

FAQs ON FOREIGN INVESTMENTS IN THE PHILIPPINES

Here are some frequently asked questions (FAQ) on investing in the Philippines, such as choosing the right corporate vehicle, the allowed areas of investment, tax incentives, and other key information:

1

How does the Philippines define foreign corporations?

Foreign Corporations has been defined as one, which owes its existence to the laws of another state, and generally, has no legal existence within another state. Section 123 of the Corporation Code as one formed, organized, and existing under any laws other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in the Philippines.

2

What is the general policy of the government for foreign investments?

- The government encourages foreign investments, which will provide significant employment opportunities relative to the amount of the capital being invested, improve productivity of resources, increase volume and value of exports, and provide a foundation for the future development of the economy.
- The government recognizes the pivotal role of private sector investments and, thereby, commits to continuously enhance the business climate. Foreign investments are encouraged to fill in capital gaps, help provide employment, increase production, and provide a base for the overall development of the economy.
- Investment-related rules have been liberalized to facilitate entry of foreign investments. This thrust is expected to continue.

3

Can a foreign company invest in the Philippines?

Yes. The Foreign Investment Act (R.A. 7042, 1991, amended by R.A. 8179, 1996) liberalized the entry of foreign investment into the Philippines. Under the FIA, foreign investors are generally treated like their domestic counterparts and must register with the Securities and Exchange Commission (SEC) (in the case of a corporation or partnership) or with the Department of Trade and Industry's Bureau of Trade Regulation and Consumer Protection (in the case of a sole proprietorship).

4

What is the percentage of foreign equity allowed under the FIA?

With the liberalization of the foreign investment law, 100% foreign equity may be allowed in all areas of investment except for financial institutions and those reserved for Filipinos by mandate of the Philippine Constitution and existing laws.

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What are those businesses with foreign investment restrictions?

Within the 1991 Foreign Investment Act (FIA) there are two negative lists, also known as the "Foreign Investment Negative List", which defines the foreign investments, which are limited or restricted by the Constitution and specific laws. Negative List A & Negative List B.

6**What requirements must be complied with before a foreign corporation can do business in the Philippines?**

A foreign corporation must first secure the necessary licenses or registrations from the appropriate government bodies. In the case of corporations or partnerships, the necessary incorporation papers from the SEC must first be obtained. In the case of single proprietorship, registration from the Bureau of Trade Regulation & Consumer Protection of the Department of Trade and Industry must be secured.

7**What are the requisites for obtaining a license to do business in the Philippines?**

A foreign corporation shall be granted a license to transact business by filing a verified application with the SEC setting forth specifically required data, including certified copies of its articles of incorporation and by-laws.

8**Is there a need for the foreign corporation to appoint its local agent in the Philippines?**

Yes. Among the things to be stated in the verified application are the name and address of the foreign corporation's resident agent authorized to accept summons and process in all legal proceedings and, pending the establishment of a local office, all notices affecting the corporation.

9**How will the foreign corporation appoint its Philippine local agent?**

A written power of attorney must be filed by the foreign corporation with the SEC designating some person who must be a resident of the Philippines, on whom service of summons and other legal processes may be served in all actions or other legal proceedings against such corporation, and consenting that service upon such resident agent shall be admitted and held as valid as if served upon the duly authorized officers of the foreign corporation at its home office.

10**Is there a need for the foreign corporation to execute an agreement with the SEC regarding service of summons?**

Yes. In consideration of its being granted a license to do business in the Philippines, the foreign corporation shall execute and file with the SEC an agreement or stipulation agreeing that if at any time said corporation shall cease to transact business in the Philippines or shall be without any resident agent in the Philippines on whom any summons or other legal processes may be served, then in any action or proceeding arising out of any transaction or business which occurred in the Philippines, service of any summons or other legal processes may be made upon the SEC and that such service shall have the same force and effect as if it is made upon the duly authorized officers of the foreign corporation at its home office.

11**What is the effect of failure to appoint or maintain a local agent?**

The failure to appoint or maintain a resident agent in the Philippines or failure, after change of its resident agent or his address, to submit to the SEC a statement of such change, are grounds for revocation of a license granted to a foreign corporation to do business.

