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Doing business in the Philippines
Driving growth for success

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Contents

The Philippines

Why do business in the Philippines?

Lower oil prices notwithstanding, the global economy will remain on tenterhooks in the next 12 months. While the International Monetary Fund (IMF) estimates that a 10% decline in global oil prices would result in 0.2 percentage points growth to world gross domestic product (GDP) in a year, The Economist expects global economic activity to remain sluggish, growing by 2.9% by end-2015[1]. The World Bank, although having forecasted the global economy to grow at 3.4%, is calling for prudence as it expects monetary policy tightening in the foreseeable future[2]. Similar scenarios are forecasted by the IMF[3] and the Organization for Economic Co-operation and Development (OECD)[4], despite their more optimistic growth projections.

The Philippines, however, continues to be the darling among foreign investors. Based on the latest OECD Economic Outlook for Southeast Asia, the Philippine economy is expected to grow by 6.2% every year between 2015 and 2019[5], the highest among the five largest economies in the region[6]. The Economist is forecasting a higher year-on-year real GDP growth rate for the Philippines at 6.6% by end-2015, also the highest among the six Southeast Asian nations[7] it is keeping tabs on. The Asian Development Bank (ADB) also forecasts the Philippines to have the highest year-on-year GDP growth rate, at 6.4%, among the same cohort of countries. Meanwhile, JP Morgan revised its economic growth forecast for the Philippine economy, hiking it to 6.4% from its earlier 5.4% projection.

According to the National Statistical Coordination Board (NSCB), the Philippine's 2014 GDP grew year-on-year by 6.1%; during the fourth quarter, GDP expanded year-on-year by 6.9%. Although the Philippine economy was not able to reach the government's 6.5%-7.5% growth target, it was still within the 6%-7% growth range forecasted by financial and multilateral institutions, as well as the country's economic managers. National Economic Development Authority (NEDA) Director General Arsenio Balisacan recently remarked that the Philippines "can no longer be called the 'sick man' of Asia." Between 2010 and 2014, the Philippine grew on average by 5.9%.

After a lackluster third quarter, the agriculture sector bounced back in the fourth quarter, its gross value added (GVA) expanding year-on-year by 4.8%. For the entire year, the sector grew year-on-year by 1.9%, higher than the previous year's 1.1% expansion. The service sector's performance in 2014 was also an improvement from the previous year, having expanded year-on-year by 6.0%. Meanwhile, the industry sector's year-on-year growth of 7.5% was slower than 2013's 9.3% annual expansion.

On the demand side, the Philippine economy remains heavily reliant on consumer spending. In 2014, household expenditures accounted for 68.9% of the country's GDP; meanwhile, investments and government expenditures' share to Philippine GDP stood at 21.1% and 10.3%, respectively. On the supply side, the service sector continues to provide a lion's share of the country's economic output, its GVA accounting for 57.7% of Philippine GDP. Among the various economic sub-sectors, the construction sub-sector posted the highest year-on-year GVA growth at 8.5%, followed by the real estate and manufacturing sub-sectors at 8.1%.

Prices have remained within the target of the country's monetary authorities. According to the latest Inflation Report[8] of the Bangko Sentral ng Pilipinas (BSP), average inflation for 2014 stood at 4.1%, which is within the government's inflation target of 4.0% ± 1.0 percentge point. This marked the sixth consecutive year that full-year inflation was within government target. In July and September, the Monetary Board hiked key policy rates by a total of 50 basis points; that said, it has maintained key policy rates in its past two meetings. During the fourth quarter, inflation slowed down due to slower increases in food prices, as well as lower electricity and petroleum prices. Between 2015 and 2016, the government's inflation target is set at 3.0% ± 1.0.

1 The Economist Intelligence Unit (2014). "Global Forecasting Service."
2 The World Bank (2014). "Global Economic Prospects June 2014."
3 International Monetary Fund (2014). "World Economic Outlook October 2014."
4 Organization for Economic Co-operation and Development (2014). "Advance G-20 Release: OECD Economic Outlook November 2014."
5 Organization for Economic Co-operation and Development (2014). "Economic Outlook for Southeast Asia, China and India 2015."
6 Indonesia, Malaysia, Philippines, Singapore, and Thailand, also known as ASEAN-5.
7 ASEAN-5 plus Vietnam.
8 Bangko Sentral ng Pilipinas (2014). "Inflation Report Fourth Quarter 2014."

