



# **The Legal 500 Country Comparative Guides**

## **Philippines**

### **DOING BUSINESS IN**

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This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Philippines.

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## PHILIPPINES

### DOING BUSINESS IN



#### 1. Is the system of law in your jurisdiction based on civil law, common law or something else?

The Philippine legal system is a combination of civil and common law. Customary law and the Muslim Shariah legal system for the Muslims in the Philippines are likewise recognized as part of the law of the land.

#### 2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

Business vehicles in the Philippines are as follows:

- **Corporation.** It is an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incidental to its existence. A corporation may be stock or non-stock. A One Person Corporation, which has a single stockholder, is also recognized in the Philippines.
- **Partnership.** This is formed by two or more persons who bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves. The partnership has a juridical personality separate and distinct from that of each of the partners. A partnership may be limited or general.
- **Sole Proprietorship.** It is a form of business organization conducted for profit by a single individual and does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise.

#### 3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

No. There is a need for the foreign entity to first register as a foreign corporation or incorporate a local entity. The following are the different forms by which a foreign entity may do business in the Philippines:

- **Subsidiary.** It is a domestic corporation, either wholly or substantially owned by a foreign or another domestic parent company. It is a juridical entity with legal personality separate and distinct from that of its parent company, such that, its corporate liabilities are generally not regarded as liabilities of its "parent" company.
- **One Person Corporation.** A foreign natural person may set-up a One Person Corporation, subject to applicable restrictions on foreign participation in investment areas of activities.
- **Branch Office of Foreign Company.** It carries out the business activities of the head office and derives income from the host country.
- **Representative Office.** A representative office deals directly with clients of the parent company but does not derive income from the host country. It may undertake activities such as but not limited to information dissemination, market research, promotion of the company's products, quality control of products. However, a representative office cannot derive income in the Philippines or "solicit" orders or sales in the Philippines.
- **Regional/Area Headquarters.** This serves as an administrative branch of a multinational company engaged in international trade which serves as a supervision, communications and coordination center of its branches, subsidiaries, or affiliates in the Asia-Pacific Region and other foreign markets and which does not earn or derive income from the Philippines.

#### 4. Are there are any capital requirements

## to consider when establishing different entity types?

Yes. Capital requirements differ depending on the corporate vehicle chosen by the foreign entity. The following table illustrates the capital requirements for each corporate vehicle:

Corporate Vehicle	Capital requirements
Subsidiary	Must have a minimum of USD \$200,000.00 capital remitted to a designated treasurer-in-trust-for account if the foreign ownership in the subsidiary exceeds 40%. However, minimum capital of USD \$100,000.00 is allowed for a subsidiary (a) involved in advanced technology as determined by the Department of Science and Technology, or (b) it is endorsed as a startup or startup enabler by the lead host agencies or (c) it employs at least fifty (50) direct employees. Subsidiaries considered as export enterprises are not subject to the foreign ownership requirement.
One Person Corporation	Since this is still a corporation similar to a subsidiary, it follows the required capital requirements for specific industries.
Branch Office	As it carries out the business activities of the foreign company, it has the same minimum capital requirement as that of a subsidiary.
Representative Office	Amount initially remitted must be at least USD \$30,000.00.
Regional/Area Headquarters	Remittance to the country shall not be less than USD \$50,000.00 (or its equivalent in other foreign currencies) annually.
Regional Operating Headquarters	Remittance to the country shall not be less than USD \$200,000.00 (or its equivalent in other foreign currencies).

## 5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

All persons or entities establishing a business in the Philippines must register or obtain a license to do business from the Securities and Exchange Commission ("SEC"). In case of sole proprietors, they must register with the Department of Trade and Industry ("DTI"). Requirements and fees vary depending on the business vehicle.

In certain industries or activities, such as banks, insurance companies, remittance services and internet service providers, the SEC will also require a favorable endorsement from the appropriate government regulatory agency.

After registration with the SEC or DTI, the next step is to

apply for business permit with the city or municipality which has jurisdiction over the place where the business is located and register the business with the Bureau of Internal Revenue to secure a Tax Identification Number.

Investors are usually inclined to utilise a corporations as a business vehicle since the applicable laws, rules and regulations are clear, and the shareholders are protected by the corporate veil.

## 6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

In case of corporations, the board of directors shall exercise the corporate powers, conduct all business, and control all properties of the corporation. Once there is a quorum, the directors discuss corporate matters in a regular or special meeting. The Board's decisions shall be made official via written resolutions. Meanwhile, the corporate officers shall manage the corporation and perform such duties as may be provided in the bylaws and/or as resolved by the board of directors.

For partnerships, every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership. However, certain matters (such as, disposal of the goodwill of the business, confess judgment, renouncing partnership's claim, etc.) may only be decided by all of the partners, except when one is authorized by other partners or unless the partner abandoned the business.

In the case of sole proprietorship, the owner, who is a natural person, is primarily in charge of the business operations and decision-making.