12**Is there any Reciprocity Compliance?**

Yes. Attached to the application shall also be a duly executed certificate under oath by the authorized official or officials of the jurisdiction of incorporation of the foreign corporation, attesting to the fact that the laws of the country or state of the applicant allow Filipino citizens and corporation to do business therein.

13**Is there a need to deposit Securities?**

Yes. Within sixty (60) days from issuance of the license to do business, such foreign corporation shall deposit with the SEC, for the benefit of its present and future creditors, Philippine securities in the actual market value of at least Php100,000.00, subject to further deposit of additional securities every six months after each fiscal year equivalent in actual market value to two percent (2%) of the amount by which the foreign corporation's gross income for that fiscal year exceeds Php5,000,000.00.

14**What is the effect of being issued a license to do business?**

When a foreign corporation is issued the license to do business in the Philippines, it may commence to transact its business in the Philippines and continue to do so for as long as it retain its authority to act as a corporation under the laws of the country or state of its incorporation, unless such license is sooner surrendered, revoked, suspended, or annulled.

15**What are the consequences of not obtaining a license to do business?**

A foreign corporation doing business in the Philippines without first obtaining the license to do business (a) shall not be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; (b) but such foreign corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

16**Is registration of foreign investment with the BSP required?**

BSP registration is necessary only if the investor wants to make sure that the repatriation of capital and the remittance of dividends, profits and earnings can be made using foreign exchange sourced from the banking system. Otherwise, BSP registration is not necessary.

17**Can foreign investment funds be inwardly remitted outside of the banking system?**

Yes, however, amounts in excess of the equivalent of US\$10,000.00 are required to be declared upon physical entry into the country. Funds remitted outside the banking system cannot be registered as foreign equity investment with the SEC and Bangko Sentral ng Pilipinas or BSP.

18**Is inward remittance of foreign investment required to be converted immediately to Philippine pesos?**

An investor is required to convert his inward remittance of foreign investment to Philippine pesos for purposes of registration with the BSP.

19**Are there any tax incentives for foreign corporations investing in the Philippines?**

- Yes. There are different forms of investment aids like exemptions and tax relief, administrative and customs facilities. A corporation investing in the Philippines may avail of tax breaks and incentives by registering with the BOI – Board of Investments. The company must operate a business, which has been recognized as a preferred area of investment in the Philippines Investment Priority Plan (IPP).
- Other agencies like Philippine Chamber of Commerce and Industry may be of help to foreign investors

**20****Can business activities not covered by the IPP avail of tax incentives?**

Yes, provided the following requirements are met:

- at least 50% of production / service is for export, if Filipino-owned enterprise;; and
- at least 70% of production / service is for export, if majority foreign-owned enterprise (more than 40% foreign equity)

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What are the available fiscal incentives for foreign corporations operating businesses covered by the IPP?

- Income Tax Holiday
- Tax credit on raw materials, supplies and semi-manufactured products
- Additional deduction from taxable income for labor expenses (cannot be simultaneously enjoyed with the ITH incentive)
- Exemption from Taxes and Duties on Imported Spare Parts
- Exemption from Wharfage Dues and Export Tax, Duty, Impost and Fees
- Tax Exemption on Breeding Stocks and Genetic Materials
- Additional Deductions from Taxable Income for necessary and major infrastructure works (cannot be simultaneously enjoyed with the ITH incentive).

22

What are the advantages of an Income Tax Holiday?

- Companies registered with the BOI are eligible for income tax holidays, which range from 3 – 8 years. 4 years for new projects without pioneer status and 6 years for projects with pioneer status. If a non-pioneering firm is located in a less developed area, it shall generally be entitled to six (6) years income tax holiday. However, it should be noted that Firms locating within Metro Manila shall not be granted income tax holiday unless they are:
 - Within a government industrial estate;
 - Service-type projects with no manufacturing facilities;
 - Power generating plants; or
 - Exporters with expansion projects.
- A 100% foreign owned corporation may be entitled to incentives if their business has been categorized as a pioneer project and at least 70% of production / service is exported or the project is in one of the less-developed areas mentioned in the IPP. Companies not exporting 100% of their production / services are obliged to have 60% Filipino ownership within a period of 30 years from time of registration with the BOI. Foreign ownership of corporations in non-pioneer projects is limited to 40% except if the company exports more than 70% of its production / service.