In October 2014, President Benigno Simeon Aquino III signed the Investment Priorities Plan (IPP) 2014. The IPP, which will be in effect in the next three years, covers eight preferred industries sectors that stand to receive fiscal and non-fiscal incentives. These sectors include manufacturing; agribusiness and fishery; services; economic and low-cost housing; hospitals; energy; public infrastructure and logistics; and public private partnerships. According to Department of Trade and Industry (DTI) Undersecretary Adrian Cristobal Jr., the IPP 2014 will contain comprehensive industrial policies, goals, plans, and core strategies for each priority sector[9]. To date, the Board of Investments (BOI) has yet to release the General Policies and Specific Guidelines that should accompany the IPP 2014.

Following a credit ratings upgrade in October 2013, Moody's Investors Service raised the Philippines' credit rating in December 2014 to Baa2 with stable outlook. Good governance, coupled with the BSP's pragmatic take on maintaining price and financial stability, contributed to Moody's decision to hike the country's credit rating anew. The BSP's liabilities were also given the same upgrade to Baa2 with stable outlook, further bolstering the Philippine economy's investment prospects in the near- to medium-term.

The World Economic Forum (WEF) also upgraded the Philippines' ranking in its Global Competitiveness Index 2014-2015. The Philippines now ranks 52nd among 144 countries, jumping seven notches from the previous year's index. Since 2010, the Philippines has seen its rank rise by 33 places, the largest jump among all countries tracked by the index. The WEF has credited the Aquino Administration's concentrated and sustained efforts against corruption as the biggest contributors to the country's ranking gains.

Admittedly, the Aquino Administration considers the country's infrastructure bottleneck as among the main limiters of sustained long-term economic gains. Hence, the government, through the Public-Private Partnership (PPP) Center, has been doing its best to bid out as many big-ticket public infrastructure projects as possible until the Aquino Administration steps down from power in June 2016. For 2015, the PPP Center is expecting to bid out at least nine projects, the largest being the Php374.5B Makati-Pasay-Taguig Mass Transit System Loop (MTSL) that aims to connect three of Manila's largest business and leisure districts.

The Philippines continues to offer generous incentives to qualified enterprises. These include income tax holidays of up to six years, tax and duty free importation of raw materials and equipment subject to certain conditions, and simplification of customs procedures, among others.

Although the Philippines is not immune to global and regional economic shocks, it has shown in recent years how sound economic policies, as well as a vibrant consumer market and a renewed commitment to good governance, could go a long way in attracting interest among investors looking for a bright spot in a dour global economic landscape. Those who will bet on the Philippine's burgeoning economy will not be disappointed.

9 A. Cristobal Jr. (2014). "Opening remarks delivered at the 2014 IPP multi-sectoral public consultations."

Country snapshot

Geography

The Philippines is located in Southeast Asia, around 800 kilometers from the Asia mainland. It is one of the largest archipelagos in the world, with over 7,100 islands and a total land area of approximately 300,000 square kilometers. The country is divided into three main geographic areas: Luzon, where Metro Manila is located, Visayas and Mindanao.

Climate

The Philippines has a tropical climate with three seasons: summer, or the hot dry season, from March to May, the rainy season from June to November, and the cool dry season from December to February. Temperatures usually range from 21°C to 32°C, with the yearly temperature averaging 26.6°C in Metro Manila. The driest month is February, with 13 mm average rainfall, while the wettest month is July, with 432 mm average rainfall.

Population

The population of the Philippines in 2015 is estimated to reach 101.6 million, almost 60% of which are aged below 29 years old. Outside Metro Manila, the most populous cities are Metro Cebu, Metro Davao, Zamboanga, Cagayan de Oro and General Santos.

Language

Filipino is constitutionally designated as the national language of the Philippines and, along with English, as one of two official languages. Many other languages and dialects are spoken all over the country.