## 7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

Under the Revised Corporation Code ("RCC"), the number of directors of a corporation, other than a One Person Corporation, shall be two (2) or more but not exceeding fifteen (15). Directors who are elected by the stockholders must be: (i) a natural person; (ii) of legal age; (iii) must own at least one share.

The RCC likewise provides certain requirements for each officer. The President must be (i) a natural person; (ii) of legal age; (iii) must be shareholder and director of the corporation; and (iv) must not be a Secretary or Treasurer.

The Secretary and Treasurer must be (i) a natural person; (ii) of legal age; (iii) a resident of the Philippines; and (iv) if elected as Secretary, a citizen of the Philippines.

Within five (5) years prior to their election, directors and officers must likewise be free of the following disqualifications: (i) convicted of a criminal offense punishable by imprisonment for a period exceeding six years, or for violation of the RCC or Securities Regulation Code; (ii) not liable for any offense involving fraudulent acts; and (iii) not liable for acts, violations, or misconduct similar to (i) and (ii) as may be found by a foreign court or equivalent foreign regulatory authority.

In the case of shareholders, there are no limitations as to the number of shareholders of a foreign nationality, except in nationalized and partly nationalized industries. In these industries, the nationality of both shareholders and directors must be proportionate to the allowable participation or share in the capital of the company.

### **8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?**

Working with distributors and resellers is a viable alternative for expanding business operations. This is usually achieved by entering into contracts outlining the rights and responsibilities of the parties. While there are no specific rules or limitations as to the arrangements between the counterparts, foreign companies or businesses must make sure that the local distributor is registered either with the Securities and Exchange Commission (for corporate entities and partnerships) or Department of Trade and Industry (for sole proprietorships).

Other options for expanding one's business into the Philippine market are franchising, joint ventures, mergers and acquisitions, licensing, among others, subject to laws and regulations such as Philippine Competition Act.

### **9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.**

Yes. There is a prescribed *Code of Corporate Governance (SEC Memorandum Circular No. 062009)* which is applicable to all registered corporations and branches of foreign corporations that: a) sell equity or debt securities to the public; b) have assets in excess of PhP50 Million and have at least 200 shareholders with over 100 shares each; c) whose equity securities are listed on an exchange; or d) are grantees of secondary licenses from the SEC. Subsequently, the SEC issued the *Code of Corporate Governance for Publicly-Listed Companies (SEC Memorandum Circular No. 19-2016)* which applies specifically to Publicly-Listed Companies and the *Code of Corporate Governance for Public Companies and Registered Issuers (SEC Memorandum Circular 24-2019)*.

In general, these issuances are intended to bring corporate governance standards to that prescribed by the G20/OECD policies. They utilize the "comply or explain" approach involving voluntary compliance and mandatory disclosure.

However, note that these do not strictly govern the privately owned companies. At best, the codes of corporate governance that may apply to private companies are those for Bangko Sentral ng Pilipinas ("BSP") -Supervised Financial Institutions ("BSFIs") and the Insurance Commission Regulated Companies ("ICRCs"), as there are private companies classified as BSFIs or ICRCs.

Although subject to separate guidelines for corporate governance, the codes for specific groups of companies are generally aligned with the *Code of Corporate Governance for Publicly Listed Companies ("CCGPLC")*. As such, these are themes of the principles with the corresponding recommended applications under the CCGPLC:

#### **Board's Roles and Responsibilities**

- The Board should be composed of directors with a collective working knowledge, experience or expertise that is relevant to the company's industry/sector, and majority of them must be non-executive directors.
- The Board should be assisted by a Corporate Secretary and Compliance Officer.
- The Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of

the company and all shareholders. The Chairperson must be competent and qualified.

- The Board should be responsible for ensuring and adopting an effective succession planning program for directors, key officers and management, and a clear policy specifying the relationship between remuneration and performance.

#### **Establishment of Board Committees**

- The Code provides for certain committees which should be established to focus on specific board functions to aid in the optimal performance of its roles and responsibilities. These are the Audit Committee, Corporate Governance Committee, Board Risk Oversight Committee and Related Party Transaction Committee.

#### **Fostering commitment**

- The codes emphasized importance of directors' attendance and active participation in all meetings of the Board, Committees, and Shareholders.
- There is a limit as to the maximum number of companies where a non-executive director may serve as such.

#### **Reinforcing Board Independence**

- This is achieved by setting a minimum number of independent directors, who have the necessary qualifications and none of the disqualifications.
- The Board's independent directors should serve for a maximum cumulative term of nine years.
- A director with a material interest in any transaction affecting the corporation should abstain from taking part in the deliberations for the same.

#### **Assessing Board Performance**

- The Board should conduct an annual self-assessment of its performance, including the performance of the Chairman, individual members, and committees.
- The Board should have in place a system that provides, at the minimum, criteria and process to determine the performance of the Board, the individual directors, committees, with feedback mechanism.