23

What are the available non-fiscal incentives for foreign corporations operating businesses covered by the IPP?

Certain non-fiscal incentives are also available to registered enterprises, among which are: employment of foreign nationals; guaranteed repatriation of foreign investments and earnings thereon; and importation of consigned equipment for an unlimited period subject to posting of a re-export bond.

24**How does a foreign corporation apply for BOI incentives?**

Submission of a notarized application specifying the nature of the projects, its inclusion in the IPP or not, percentage of production for export, the investors details and a 5 year feasibility study.

25**What are other tax incentive schemes available for foreign corporations?**

- Companies that register and locate within the free zones such as the BOI-Autonomous Region of Muslim Mindanao (BOI-ARMM), less developed areas (LDA), “ecozones” under the Philippine Economic Zone Authority (PEZA), and the special economic zones like Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), Cagayan Economic Zone Authority (CEZA), Authority of the Freeport Area of Bataan (AFAB), John Hay Poro Point, Aurora Pacific Economic Zone Authority and Zamboanga (Zambo ecozone).
- Companies that register and locate within an area that is under the Philippine Economic Zone Authority (PEZA) are entitled to various tax incentives and other advantages.

NOTE: Usually, enterprises located in a PEZA approved ecozone are required to export 100% of their production.

26**What is the percentage of foreign ownership allowed in enterprises located in a PEZA approved ecozone?**

100% foreign ownership is allowed except in activities, which are limited by the Foreign Investment Negative List.

27**What are the incentives provided by PEZA?**

- Income Tax Holiday (ITH) or exemption from corporate income tax for 4 years, extendable to a maximum of 8 years; after which a special 5% tax on gross income (sales less direct costs) shall be paid in lieu of all national and local taxes. The income tax holiday is not available for locators in the Subic Bay Metropolitan Authority (SBMA) and Clark Freeport Zone; they are entitled to the special 5% tax on gross income as described above.
- Exemption from duties and taxes on imported capital equipment, spare parts, supplies, raw materials, and other merchandise directly needed in their registered operations. Tax credits will be issued on breeding stocks or genetic materials when they are sourced locally. Moreover, after availment of the ITH incentive, PEZA-registered enterprises shall be subject to a final tax at a preferential rate of 5% of their gross income earned, in lieu of all other taxes, local and national. Information Technology (IT) companies are entitled to similar incentives if they are registered locators in an IT ecozone.

28**What are the other available incentives?**

- PEZA may grant the right to the locator on a case-to-case basis the sale of up to 30% of production to the domestic market.
- Exemption from wharfage dues and export taxes, imposts and fees.
- Permanent resident status for foreign investors and immediate family members.
- Employment of foreign nationals.
- Simplified import and export procedures.

29**Are investment incentives transferable?**

In general, investment incentives are not transferable. However, investment incentives are attached to the registered project and subject to certain qualifications, may be carried over from one owner to the next, at the discretion of the incentives giving body. Tax credit certificates may be transferred subject to certain conditions.

30**How long will it take to obtain BOI/PEZA/Other IPAs approval once all requirements are complied with?**

- Under EO 226, applications filed with the BOI shall be considered automatically approved if not acted upon by the BOI Board within 20 working days after they have been officially accepted, subject to the usual terms and conditions.
- In the case of PEZA, the processing and evaluation by the appropriate department usually takes about two (2) weeks. The decision on the project is made during the bimonthly meetings of the PEZA Board.
- As to the other IPAs, processing of applications including the approval of their respective Boards, take a period of 15 to 30 working days from submission of all documentary requirements.