Currency

Philippine Peso (PHP); PHP1 = 100 centavos
The average exchange rate for 2014 was PHP44.40:USD1

Time

8 hours ahead of Greenwich Mean Time (GMT)

Public holidays in 2015

New Year's Day (January 1), Chinese New Year (February 19) Maundy Thursday (April 2), Good Friday (April 3), Black Saturday (April 4), Araw ng Kagitingan or Valor Day (April 9), Labor Day (May 1), Independence Day (June 12), Ninoy Aquino Day (August 21), National Heroes Day (August 31), All Saints Day, (November 1), Bonifacio Day (November 30), Eid ul-Adha (varies), Eid ul-Fitr (varies), Christmas Eve (December 24), Christmas Day (December 25), Rizal Day (December 30), Last Day of the Year (December 31).

Political structure

The Philippines has a presidential system of government, the president being limited to a single six-year term. Congress is modeled on the United States system and comprises two directly elected bodies: the Senate and the House of Representatives. The judicial power is vested in the Supreme Court which can rule on the constitutionality of government actions.

Foreign trade

The Philippines has opened its economy to foreign markets and established a network of free trade agreements with several countries. Its main merchandise exports are electronic products (primarily semiconductors), woodcraft and furniture, metal components, and apparel and clothing accessories. On the other hand, its main imports are electronic products, mineral fuels and lubricants, transport equipment, and industrial machinery and equipment. The country's major trading partners are Japan, People's Republic of China, the United States, the European Union, and Singapore.

Selected key investment sectors

Power

Electricity prices in the Philippines remain as among the most expensive in the world. A 2012 survey by the International Energy Consultants[1] revealed that average retail rates charged by the Manila Electric Co. were the second highest in Asia, only behind Japan. The United States Agency for International Development, in its April 2013 report[2] covering power rates across Southeast Asia, showed that the country's residential and low voltage commercial electricity prices are highest in the region, with only Singapore posting higher rates for low and high voltage industrial power usage.

At first glance, current power circumstances diverged from the expectations raised by the passage of the Electricity Power Industry Reform Act (EPIRA) more than a decade ago. Amid growing debt incurred by the National Power Corporation resulting from onerous contracts[3] it entered into and rising electricity prices, EPIRA provided institutional and market-based solutions to address both issues. Privatizing the government's power assets not only transferred the risk of guaranteeing the country's energy self-sufficiency to the private sector but also raised hopes that power prices will go down as a consequence of increased competition.

In March 2014, the Energy Regulatory Commission (ERC) voided Wholesale Electricity Spot Market (WESM) prices between October and December 2013 after concluding that these "could not qualify as reasonable, rational, and competitive"[4]. This, after WESM prices shot up to as high as Php25.67/kWh amid the Malampaya shutdown; the ERC said that WESM prices should have been at least 70% lower. In August 2014, Energy Secretary Jericho Petilla echoed calls for Congress to grant emergency powers to President Benigno Aquino III to address a looming power crisis in 2015 as power demand has consistently outpaced supply in recent years, with some power plant projects or expansion plans not pushing through as scheduled by the summer of 2015.

Renewable energy (RE) development seems to be the key in solving the country's short-term power woes. In particular, deploying solar photovoltaic (PV) panels across a farm can be done in less than 12 months. There is, however, a divergence between developers' timeline and the government's permitting process, the latter taking up as long as three years to finish. Another concern involves business risks investors face due to the existing "first come, first serve" policy of the DOE in awarding feed-in tariff (FIT) eligibility. Although the rationale behind such policy is well-founded (i.e., to encourage RE developers to fast-track facilities construction and commercial operation), the inability of the government to immediately expand capacity allocation leaves investors in a quandary, especially if a number of them are competing for the last few megawatts of FIT allocation.

The above developments notwithstanding, there remains untapped potential in the domestic power sector, particularly for power generation, given the continued upward trajectory of power demand in the foreseeable future. As per the Department of Energy's latest power projections, peak demand in the Luzon grid almost outpaces combined available and committed capacity by May 2020; should committed projects in the pipeline not go online as expected, peak demand would significantly outpace available capacity by March 2016. The situation is starker in the Visayas grid, where a lack of power projects in the pipeline beyond 2017 could result in power outages starting July 2018.

A number of RE developers have demonstrated that building and operating an RE power plant is feasible even outside the FIT system. Location is a critical consideration; these RE developers were able to identify specific areas whose power requirements outweigh the relatively high cost of electricity needed to sustain RE power generation from solar and wind energy. The local financing climate has also helped their cause. Whereas banks in the past were not adept in the calculus of project financing, today's major local banks have embraced the dynamics of funding power projects based on cash flow given a compelling business case.