#### **Strengthening Board Ethics, Disclosure and**

#### **Transparency**

- Members of the Board are duty-bound to apply high ethical standards, taking into account the interests of all stakeholders.
- The Board should ensure the proper and efficient implementation and monitoring of compliance with the Code of Business Conduct and Ethics and internal policies.
- The Board should establish corporate disclosure policies and procedures.

#### **Strengthening External Auditor's Independence and Improving Audit Quality**

- The Audit Committee should have a process for approving and recommending the appointment, reappointment, removal, and fees of the external auditor. Its Charter must include its responsibility on assessing the integrity and independence of the external auditor.

#### **Increasing Focus on Non-Financial and Sustainability Reporting**

- The Board should have a clear and focused policy on the disclosure of nonfinancial information, with emphasis on the management of economic, environmental, social and governance ("EESG") issues of its business, which underpin sustainability.
- Likewise, corporations should adopt a globally recognized standard/framework in reporting sustainability and non-financial issues.

#### **Strengthening the Internal Control System and Enterprise Risk Management Framework**

- There should be an adequate and effective internal control system and an enterprise risk management framework in the conduct of its business, taking into account its size, risk profile and complexity of operations.
- There should be an independent internal audit function.
- There should be a Chief Risk Officer ("CRO"), who is the ultimate champion of Enterprise Risk Management ("ERM").

#### **Promoting Shareholder Rights**

- The Board should ensure that basic shareholder rights are disclosed in the Manual on Corporate Governance and on the company's website.
- The Board should encourage active

shareholder participation by requiring advance notice on annual and special shareholders' meeting.

### 10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

Some of the options available to the entity are the following:

- Loans from bank or other third parties;
- Advances from shareholders;
- Deposits for future subscription from prospective shareholder-investors; and/or
- Additional subscription to the authorized capital stock.

### 11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

The following are some ways for the entity to return proceeds while it is a going concern by:

- Declaration of dividends out of unrestricted retained earnings (corporations) or distribution of profits (partnerships);
- Return of capital contribution such as by buying back of shares (corporations), but only for legitimate corporate purpose/s and considering the trust fund doctrine; and
- Extending loans to shareholders/partners in the form of advances.

### 12. Are specific voting requirements / percentages required for specific decisions?

Yes. Generally, the board may decide on corporate decisions by a *majority vote*, except in certain instances such as in the case of corporations vested with public interest, material contracts are approved by at least two-thirds (2/3) of the entire membership of the board.

In securing shareholders' approval of the corporate act, the following are the voting requirements/percentages:

Corporate Act	Voting Requirement
Amendment of By-laws	
Power to Enter into Management Contract	Ratified by stockholders representing at least the majority of the outstanding capital stock
Compensation of Directors or Trustees	
Amendment of Articles of Incorporation	Ratified by stockholders representing at least two-thirds (2/3) of the outstanding capital stock
Power to Extend or Shorten Corporate Term	
Power to Increase or Decrease Capital Stock	
Power to Incur, Create, or Increase Bonded Indebtedness	
Sale or Other Disposition of Assets	
Power to Invest Corporate Funds in Another Corporation or Business of for Any Other Purpose	
Power to Declare Dividends	
Removal of Directors or Trustees	

### 13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

Not directly. Generally, shareholders are only authorized to participate in the management of a corporation through the election of directors. This is because, under the RCC, the board of directors shall exercise the corporate powers, conduct all business, and control all properties of the corporation. In turn, the directors appoint the officers of the corporation who shall manage the corporation and perform such duties as may be provided in the bylaws and/or as resolved by the board of directors.

However, the shareholders also hold the power to remove directors and the RCC does not provide any limitations as to the cause of such removal. The same can be said with corporate officers, being liable to be removed by the directors who appointed them. Thus, if the directives of the stockholders, through the board of directors are not followed, they may be removed.

### 14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

The protection afforded by Philippine labor laws can be



divided into two (2): labor standards and labor relations.

- **Labor standards** refer to the minimum requirements prescribed by existing laws, rules, and regulations relating to wages, hours of work, cost of living allowance and other monetary and welfare benefits, including occupational, safety, and health standards. This also covers employment rules with respect to gender, age, and disabilities.
- **Labor relations** define the status, rights, and duties, and the institutional mechanisms that govern the individual or collective interactions of the parties. This covers security of tenure, and the right to self-organization and collective bargaining.

**15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?**

Under the Labor Code, the grounds for the dismissal of an employee may be grouped into the following categories:

**Just causes** include (a) Serious misconduct or willful disobedience; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach of trust; (d) Commission of a crime or offense by the employee; and (e) Other causes analogous to the foregoing.

In these cases, the Philippines follow the “twin notice rule”, which requires the services of two (2) written notices upon the employee:

**First notice.** This contains the specific causes or grounds for termination against the employee, and a directive that the employee is given the opportunity to submit a written explanation within a reasonable period.

After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management.

**Second and final notice.** Once the termination is found to be justified, the employer shall serve the employee a written notice of termination.