31**What are the restrictions attached to the approval of the application for registration?**

A list of general and specific terms and conditions is normally attached to the approval letter issued by the BOI/PEZA/Other IPAs upon approval of the application for registration. The general conditions include certain management, financial, operational, and marketing restrictions, which must be properly complied with so as to avoid grounds for cancellation of registration. The specific terms and conditions, which may include nationality, operational, and reporting requirements, vary depending upon the nature of the business enterprise. similar incentives if they are registered locators in an IT ecozone.

32**How much time is an investor allowed to start his project?**

The amount of time allowed for starting a registered project depends on the type of the proposed project and the period set by the proponent in the feasibility study with the approval of the BOI/PEZA/IPAs. Generally, the project must be commenced within one year from approval date, but may be extended under applicable qualifying circumstances.

33

Can the application for registration with the BOI/PEZA/other IPAs and the SEC be filed simultaneously, or must one wait for the BOI/PEZA/Other IPAs approval before going to the SEC?

Yes, the application for registration can be filed simultaneously, but the approval of the application with the BOI/PEZA and other IPAs would be conditional on the affirmative completion of the SEC processes.

34

Can foreign corporations acquire or own land in the Philippines?

Yes, provided the following requirements are met: (a) it must be a private land, which means any land of private ownership; and (b) the foreign equity in the corporation must not exceed forty percent (40%).

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What will happen if foreign ownership exceeds forty percent (40%)?

The effect would be that the foreign corporation would lose its capacity to hold the private land. They may, however, be granted temporary rights such as a lease contract which is not prohibited by the Constitution.

36

What are the other exceptions to the ownership of land by foreign investors and corporations?

- Acquisition through hereditary succession;
- Purchase by a former natural-born Filipino citizen pursuant to the Dual Citizenship Law which states that a former Filipino re-acquiring his Filipino Citizenship shall be deemed not to have lost his Philippine citizenship, thus enabling them to enjoy all the rights and privileges of a Filipino;
- If a former natural-born Filipino who has become a naturalized citizen of another state opts not to re-acquire Filipino citizenship according to the Dual Citizenship Act, he may nonetheless own land but limited to the following according to BP 185 and RA 8179:
 - For residential use:
 - Up to 1,000 square meters of residential land
 - Up to 1 hectare of agricultural land
 - For business or commercial use
 - Up to 5,000 square meters of urban land
 - Up to 3 hectares of rural land
- Purchase of not more than 40% interest in a condominium project; and
- Ownership through Filipinos who are married to aliens who retain their Filipino citizenship

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Is there any protection from expropriation?

Yes. The law provides for protection against expropriation except for reasons of public interest, national welfare, security/defense against payment of just compensation; and it provides for protection against requisitioning of goods except in case of war or national emergency and against payment of just compensation.

38

Can foreign corporations own real properties in the Philippines other than land?

Yes. Foreign corporations can acquire other immovable or real properties such as buildings and other improvements on the land.

39

Are foreigners and foreign corporations allowed to lease lands in the Philippines?

Yes. Foreign investors investing in the Philippines can now lease private lands up to 75 years. Based on R.A. No. 7652, entitled "Investor's Lease Act", lease agreements may be entered into with Filipino landowners. Lease period is to 50 years, renewable for a period of 25 years, provided that the land is intended for investment (industrial buildings, factories, companies, tourism, etc.). For tourism projects, the lease shall be limited to projects with an investment of not less than US\$5M, 70% of which shall be infused in said project within 3 years from signing of the lease contract.

40

Are arbitration clauses accepted in the Philippines?

Yes. Consistent with UNCITRAL Model Law, the Alternative Dispute Resolution (ADR) Act of 2004 was recently enacted. The Law promotes the use of different modes of ADR for the speedy and impartial dispensation of justice. The ADR Act expressly adopted under Section 19 thereof the UNCITRAL Model Law as the law governing international commercial arbitration in the Philippines. /in short, the ADR Act has now opened the window for the Philippines to be a venue for international commercial arbitration and mediation.

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Can foreign corporations participate in bidding for projects by the Philippine Government?

Yes. Under the "Government Procurement Reform Act of 2003", all procurement shall be done through competitive bidding, a method of procurement which is open to participation by any interested party.



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