belongs.

The Amended Rules on Evidence also added that the communication shall remain privileged, even in the hands of a third person who may have obtained the information, provided that the original parties to the communication took reasonable precaution to protect its confidentiality.

4. Privilege relating to trade secrets

The Amended Rules on Evidence adopted the ruling of the Supreme Court in the case of *Air Philippines Corporation vs. Pennswell*, where it was held that trade secrets are privileged in nature. Under the Amended 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. However, when the courts direct the disclosure of a trade secret, the court shall take such protective measures as the interest of the owner of the trade secret and of the parties, and the furtherance of justice may require.

5. The Amended Rules on Evidence provided the definition of hearsay

Prior to the amendment of the rules on evidence, the Supreme Court has defined hearsay as "an out of court statement offered for the truth of the matter asserted".

The Amended Rules on Evidence have thus incorporated jurisprudential pronouncements and provides that hearsay is a statement other than one made by the declarant while testifying at a trial or hearing, offered to prove the truth of the facts asserted therein. Additionally, the rules provide that it is ***not*** hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with the declarant's testimony and was given under oath subject to the penalty of perjury at a trial hearing, or other proceeding, or in a deposition; (b) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or (c) one of identification of a person made after perceiving him or her.

6. The Amended Rules on Evidence added a "residual exception" to the hearsay rule

Under the Amended Rules, a statement not covered by any of the exceptions to the hearsay rule, but has the equivalent circumstantial guarantees of trustworthiness, will be

admissible in evidence, if the court determines that:

a. The statement is offered as evidence of a material fact;

b. The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

c. The general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Further, the new rule adds that a statement may not be admitted under the foregoing exception unless the proponent makes known to the adverse party, sufficiently in advance of the hearing, or by the pre-trial stage in the case of a trial of the main case, to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

7. Presumptions in Civil Actions and Proceedings

The Amended Rules on Evidence inserted a new provision which provides that in all civil actions and proceedings not otherwise provided for by law or the rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption. Moreover, if the presumptions are inconsistent, the presumption that is founded on weightier considerations of policy shall apply. If considerations of policy are of equal weight, neither presumptions apply.

8. Presumption against an accused in criminal cases

A presumption with respect to an accused in criminal cases was included in the Amended Rules on Evidence. The provision states that if a presumed fact that establishes guilt is an element of the offense charged, or negates a defense, the existence of the basic fact must be proved beyond reasonable doubt and the presumed fact follows from the basic fact beyond reasonable doubt.

9. A witness may be impeached by evidence of conviction of a crime

The Amended Rules on Evidence now allow the impeachment of a witness by reason of a previous conviction of a crime. However, evidence of previous conviction will only be admitted if the crime was punishable by a penalty in excess of 1 year or the crime involved moral turpitude, regardless of the penalty.

The evidence of conviction will not be admissible if the conviction has been the subject of an amnesty or annulment of the conviction.

10. Public documents and proof thereof

The Amended Rules on Evidence included in the enumeration of public documents those that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source. The proof of such public document shall be in the form of a certificate or its equivalent prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to above, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his or her office.

11. The court has discretion in giving weight to the opinion of an expert witness

Philippine jurisprudence has long recognized that the opinion of an expert witness is admissible, but such testimony is merely persuasive and not binding upon the courts. Thus, the introduction of said Amended Rules on Evidence give guidance to the court in determining the weight to be given to an expert opinion. For said purpose, the court may consider the following in giving weight to the testimony of the expert witness:

a. Whether the opinion is based upon sufficient facts or data;

b. Whether it is the product of reliable principles and methods;

c. Whether the witness has applied the principles and methods reliably to the facts of the case; and

d. Such other factors as the court may deem helpful to make such determination.