**Authorized causes** cover the following: (a) installation

of labor-saving devices, (b) redundancy, (c) retrenchment or downsizing, (d) closure or cessation of operation, and (e) disease.

“Collective dismissals” fall under this category.

The requirements of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days (30) before the effectivity of the termination, specifying the ground or grounds for termination.

**16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?**

Yes. The Philippine Constitution protects the workers’ rights to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. It also affords laborers the right to participate in policy and decisionmaking processes affecting their rights and benefits as may be provided by law.

It shall include the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for the same purpose for their mutual aid and protection.

Generally, there are no entities exempt from this rule, as the law provides that it shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization. However, managerial employees are not eligible to join, assist or form any labor organization.

The Philippines also affords the workers the right to participate in policy-making processes through tripartite conferences, tripartite industrial peace councils, and Regional Tripartite Wages and Productivity Boards, among others.

**17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?**

The Anti-Graft and Corrupt Practices Act criminalizes certain corrupt practices by government officials and employees. Apart from and in connection with this, the same Act and the Code of Conduct and Ethical Standards for Public Officials and Employees require all public officials to regularly submit a sworn statement of their assets, liabilities, and net worth. Such statement shall include a disclosure of his/her income, expenses, paid income taxes, business interests, and financial connections. Any asset found to be manifestly disproportionate to the public official's lawful income may be forfeited in favor of the Government and the official or employee concerned prosecuted.

The relevant laws did not limit the disclosure requirement to their assets and interests located in the Philippines. Public officials are therefore required to disclose their assets, business interests, and financial connections located outside the country, if applicable. Assets of such government officials may likewise be subject to forfeiture effected through extraterritorial government arrangements and cooperation agreements.

**18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?**

The body of Philippine criminal laws, comprised of the Revised Penal Code and numerous special penal laws, punishes the taking of another persons' property without permission, the concealment of one's own property to creditors, the act of swindling another person for his/her money or property, the removal of mortgaged personal property without the knowledge or consent of the mortgagee, and the act of knowingly transacting with stolen property as economic crimes.

The laws of the Philippines also penalize the act of transacting with money or property derived from an unlawful activity and making them appear to have originated from legitimate sources. For this class of crime, Philippine anti-money laundering laws impose on banks, insurance companies, dealers in securities, and other related entities the obligation to report certain kinds of transactions with relevant authorities.

Some special crimes, such as plunder (a form of corruption), large scale smuggling, syndicated estafa (fraud) and illegal recruitment, may be considered forms of economic sabotage, if certain conditions are present. These crimes carry higher or maximum criminal penalties, and are generally non-bailable offenses.

**19. How is money laundering and terrorist financing regulated in your jurisdiction?**

The Anti-Money Laundering Act and the Terrorism Financing Act of 2012 requires transactions that are either suspected to be the derived from unlawful activities or related to the financing of terrorism are required to be reported to the Anti-Money Laundering Council ("AMLC"). Failure to report these transactions shall make the financial institution involved liable for the crime of Money Laundering.

The AMLC is also capable of freezing money or property, examining bank accounts, and initiating forfeiture proceedings. The AMLC can use these powers should it find that the concerned asset, property, or account relates to money laundering activities or terrorism financing.

**20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderearbeid, the French loi de vigilance)?**

Philippine laws make it illegal for arrangements that produce the effect of trafficking, slavery, and compulsory servitude. The Civil Code of the Philippines declares contracts that amount to involuntary servitude as invalid. Furthermore, the Expanded Anti-Trafficking in Persons Act criminalizes the act of recruiting, obtaining, hiring, providing, transferring, maintaining, harboring, or receiving persons for the purpose of exploitation, forced labor, slavery, and servitude, among others. The Philippines also places certain limitations on child labor. Republic Act No. 9231 places a limit on the age of children allowed to work, the working children's maximum daily and weekly working hours, and the fields of work that children can work in.

These laws generally punish such acts if done or committed in the Philippines. However, there is no law in place that requires companies or individuals to adhere to certain requirements or standards in their supply chain.

At most, the Philippines only requires publicly-listed corporations ("PLC") to report their initiatives for sustainability. SEC Memorandum Circular No. 4-2019 mandates these companies to submit a Sustainability Report together with their required annual submissions. The Sustainability Report shall contain disclosures involving the PLC's economic, environmental, and social policies. Failure to submit this Report shall subject the PLC to a fine.



**21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.**

Under the Revised Corporation Code, corporations doing business in the Philippines must submit their annual financial statements, audited by an independent Certified Public Accountant ("CPA"), to the Securities and Exchange Commission.

Further, the National Internal Revenue Code, as amended, requires partnerships or persons with gross annual sales or receipts exceed Three Million Pesos to have their books of account audited and examined yearly by an independent CPA.

Notwithstanding the said submission to the government entities, only corporations listed with the local stock exchange are required to disclose their audited financial statement through the exchange platform which is accessible to the public. Entities engaged in regulated industries such as banking and insurance disclose their audited financial statement in their respective websites.