1 International Energy Consultants (2012). "Regional Comparison of Retail Electricity Tariffs, Executive Summary."
2 United States Agency for International Development (2013). "Challenges in pricing electric power services in selected ASEAN countries."
3 Erik Woodhouse (2005). "The IPP Experience in the Philippines," Working Paper #37 Program on Energy and Sustainable Development. Stanford University: Stanford, California.
4 Energy Regulatory Commission (2014). ERC Case No. 2014-021 MC.

Construction

As a proportion of the Philippines' GDP, the construction industry contributed 5.8% to the country's total output in the third quarter of 2014. Its performance is the highest across all industries and sectors; its gross value added expanding by 11.9% in the past 12 months, outperforming the financial intermediation, real estate, and transportation, storage, and communication sectors, the average annual growth rates of which having outpaced that of the construction industry in the past four years. Since 2012, around a fifth of the construction industry's output has come from private works, with the remaining portion coming from public works.

The latter point explains the construction industry's strong performance in recent years. Since all industries and sectors require some sort of construction and repair work, the industry's reach covers the entire economy. That said, the construction industry has been historically dependent on the movements in the real estate (both public and private), power, transportation and telecommunications, and tourism sectors. Low interest rates have also helped the construction boom in recent years, as cheap credit has enabled both the public and private sectors to unlock value from heavy infrastructure projects, to which the construction sector lends its expertise.

A year after Typhoon Haiyan struck Central Philippines, the Aquino Administration approved the Php167.8-billion Comprehensive Rehabilitation and Recovery Plan (CRRP) that covers more than 150 cities and municipalities across 14 provinces and six regions. Bulk of the CRRP would go to resettlement projects, amounting to Php75.7B or 45.1% of the total budget; meanwhile, Php35.1B or 20.9% of the CRRP would be used for infrastructure development. The construction sector is expected to corner a large portion of these expenditures.

Another source of windfall for the construction industry is the government's annual budget. In the proposed Php2.6T national budget for 2015, Php550.6B or 25.3% of the total budget is appropriated for capital outlays[5], 85.6% of which will be for the construction of new public infrastructure projects. Year-on-year, capital outlays expenditure has grown by 27.4%; between 2012 and 2015, it has risen by 19.6% every year. Bulk of the capital outlay is allocated for the construction of roads and bridges (Php243.4B), buildings and structures (Php101.3B), and flood control and drainage (Php47.0B).

Public-Private Partnerships (PPPs)

Introduced in November 2010[6] to much fanfare, the PPP program was a response to the need for substantial investments in the country's public infrastructure given the government's weak fiscal position at that time. By promising both local and foreign investors to operate within a regime of predictable rules enforceable contracts and ensure protection from regulatory risk, the government hoped to attract private funding for projects it cannot otherwise fund using public coffers.

More than four years into the Aquino Administration, its public-private partnership (PPP) program has yet to take off as advertised. As of December 2014, only eight of the 61 projects in the PPP pipeline have been awarded. The Php2.0B Daang Hari-South Luzon Expressway Link Road Project, slated to be completed in June 2014, is delayed until the first quarter of 2015; this was the first PPP project awarded by the Aquino Administration. The PPP Center expects to complete at least five projects before the end of the Aquino Administration in June 2016.

5 Congressional Policy and Budget Research Department (2015). "2015 Budget Briefer: Dimensions of the 2015 National Government Budget."
6 President Benigno S. Aquino III (2010). "Speech during the opening of Infrastructure Philippines 2010: Investing and financing in public-private projects."

Similar delays in various stages of the PPP bidding and awarding process have hit other projects. For instance, initial construction works for Mactan-Cebu International Airport Passenger Terminal Building, the awarding of which was pushed back by three months after the winning bid was challenged by one of the losing bidders, is expected to be delayed by at least another six months due to relocation issues. The slow rollout in the bidding and awarding of PPP projects has been blamed on the government's limited exposure in overseeing and implementing such large-scale PPP program, a concern investors think the government will overcome as it gains more experience over time.