XIV. GLOSSARY

ADR - Alternative Dispute Resolution

AEC - ASEAN Economic Community

AFS - Audited Financial Statement

AGMO - Autonomous Group Market Operator

Amended Rules
Resolution A.M. 19-10-20
SC Amendments to the 1997 Rules of Civil Procedure

Amended Rules on Evidence
Resolution A.M. 19-08-15-SC amending the Revised Rules on Evidence

AOI - Articles of Incorporation

APAs - Advance Pricing Arrangements

ARMM - Autonomous Region of Muslim Mindanao

ASEAN - Association of Southeast Asian Nations

BIR - Bureau of Internal Revenue

BOC - Bureau of Customs

BOI - Board of Investments

BOT - Build-Operate-Transfer

BOT Law IRR - Implementation of PPPs

BPO - Business Processing Outsourcing

BPRT - Branch Profit Remittance Tax

BSP - Bangko Sentral ng Pilipinas

CA - Co-Production Agreement

CIAC - Construction Industry Arbitration Commission

COR - Certificate of Registration

CPA - Certified Public Accountant

CRS - Company Registration System

CWT - Creditable Withholding Tax

DENR - Department of Environment and Natural Resources

DENR-MGB - DENR-Mines and Geosciences Bureau

DND - Department of National Defense

DOE - Department of Energy

DOLE - Department of Labor and Employment

DPA - Data Privacy Act

DPS - Data Processing Systems

DST - Documentary Stamp Tax

DTI - Department of Trade and Industry

ECA - Environmentally Critical Areas

ECC - Environmental Compliance Certificate

Ecozones - any of the country's special economic zones

ECP - Environmentally Critical Projects

EICC - Energy Investment Coordination Council

EIS - Environmental Impact Statement

EPIRA - Electric Power Industry Reform Act

EPNS - Energy Projects of National Significance

ERC - Energy Regulatory Commission

EVOSS - Energy Virtual One-Stop Shop

FCDU - Foreign Currency Deposit Units

FIA - Foreign Investments Act

FINL - Foreign Investment Negative List

FRIA - Financial Rehabilitation and Insolvency

FTAA - Financial or Technical Assistance Agreement

GDP - Gross Domestic Product

GIS - General Information Sheet

HDMF - Home Development Mutual Fund

IBPAP - IT & Business Processing Association of the Philippines

IMO - Independent Market Operator

IP - Intellectual Property

IP Code - Intellectual Property Code

IPO Tax - Initial Public Offering Tax

IPO - Intellectual Property Office

IPP - Investment Priorities Plan

IPRs - Intellectual Property Rights

IRR - Implementing Rules and Regulations

ITH - Income Tax Holiday

JV - Joint Venture

JVA - Joint Venture Agreement

LGU - Local Government Unit

LRF - Legal Research Fee

LTFRB - the Land Transportation Franchising and Regulatory Board

MAO - Mergers and Acquisition Office

MCIT - Minimum Corporate Income Tax

MPSA - Mineral Production Sharing Agreement

NEDA JV Guidelines - 2013 Revised Guidelines and Procedures for Entering into JVAs between Government and Private Entities

NGCP - National Grid Corporation of the Philippines

NIRC - National Internal Revenue Code

NOLCO - Net Operating Loss Carry-Over

NPC - National Privacy Commission

OBU - Offshore Banking Unit

OCRA - Out-of-Court or Informal Restructuring Agreement or Rehabilitation Plan

OPC - One Person Corporation

PCA - Philippine Competition Act

PCC - Philippine Competition Commission

PD - Presidential Decree

PDEx - Philippine Dealing and Exchange Corp.

PEMC - Philippine Electricity Market Corporation

PEZA - Philippine Economic Zone Authority

PhilHealth - Philippine Health Insurance Corporation

PIPs - Personal Information Processors

PPP - Public Private Partnership

PRC - Professional Regulation Commission

PSE - Philippine Stock Exchange

RA - Republic Act

RCC - Revised Corporation Code

RDIs - Intellectual Property of Research and evelopment Institutes and/or Institutions