**22. Please detail any corporate / company secretarial annual compliance requirements?**

The Revised Corporation Code requires corporations doing business in the Philippines to submit a General Information Sheet ("GIS"). The GIS summarizes the movement of the capital structure of the corporation, as well as changes in its directors, officers, and beneficial owners. Entities listed in the stock exchange are subject to a more stringent set of requirements, as they have to prepare (i) an annual report, (ii) a corporate governance report, and (iii) a sustainability report, among others, as part of its annual compliance requirements.

There is no requirement for partnerships and individuals doing business in the Philippines to submit their secretarial annual compliance.

**23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?**

Under the Revised Corporation Code, regular meetings of shareholders or members shall be held annually on a

date fixed in the by-laws, or if not fixed, on any date after April 15 of every year as determined by the Board.

Matters which are required to be presented to the stockholders or members during the annual meeting include, among others, the following: (1) the minutes of the previous annual meeting, as well as the special meetings, if any; (2) material information on stockholders and voting rights; (3) an assessment of the corporation's performance; (4) a financial report of the preceding year; (5) disclosure reports on self-dealings and related party transactions, etc.; (6) the election of the directors; (7) ratification of the acts of the management for the preceding period; and (8) appointment of the external auditor for the next fiscal period.

In addition, any acts or measures which requires stockholder approval (such as amendments of the articles of incorporation), may be presented to and approved by the stockholders at the annual meeting.

**24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.**

All corporations registered with the Securities and Exchange Commission ("SEC"), including foreign and domestic, stock and non-stock corporations, which are required to submit the General Information Sheet are also required to disclose their beneficial ownership information to the SEC.

Beneficial owners are those who ultimately own or exercise control over the corporation, identified by controlling ownership interest (at least 25% of voting shares or capital), position of control in the company, or through other similar means. The information of beneficial owner that needs to be disclosed includes their complete name, residence, date of birth, nationality, Tax Identification Number or passport number, mode of acquisition of beneficial ownership, and percentage and manner of ownership in the corporation, if applicable.

**25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?**

The following are the main taxes businesses in the Philippines are subject to:

Income Tax at a rate of 15% to 35%, based on a graduated table, for citizens and residents realizing taxable income from Philippine sources, and at a rate of 25% for domestic corporations and resident foreign corporations. Depending on the situation and financial performance of the said taxpayers, individuals may avail of the 8% Gross Income Tax in lieu of the graduated rates, and corporations may be subject to 1% Minimum Corporate Income Tax.

Value Added Tax ("VAT"), which is a form of sales tax at the rate of 12% levied on the gross sales of goods and services, or total value used by the Bureau of Customs for importations. Alternatively, certain industries, such as banks and financial institutions, life insurance companies, and domestic carriers, are subject to various rates of Percentage tax for their Gross Sales in lieu of the 12% VAT.

Please note that the recently enacted Republic Act No. 11976 or the Ease of Paying Taxes (EOPT) Act revised the recognition principles of the said business taxes. Previously, there was a distinction as to the timing when Value Added Tax and/or Percentage Tax are imposed, i.e., on the point of sale for goods and on the point of collection for services. Now, Value Added Tax and/or Percentage Tax shall be imposed on the gross sales made for both goods and services, regardless of when collected.

Withholding Taxes, which individuals and corporations are obliged to withhold and remit as withholding agents, namely:

- Creditable Withholding Taxes, at the usual rates of 1%, 2%, 5%, 10%, and 15% for certain income payments, and 20% to 25%, on average, for the salaries and remunerations paid to their employees; and
- Final Withholding Taxes, for payments of passive income and for payments made in favor of non-residents.
- Documentary Stamp Taxes for certain transactions, such as raising of capital through the issuance of shares of stock and/or debt instruments.

With respect to Income Taxes, the general rates mentioned in Item (1) above apply to the taxpayer's taxable income, which means the pertinent items of gross income specified in this National Internal Revenue Code, minus the allowable deductions, if any. Gross Income means all income derived from whatever source, including (but not limited to) the following items: (a) Gross income derived from the conduct of trade or business or the exercise of a profession; (b) Gains derived from dealings in property; (c) Interests; (d)

Rents; (e) Royalties; and (f) Dividends.

Notwithstanding the foregoing definition of Gross Income and the applicability of the rates mentioned in Item (1), if such (b) Gains derived from dealings in property; (c) Interests; (d) Rents; (e) Royalties; and (f) Dividends are earned as passive income, then they are subject to certain rates of Final Withholding Taxes as mentioned in Item (3)(b). Usual passive income subject to Final Withholding Taxes are:

- Gains on the sale of real property held as a capital asset at a rate of 6% Final Withholding Tax;
- Interests from banks and Royalties at rate of 20% Final Withholding Taxes; and
- Cash and/or Property Dividends at a rate of 10%, except those received by a Domestic Corporation or a Resident Foreign Corporation from another Domestic Corporation which shall be tax-exempt;

## **26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)**

Eligible proponents who participate in industries included in the Strategic Investment Priorities Plan, subject to the nature of their activity and the location of their operations, may be entitled to the following incentives:

- Income Tax Holiday ("ITH");
- Special Corporate Income Tax ("SCIT") Rate - For export enterprise, a tax rate equivalent to five percent (5%) effective July 1, 2020, based on the gross income earned, in lieu of all national and local taxes.
- Enhanced Deductions ("ED") related to depreciation, labor, research, training, power or operating losses expenses;
- Duty exemption on importation of capital equipment, raw materials, spare parts, or accessories that are directly and exclusively used in the registered project or activity; and
- Value-Added Tax ("VAT") exemption on importation and VAT zero-rating on local purchases that are directly and exclusively used in the registered project or activity.