The biggest challenge to the PPP program, however, is the perception that regulations are not consistently observed. Just recently, the DPWH announced the rebidding of the Cavite-Laguna (CALA) Expressway project following remarks from President Aquino during this year's Asia Pacific Economic Cooperation (APEC) Summit at Beijing, where he said that such rebidding runs consistent with the government's obligation "to get the best deal for our people." Team Orion, the joint venture between Ayala Corp. and Aboitiz Land, won the original bid for the project after the San Miguel Corporation-led Optimal Infrastructure Development Inc. was disqualified on technicality. The latter appealed its disqualification; subsequently, Malacanang issued a "stay order" that prevented DPWH from implementing the disqualification notice.

This, despite the Makati Business Club (MBC) releasing a joint statement with the country's various chambers of commerce in which it warned the government of adverse consequences should it decide to rebid the project. MBC said that the rebidding does not have a legal basis and could put to waste the government's efforts to shore up investor confidence through the consistent implementation of rules.

Even with the controversies and criticisms facing the PPP program, the Aquino Administration remains committed to getting crucial infrastructure projects off the ground. In 2015, the government will be bidding out at least nine projects, the largest being the Makati-Pasay-Taguig Mass Transit System Loop (Php374.5B) and the North-South Commuter Railway – South Line (Php177.2B). Currently, the PPP Center is overseeing bid submissions for the Bulacan Bulk Water Supply Project (Php24.4B), the Laguna Lakeshore Expressway Dike Project (Php122.8B), and the Integrated Transport System – Southwest Terminal (Php2.5B), among others.

ASEAN Economic Community

Among the primary pillars of establishing the Association of Southeast Asian Nations (ASEAN) is its member-states' convergence towards a so-called "common market". The ASEAN Economic Community (AEC) aims to create a single market and production base that, in theory, taps into the competitive advantages of each member-state. Coupled with improved labor mobility and the easing of cross-border tariffs, the AEC is envisioned to promote industrial rationalization, boost worker productivity, and hasten economic development across the region.

As far as the region's major economic players are concerned, hopes on the promises of AEC being delivered are well-founded. Chairul Tanjung, Economic Coordinating Minister for Indonesia and founder of CT Corp., said that among the benefits of economic integration include cheaper costs for developed ASEAN member-states and higher employment and taxes from increased manufacturing opportunities for developing ASEAN member-states. Meanwhile, Tony Fernandes, AirAsia Group CEO and ASEAN Business Club Advisory Council member, said that ASEAN could be a much bigger, and more attractive, market as a whole, offering cost efficiencies along the way.

On the other hand, some sectors remained cautious over the prospects of a unified ASEAN economy. Michael Plummer of the East-West Center remarked that the AEC is an "extremely ambitious project" that requires a substantial level of support from both internal and external actors. The US Chamber of Commerce's ASEAN Business Outlook Survey 2015 expressed doubt on the chances of ASEAN reaching its AEC goals by the December 31, 2015 deadline; most of its respondents believe that a more realistic timeline would be 2020 or beyond. Although ASEAN has come a long way from its initial attempts to jumpstart economic integration as early as 1992, it has fallen short of its high standards and tight deadline it has set for itself[1].

"The folly of ASEAN economic integration"[2]

Consistent with "The ASEAN Way", the AEC vision is pursued along the principles of non-interference, minimal institutionalization, consultation, consensus, and non-confrontation[3]. Contrary to popular belief, AEC will neither result in the homogenization of Southeast Asia nor the adoption of a one-size-fits-all economic policy of all ASEAN member-states. Rather, intra-regional collaboration and consensus-building will drive the way forward in terms of policy harmonization and trade agreement rationalization at the national, regional, and global levels.

Oft-criticized, much has been said about "The ASEAN Way". Its supporters claim that, considering ASEAN's diversity and differing degrees of economic development among its member-states, it is the only pragmatic way forward. Indeed, some commentators credit the gradual opening of Myanmar's economic relations to ASEAN, and subsequently the world, to "The ASEAN Way", particularly how it puts premium on "constructive engagement" in resolving conflicts and managing change[4].