RE - Renewable Energy

RHQ - Regional/Area Headquarters

RMO - Revenue Memorandum Order

ROHQ - Regional Operating Headquarters

RTC - Regional Trial Court

SEC - Securities and Exchange Commission

SIF - State Insurance Fund

SIL - Service Incentive Leave

SOC - Statement of Concerns

SRC - Securities Regulation Code

SRC Rules - SRC 2015 Implementing Rules and Regulations

SSS - Social Security System

STT - Stock Transaction Tax

TCC - Tariff and Customs Code

The Transaction - Grab's acquisition of Uber's Southeast Asia business

TIN - Taxpayer Identification Number

TRAIN - Tax Reform for Acceleration and Inclusion

TRIPs - Trade-Related Intellectual Property Rights

TTA - Technology Transfer Arrangements

VAT - Value-Added Tax

WESM - Wholesale Electricity Spot Market

ABOUT
OCAMPO & SURALVO LAW OFFICES

Ocampo & Suralvo Law Offices (OS Law) is a full-service law firm in the Philippines.

OS Law assists its clients with their corporate, commercial, and tax needs across a spectrum of business concerns including general corporate and commercial matters, company establishment and registration, contract negotiation and drafting, mergers and acquisitions, joint ventures, corporate restructuring, foreign direct investments, transfer pricing and litigation.

OS Law is also driven to provide Philippine businesses with solutions that enable them to thrive in the global economy. It provides its clients with access to the tax and legal expertise in many of the world's fastest-growing investment destinations through collaborations with DFDL, an international law firm focused on Asia's emerging economies with twelve offices in eight countries, and Kinstellar, a trusted legal counsel to leading investors across Emerging Europe and Central Asia with offices in ten jurisdictions.

PARTNERS OF OS LAW

Jude Ocampo | **Cristina Suralvo** | **Karen Ocampo** | **Christine Antonio** | **Charity Aurellano**

Jude Ocampo

Jude is a Philippine attorney specializing in mergers and acquisitions, corporate law, and tax. Jude has assisted a number of global and ASEAN multinationals in multi-jurisdictional reorganizations and has advised many clients on complex mergers and acquisitions.

He holds a Master of Laws degree from Harvard University where he received the Ayala Scholarship Grant, the Lopez Scholarship Grant, and the Landon H. Gammon Fellowship for Academic Excellence. He also earned a Master of Business Administration degree (Finance and Supply Chain Management) from UNC-Chapel Hill's Kenan-Flagler Business School where he was a UNC Kenan-Flagler Fellow. He is a graduate of, and a former professorial lecturer on tax law and constitutional law at the University of the Philippines College of Law.

A corporate and tax lawyer with almost two decades of experience in the Philippines and abroad, Jude held senior director or partner positions in several Big 4 firms in the Philippines (KPMG), Central Asia (Deloitte) and in Europe (E&Y) He was, until 2015, a regional tax director and deputy head of regional tax of DFDL, an international law firm focusing on high-growth Asian markets.

He also served in the Philippine government. From 2004 to 2005, he was Assistant Secretary for Legal Affairs of the Republic's Trade and Industry Department and Finance Department.

He writes on investment law for Lexis Nexis and tax law for IBFD. He also contributes to the Linklaters global data privacy protection guide.

Jude has been consistently recognized by Asialaw Profiles as a Leading Lawyer on M&A and Corporate Law. He has also been named among the Top 100 Lawyers of the Philippines by Asia Business Law Journal.

Cristina Suralvo

Tina obtained her Bachelor of Laws degree from the University of the Philippines graduating with a Dean's Award for Academic Excellence.

She was admitted to the Philippine bar in 2001, placing 10th in the bar examinations.

She worked as a junior associate of De Borja Medialdea Bello Guevarra and Gerodias law firm and later on as a tax lawyer at Sycip Gorres Velayo & Co. (Ernst & Young in Manila), the largest professional services firm in the country. Tina also gained substantial experience as a legal officer with the Prosecution and Enforcement Department, Market Regulatory Office of the Philippine Stock Exchange.

She brings more than a decade of valuable regulatory experience with the power industry, working for many years overseeing the compliance of trading participants as Deputy Enforcement and Compliance Officer of the Philippine Electricity Market Corporation, which operates and governs the Wholesale Electricity Spot Market.