Depending again on the nature of the activity and the location of the operations, the duration of the ITH may vary from 4 to 7 years, followed by a 5 to 10 year period where the registered proponent is entitled to SCIT or ED.

## 27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

There are no impediments/tax charges for the inflow to or outflow from the Philippine jurisdiction of capital.

Nevertheless, it is encouraged, though not required, that inward remittances, in the form of direct investments or loans, be registered with our central bank for ease of subsequent repatriation.

In addition to the discussion on the capital, repatriation of income arising from the said capital are subject to the following implications.

- For expatriation of profits of domestic branches to the foreign head offices, any profit remitted shall be subject to a tax of 15% which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof;
- For the payment of dividends and interest of domestic or foreign subsidiary corporations to their foreign parent corporation, the dividends paid shall be subject final withholding tax rate of 25%.

## 28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

In the Philippines, transfers can either be onerous or gratuitous.

Onerous transfers shall be subject to business tax, either in the form of the Value Added Tax, or the Other Percentage Tax. As discussed above, the Other Percentage Tax is applied to the gross receipts of certain industries such as banks and financial institutions, premiums of life insurance companies, domestic carriers, etc. On the other hand, Value Added Tax at the rate of 12% is imposed on every other sale and purchase of goods and services, as well as the importation of goods.

We reiterate the EOPT Act which provides that Value Added Tax and/or Percentage Tax shall be imposed on the gross sales made for both goods and services.

Gratuitous Transfers may either involve transfers *inter vivos*, normally through donations, and transfers *mortis causa*, which is normally through successions.

Transfers *inter vivos* shall be subject to Donor's Tax, while transfers *mortis causa* are subject to Estate Tax, both at the rate of 6%.

Lastly, even if the transaction is onerous in nature, they may be partially subject to Donor's Tax such as when the consideration paid is grossly inadequate. On the same vein, transactions, even if gratuitous in nature, may be subject to business tax under the "*deemed sale*" concept.

The most common and significant Documentary Stamp Taxes are those applicable to (a) the original issuance, at the rate of Php1.50 for on each Php200, or fractional part thereof, of the issue price of any such debt instruments; (b) the original issuance of shares of stock at the rate of Php2.00 for on each Php200, or fractional part thereof, of the par value of such shares of stock; (c) the sale or transfer of shares at the rate of Php1.50 for on each Php200, or fractional part thereof, of the par value of such shares of stock; and (d) the sale, conveyances, and donation of real property at the rate of Php15.00 for on each Php1,000, or fractional part thereof on the consideration paid or fair market value of the real property, whichever is higher.

Lastly, excise taxes are imposed on alcohol products, tobacco products, automobiles, and other non-essential goods.

## 29. Are there any public takeover rules?

Yes. Public takeover rules are primarily governed by the Revised Corporation Code and the Securities Regulation Code. Some of the pertinent rules are as follows: (a) stockholders can enforce their appraisal right to dissent and demand payment of the fair value of their shares; (b) compliance to the tender offer rule; and (c) fiduciary duty of directors to act for the benefit of the corporation.

Laws pertaining to certain transactions should also be taken into account, such as the Foreign Investments Act which operates when foreign investments and acquisitions are involved, and the Philippine Competition Act, in cases of high-value mergers and acquisitions, among others.

## 30. Is there a merger control regime and is it mandatory / how does it broadly work?

Yes. In general, all mergers of corporations must be approved by the SEC. Further, parties to the merger are required to notify the Philippine Competition Commission ("PCC") if the size of the party to the merger exceeds Philippine Peso: Seven Billion Eight Hundred Million

(PhP7,800,000,000.00), and the value of the transaction exceeds Philippine Peso: Three Billion Two Hundred Million Pesos (PhP3,200,000,000.00).

The acquiring party to the merger shall fill out the Notification Form, together with the supporting information and documents, and submit them to PCC. Upon submission, the PCC conducts a sufficiency determination within a period of fifteen (15) days and conducts a two-phase assessment of a notified merger which lasts about ninety (90) days. Thereafter, the PCC shall render its decision.

A notifiable transaction which does not comply with the mandatory notification requirements shall be considered void and will subject the parties to an administrative fine of one percent (1%) to five percent (5%) of the value of the transaction.