Its critics, however, have frowned upon its heavy reliance on soliciting unanimity. With each member-state effectively holding veto power, rarely does ASEAN present a united front on matters that could present a strategic conflict to national interests. Although visionary regional leadership could provide a locus for consultation and decision-making, it has been sorely lacking[5]. While the ASEAN Secretariat exists to coordinate intra-regional interaction and coordination, its role is purely administrative. It cannot enforce compliance among ASEAN member-states nor is expected to do so; it is underfunded and understaffed given the scale of its operations[6].

1 Siow Yue Chia (2013). "The ASEAN Economic Community: Progress, Challenges, and Prospects," ADBI Working Paper Series.
2 Mario Guarina III (2014). "The follow of ASEAN economic integration," The Philippine Daily Inquirer.
3 Deloitte Southeast Asia Ltd. (2014). "The ABC of AEC: To 2015 and beyond."
4 L. Masilimani and J. Peterson (2014). "The 'ASEAN Way': The Structural Underpinnings of Constructive Engagement," Foreign Policy Journal.
5 Banyan (2014). "Getting in the way," The Economist.
6 B. Hutabarat (2014). "ASEAN Economic Community 2015: Will it happen?" The Jakarta Post.

The Philippines and the AEC

For its part, the Philippines has remained committed to achieving the AEC goals by 2015. The Department of Trade and Industry (DTI) expressed optimism over the Philippines' trade sector once AEC opens for business, with DTI Undersecretary Adrian Cristobal Jr. citing the country's preparedness in terms of trading most of its products and produce at zero tariff since January 2010 through the ASEAN Trade in Goods Agreement (ATIGA). Department of Foreign Affairs (DFA) Secretary Albert del Rosario remarked that the Philippines is "87.5% ready" for AEC[7].

Using the latest ASEAN Scorecards[8] as a benchmark for readiness, the Philippines has implemented all measures in nine[9] out of 19 categories where progress monitoring is recorded. In the other nine[10] categories, the Philippines is known to have implemented more than half of targeted measures. It, however, failed in Food, Agriculture, and Forestry; it is among the two areas (the other being manufacturing) in which local economists and business leaders have raised concerns[11] should the AEC push through by 2015. Manny Pangilinan, Managing Director and CEO of Hong Kong-based First Pacific Company Ltd. and Chairman of Metro Pacific Investments Corporation, echoed similar sentiments regarding the preparedness of the country's agricultural sector for the AEC. In particular, Pangilinan fretted over[12] the net effect of a zero tariff trade regime in the country's sugar industry, remarking that the AEC "will kill the sugar industry"[13].

Apart from the agriculture and manufacturing sectors, the local banking sector is also hard-pressed to measure up in a unified regional economy. BDO Unibank Inc., the Philippines' largest bank in total assets[14], will only rank 19th among banks in ASEAN. Combining the total assets of the country's three largest banks (BDO Unibank Inc., Metropolitan Bank and Trust Co., Bank of the Philippine Islands) would be roughly equivalent to those of one bank in Thailand (Bangkok Bank)[15]. According to Bangko Sentral ng Pilipinas (BSP) Deputy Governor Diwa Guinigundo, the total capitalization of the Philippine banking system is equivalent to that of just one Singaporean bank[16].

The above notwithstanding, the Philippines is primed and ready to compete in a number of sectors in AEC. The local construction industry, particularly its prominent engineering, procurement, and construction (EPC) contractors, is confident of its prospects in a single ASEAN market economy given its cumulative experience and expertise doing large-scale infrastructure work both locally and overseas. It also speaks volumes on the quality of Filipino engineers, who domestic EPC firms are struggling to keep locally due to high demand abroad.

7 G. Sicat (2014). "Ready for ASEAN Economic Community 2015?" The Philippine Star.
8 The ASEAN Secretariat (2012). "ASEAN Economic Community Scorecard."
9 Free flow of capital, free flow of skilled labor, priority integration sectors, competition policy, intellectual property rights, mineral, ICT, taxation, and e-commerce.
10 Free flow of goods, free flow of services, free flow of investment, consumer protection, transport, energy, SME development, initiative for ASEAN integration, and external economic relations.
11 A. Villasanta (2013). "Zero Sum or Win-Win? The Philippines Faces up to the ASEAN Economic Community," ECCP Business Review April-May 2013.
12 M. Halili (2014). "PH not ready for ASEAN economic integration, must catch up fast – MVP," Interaksyon.
13 Firms managed by Pangilinan own minority stakes in various sugar corporations in the Philippines, including the Victorias Milling Corporation and Roxas Holdings, Inc.
14 Bangko Sentral ng Pilipinas (2014). "Ranking as to Total Assets, Universal and Commercial Bank Group as of June 30, 2014."
15 F. Mangosing (2014). "BDO Exec doubtful if PH banks ready for Asean integration in 2015," The Philippine Daily Inquirer.
16 The Philippine Daily Inquirer (2014). "Editorial: PH ready for AEC?"