Tina's expertise in labor, corporate, and commercial law allows her to advise and assist domestic and foreign clients in various stages of their business operations and in their many transactions. She has handled company registration and compliance involving various agencies such as the Securities and Exchange Commission, Bureau of Internal Revenue, Philippine Economic Zone Authority, the Food and Drug Administration, the Board of Investments, and many local government units. She assists clients in drafting, reviewing, and negotiating various contracts and agreements, and in conducting due diligence reviews prior to acquisitions.

Karen Ocampo

Karen obtained her Bachelor of Laws degree from the University of the Philippines. She was admitted to the Philippine bar in 2001. She has extensive experience in corporate commercial and tax law, having worked as an associate at top law firm Castillo Laman Tan Pantaleon & San Jose, and as a tax lawyer at Sycip Gorres Velayo & Co. (Ernst & Young in Manila), the largest professional services firm in the country.

Karen's experience in tax law is wide-ranging, from tax planning and advisory to tax controversy and advocacy. Her competence in this sphere is strengthened by international experience in the tax and legal departments of Big 4 accounting firms abroad. She was a senior tax manager at Deloitte Kazakhstan, providing investment counseling, corporate tax advice and international structuring assistance to domestic and multinational clients in various industries, particularly in the energy and resources space. She was also a tax executive at Ernst & Young Cambodia advising mostly inbound investors in a wide range of industries in respect of their corporate and transaction tax concerns, including mergers and acquisitions and cross-border structuring.

Karen is also adept at data privacy issues. She has advised on, and assisted clients with, data privacy compliance including data protection officer and data processing system registrations; establishing privacy management programs; drafting privacy policies, procedures and notices; drafting and updating vendor and data transfer agreements; and establishing and implementing breach management procedures. Karen has the Certified Information Privacy Manager (CIPM) credential, as certified by the International Association of Privacy Professionals (IAPP).

In respect of corporate and commercial matters, she has handled corporate registrations, mergers and acquisitions and corporate reorganizations for domestic and multinational clients. She has assisted clients in drafting, reviewing

Christine Antonio

Christine obtained her Bachelor of Laws degree from the University of the Philippines where she was awarded the Dean's Medal for Academic Excellence. She holds a Master of Corporate Law degree from the University of Cambridge graduating with First Class Honors. She was admitted to the Philippine Bar in 2007.

She possesses extensive experience in the Public Private Partnership (PPP) sector, having worked as the head of the Project Development Service Department of the Public-Private Partnership Center of the Philippines. She likewise worked as a Foreign Consulting Attorney for Kelvin Chia Yangon Ltd., where she was seconded as General Manager of the Legal Department of the Joint Operations/PPP between Myanmar Posts and Telecommunications and KDDI/ Sumitomo Corporation. She also previously worked for the Department of Finance Privatization and Management Office as Deputy Privatization Officer For Legal, and as an Associate at Castillo Laman Tan Pantaleon & San Jose Law Offices, one of the largest law firms in the Philippines.

Charity Aurellano

Charity received her Bachelor of Laws degree from the University of the Philippines in 2001 and graduated with a Dean's Medal in Academic Excellence. She holds a Master of Commercial Law degree from the University of Melbourne and was the recipient of the Frank Pinkerton Scholarship Award for Principles of Natural Resources Law in 2017.

She was admitted to the Philippine Bar in 2002. Prior to joining OS Law, Charity was an associate in Poblador Bautista & Reyes Law Offices and Siguion Reyna, Montecillo & Ongsiako Law Offices, where she gained extensive litigation experience representing foreign and domestic clients in various commercial disputes, including corporate rehabilitation and insolvency, intra-corporate controversies, breach of contracts, and intellectual property rights violations.

Charity was also a former Corporate Legal Counsel for a group of mining companies and has advised and assisted clients in conducting legal due diligence reviews of mining projects, contract negotiations, license applications, and compliance with national and local mining and environmental laws and regulations.

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