### **31. Is there an obligation to negotiate in good faith?**

Yes. Parties negotiating an agreement are mandated to act in good faith pursuant to the Civil Code of the Philippines. This mandate extends to the directors of the corporation, which is the buyer or seller in acquisition transactions. Otherwise, the document evidencing such acquisition may be annulled due to vices of consent and may even expose the party in bad faith to liability for damages.

### **32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?**

In cases of share acquisitions, the acquirer merely buys the shares of the target company, and the underlying employment relationship between the target company and its employees is not affected. The employees remain with the corporate employer in the same manner as before the equity transfer. Consequently, the corporate employer or its new majority shareholders are not entitled to lawfully dismiss the employees absent a just or authorized cause.

On the other hand, in an asset acquisition, generally, there is no obligation to absorb the employees due to the personal nature of employment contracts which

under Philippine labor law cannot be enforced against a buyer in an acquisition transaction. The seller in good faith is authorized to dismiss the affected employees but is liable for payment of separation pay under the law. The acquirer in good faith has no obligation to absorb employees of the other or to continue employing them, nor is it liable for payment of their just claims. The most that it may do, for reasons of public policy and social justice, is to give preference to the qualified separated employees of the seller.

In a corporate merger, the rights and obligations of the merged companies are automatically assumed by the surviving company. This includes all rights of and obligations to employees such as security of tenure and their right to non-diminution of benefits.

Philippine labor laws do not provide any rules on obtaining consent from employees in cases of mergers & acquisitions, unless otherwise provided in a valid and subsisting collective bargaining agreement.

### **33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.**

Restrictions on foreign investments are generally in the form of limitations on foreign equity ownership and/or control. Majority of these limitations are found in the 1987 Philippine Constitution and Republic Act No. 7042 (Foreign Investments Act of 1991 or "FIA").

The Foreign Investment Negative List ("FINL") enumerates the industries or businesses where domestic market access by foreigners is limited or altogether denied. The FINL consists of two parts, namely:

- List A – consists of areas of activities reserved for Philippine nationals where foreign equity ownership is limited by constitutional mandate and other special laws.
- List B – consists of areas of activities where foreign equity ownership is limited for reasons of security and defense, risk to public health and morals, and for the protection of small and medium scale enterprises.

The latest Twelfth (12) Regular FINL which was promulgated on 27 June 2022, provides:

LIST A Foreign Ownership is Limited by Mandate of the Constitution and Special Laws	
No Foreign Equity / 0% Foreign Ownership	<ul style="list-style-type: none"> <li>• Mass media (Except recording and internet business)</li> <li>• Practice of professions, except in cases specifically allowed by law following the prescribed conditions stated therein</li> <li>• Retail trade enterprises with paid-up capital of less than Twenty-Five Million Pesos (PHP25,000,000)</li> <li>• Cooperatives (except investments of former naturalborn citizens of the Philippines)</li> <li>• Organization and operation of private detective, watchmen or security guards agencies</li> <li>• Small-scale mining</li> <li>• Utilization of marine resources in archipelagic waters, territorial sea and exclusive economic zones, as well as small-scale utilization of natural resources in rivers, lakes, bays and lagoons</li> <li>• Ownership, operation and management of cockpits</li> </ul>
	<ul style="list-style-type: none"> <li>• Manufacture, repair, stockpiling and/or distribution of nuclear weapons</li> <li>• Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines (various treaties to which the Philippines is a signatory and conventions supported by the Philippines)</li> <li>• Manufacture of firecrackers and other pyrotechnic devices.</li> </ul>
Up to 25%	<ul style="list-style-type: none"> <li>• Private recruitment, whether for local or overseas employment</li> <li>• Contracts for the construction of defense-related structures</li> </ul>
Up to 30%	<ul style="list-style-type: none"> <li>• Advertising</li> </ul>
Up to 40%	<ul style="list-style-type: none"> <li>• Procurement of infrastructure projects in accordance with Section 23.4.2.1(b), (c), and (e) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9184</li> <li>• Exploration, development, and utilization of natural resources</li> <li>• Ownership of private lands, except for a natural-born citizen who has lost his Philippine citizenship and has the legal capacity to enter into a contract under Philippine laws</li> <li>• Operation of public utilities: (i) electricity distribution, (ii) electricity transmissions, (iii) petroleum and petroleum products pipeline transmission systems, (iv) water pipeline distribution systems and wastewater pipeline systems, including sewerage pipeline systems, (v) seaports, and (vi) public utility vehicles. (Republic Act No. 11659, otherwise known as Public Service Act)</li> <li>• 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 highlevel skills development that do not form part of the formal education system as defined in Section 20 of Batas Pambansa No. 232</li> <li>• 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, subject to a period of divestment.</li> <li>• Contracts for the supply of materials, goods, and commodities to Government-Owned and Controlled Corporation (GOCC), company, agency or municipal corporation</li> <li>• Operation of deep-sea commercial fishing vessels</li> <li>• Ownership of condominium units</li> <li>• Private radio communications network</li> </ul>