Homegrown beverage manufacturers, such as San Miguel Corporation, Universal Robina Corporation, and the Yap Group of Companies (known locally for its Zesto ready-to-drink brand), are also gung-ho with their chances in competing with their ASEAN counterparts. Prior to the establishment of AEC, these beverage manufacturers have been gradually expanding their footprint across Southeast Asia, having constructed manufacturing facilities in Thailand, Vietnam, and Indonesia or established strategic partnerships with their regional counterparts.

The business processing outsourcing (BPO) sector is also expected to be among the sectors where the Philippines is expected to lead its regional peers in the AEC. According to the International Labor Organization (ILO), export revenues earned by the Philippine BPO sector amounted to USD13.3B in 2013, a ten-fold growth during the past decade[17]. Tholons, a consultancy firm, recently said that the Philippine BPO sector's revenues is projected to reach USD48B by 2020[18], or around a fifth of global receipts. In Tholons' latest outsourcing destinations ranking[19], the Philippines is the only ASEAN member-state that has two cities ranked in the top 10 (Manila being 2nd and Cebu being 8th); Vietnam's Ho Chi Minh City and Malaysia's Kuala Lumpur are ranked 17th and 18th, respectively. A ranking executive of a multinational BPO firm[20] said the Philippines has an inside track in capturing the lion's share of BPO services in AEC given its cost, quality, and scalability.

Conclusion

Looking at macroeconomic fundamentals, the Philippines has three factors going for it. A young and highly educated population, a growing domestic economy built on robust consumer spending, and sound fiscal and monetary policy directions have allowed the Philippines to play catch up after years of lagging behind its regional peers. Yet recent strong performances on the domestic front does not guarantee medium- to long-term success in a tightly integrated regional market where fortunes are built on scalability, flexibility, and adaptability.

To be able to further nurture the country's growth trajectory as well as enable it to compete head-on in the AEC, much needs to be done in "future-proofing" itself against internal and external economic shocks. Dr. Cielito Habito, Chief-of-Party of the US Agency for International Development-funded Trade Related Assistance for Development Project, cited four key activities the Philippines must commit to undertake: removal of trade and investment barriers, opening of the country's skies for tourism, improvement of trade facilitation, and adoption of a strong competition policy.

The Philippines, time and again, has proven itself as a tough cookie in the face of adversity. The AEC, amid forecasts of economic gloom from various sectors, will be no different.

17 International Labor Organization (2014). "Will greater regional integration reduce poverty and vulnerability and create better jobs in the Philippines?" The Philippines Country Brief October 2014.
18 C. Pillas (2014). "BPO revenues at $48 billion by 2020," BusinessMirror.
19 Tholons (2013). "2014 Tholons Top 100 Outsourcing Destinations: Rankings."
20 Oxford Business Group (2014). "The Philippines' revenues from BPO set to rise 15% in 2014."

Foreign investments in the Philippines

Attracting foreign investment has been a government policy since the 1980s, and the Philippine Congress has passed several laws to attract foreign capital. Republic Act (R.A.) No. 7042, otherwise known as the Foreign Investments Act of 1991 (FIA), as amended by R.A. 8179, is the law that governs foreign investments in the Philippines, except in banking and other financial institutions which are governed and regulated by the BSP. The FIA declares that it is the policy of the State to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations and governments in activities which significantly contribute to national industrialization and socio-economic development to the extent that foreign investment is allowed by the Constitution and the relevant laws.