LIST B Foreign Ownership is Limited for Reasons of Security, Defense, Risk to Health and Morals and Protection of Small and Medium Scale Enterprises	
Up to 40%	<p>Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance:</p> <ul style="list-style-type: none"> <li>o Firearms (handguns to shotguns), parts of firearms and ammunition therefor, instruments or implements used or intended to be used in the manufacture of firearms; o Gunpowder; o Dynamite; o Blasting supplies; o Ingredients used in making explosives:</li> <li>• Chlorates of potassium and sodium;</li> <li>• Nitrates of ammonium, potassium, sodium barium, copper (11), lead (11), calcium, and cuprite;</li> <li>• Nitric acid;</li> <li>• Nitrocellulose;</li> <li>• Perchlorates of ammonium, potassium, and sodium;</li> <li>• Dinitrocellulose;</li> <li>• Glycerol;</li> <li>• Amorphous phosphorus;</li> <li>• Hydrogen peroxide;</li> <li>• Strontium nitrate powder;</li> <li>• Toluene; and</li> <li>• Telescopic sights, sniper scope, and other similar devices.</li> </ul> <p>However, the manufacture or repair of these items may be authorized by the Chief of the PNP to nonPhilippine nationals; provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance (RA No. 7042 as amended by RA No. 8179).</p>
	Manufacture and distribution of dangerous drugs
	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
	All forms of gambling, except those covered by investment agreements with Philippine Amusement and Gaming Corporation
	Domestic market enterprises with paid-in equity capital of less than the equivalent of Two Hundred Thousand US Dollars (US\$200,000)
	Micro and small domestic markets that involves the following: o Advance technology as determined by Department of Science and Technology (DOST);
	Endorsed as a start-up or start-up enablers by lead host agencies, namely the Department of Trade Industry, Department of Information and Communications Technology or DOST; or o Majority of their direct employees are Filipinos, but in no case shall the number of Filipino employees be less than fifteen (15), with paid-in equity capital of less than the equivalent of One Hundred Thousand US Dollars (US\$100,000)

The necessary approvals and licenses shall be obtained from the following:

- Securities and Exchange Commission – for incorporation of corporate entities
- Board of Investments – for availment of investment incentives



- Fiscal Incentives Review Board – for availment of tax incentives under the Corporate Recovery and Tax Incentives for Enterprises Act
- Philippine Economic Zone Authority – Registration of export-oriented business operations of investors located inside the Special Economic Zones
- Local Government Units – Securing licenses to conduct business within its territorial jurisdiction
- Bureau of Internal Revenue – Taxpayer registration

### 34. Does your jurisdiction have any exchange control requirements?

The Foreign Investments Act defines the term “foreign investment” as “an equity investment made by a non-Philippine national in the form of foreign exchange and/or assets actually transferred to the Philippines.”

Registration of foreign investments with the Bangko Sentral ng Pilipinas (“BSP”) is required when the foreign exchange needed for the repatriation of capital and remittance of dividends/profits accruing on foreign investments will be sourced from authorized agent banks (“AABs”) or their affiliate/subsidiary foreign exchange corporations. If not registered, the foreign exchange needed for repatriation and remittance may be sourced from foreign exchange dealers, money changers and the like.

Outward investments require prior BSP approval if the foreign exchange needed to fund such outward investments exceeds Sixty Million US Dollars (US\$60,000,000.00) per investor per year, such foreign exchange to be sourced from AABs or their affiliate/subsidiary foreign exchange corporations.

### 35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

Philippine business entities can be dissolved or liquidated through the following means:

- **Shortening of the Corporate Term.** Corporations may shorten their term by amending the articles of incorporation. If the amendment is approved, dissolution shall take effect upon the expiration of the shortened term.
- **Request for Dissolution.** A Request for Dissolution submitted to the Securities and Exchange Commission (“SEC”) is proper when no creditor will be affected by the dissolution of the corporation.
- **Petition for Dissolution.** A Petition for Dissolution filed with the SEC is appropriate when creditors may be affected by the dissolution of the corporation. All corporate creditors must be mentioned in the petition and given the chance to object to the dissolution.
- **Order of Dissolution.** The Philippine Government, through the SEC, may order the dissolution of the corporation. Dissolution may be ordered if the corporate charter is not used, the corporation fails to organize and operate, a court orders the dissolution, the incorporation was attended with fraud, or the corporation committed a crime with the knowledge and/or tolerance of the directors or stockholders which amounts to a forfeiture of the corporate charter.
- **Petition for Liquidation.** The Financial Rehabilitation and Insolvency Act allows insolvent corporations and corporate creditors to file a Petition for Liquidation with the appropriate trial court. Corporate creditors may also file this petition upon proving the corporation’s general failure to comply with its demandable obligations and the improbability of its rehabilitation. Upon giving due course to the petition, the court will appoint a Liquidator to take custody of the assets of the corporation and prepare and execute a liquidation plan



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