All investors and enterprises are entitled to the basic rights and guarantees provided in the Philippine Constitution. In addition, Philippine laws provide certain rights for foreign investors, including the following:

- Right to repatriate the entire proceeds of the liquidation of the investment
- Right to remit earnings from the investment
- Right to remit sums as may be necessary to meet the payments of interest and principal on foreign loans and obligations arising from technological assistance contracts
- Freedom from expropriation except for public use or in the interest of national welfare or defense and upon payment of just compensation

The FIA liberalized the entry of foreign investments into the country. In general, foreigners can invest up to 100% equity in corporations, partnerships and other entities in the Philippines, except in areas included in the Foreign Investments Negative List (FINL). The FINL lists investment areas and activities reserved to Filipino nationals where foreign investments are prohibited or limited to a certain percentage.

The FINL is composed of two lists, as follows:

- List A consists of areas of activities reserved to Philippine nationals where foreign ownership is limited by mandate of the Constitution and specific laws
- List B consists of areas of activities where foreign ownership is limited for reasons of security, defense, risk to health and morals and protection of small- and medium- scale enterprises

Amendments to List A may be made at any time to reflect changes in specific laws while amendments to List B may not be made more often than once every two years.

A Philippine national is defined as a citizen of the Philippines; or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding is owned and held by citizens of the Philippines; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which 100% of the capital stock outstanding is wholly owned by Filipinos; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least 60% of the fund will accrue to the benefit of Philippine nationals. Where a corporation and its non-Filipino stockholders own shares of stock in an enterprise registered with the Securities and Exchange Commission (SEC), at least 60% of the capital stock outstanding must be owned and held by citizens of the Philippines and at least 60% of the members of the Board of Directors must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national. For purposes of determining compliance, the required percentage of Filipino ownership shall be applied to both (a) the total number of outstanding shares of stock entitled to vote in the election of directors, and (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.

Under the FIA, non-Philippine nationals may own up to 100% of a domestic market enterprise or an export enterprise unless foreign ownership is prohibited or limited by the Constitution and existing laws or the FINL. A domestic market enterprise is defined as an enterprise which produces goods for sale or renders services to the domestic market entirely or, if exporting a portion of its output, fails to consistently export at least 60% of such output. On the other hand, an export enterprise is a manufacturer, processor, or service (including tourism) enterprise that exports 60% or more of its output, or a trader that purchases products domestically and exports 60% or more of such purchases.

If a non-Philippine national invests in a domestic market enterprise, the paid-in capital must not be less than the peso equivalent of USD200,000. This requirement is reduced to the peso equivalent of USD100,000 if the investment will involve advanced technology as determined by the Department of Science and Technology, or will employ at least 50 direct employees.

Ninth Regular Foreign Investment Negative List

List A: Foreign ownership is limited by mandate of the Constitution and specific laws

No foreign equity

1. Mass media except recording
2. Practice of all professions
   a) Engineering
   b) Medicine and allied professions
   c) Accountancy
   d) Architecture
   e) Criminology
   f) Chemistry
   g) Customs brokerage
   h) Environmental planning
   i) Forestry
   j) Geology
   k) Interior design
   l) Landscape architecture
   m) Law
   n) Librarianship
   o) Marine deck officers
   p) Marine engine officers
   q) Master plumbing
   r) Sugar technology
   s) Social work
   t) Teaching
   u) Agriculture
   v) Fisheries
   w) Guidance counseling
   x) Real estate service
   y) Respiratory therapy
   z) Psychology
3. Retail trade enterprises with paid-up capital of less than USD2,500,000
4. Cooperatives
5. Private security 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
11. Manufacture of firecrackers and other pyrotechnic devices

Up to 20% foreign equity

1. Private radio communications network

Up to 25% foreign equity

1. Private recruitment, whether for local or overseas employment
2. Contracts for the construction and repair of locally-funded public works except:
   a) Infrastructure/development projects, and
   b) Projects which are foreign funded or assisted and required to undergo international competitive bidding
3. Contracts for the construction of defense-related structures

Up to 30% foreign equity

1. Advertising

Up to 40% foreign equity

1. Exploration, development and utilization of natural resources
2. Ownership of private lands
3. Operation and management of public utilities
4. Ownership/establishment and administration of educational institutions
5. Culture, production, milling, processing, trading excepting retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof
6. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation
7. Project proponent and facility operator of a BOT project requiring a public utilities franchise
8. Operation of deep sea commercial fishing vessels
9. Adjustment companies
10. Ownership of condominium units where the common areas in the condominium project are co-owned by the owners of the separate units or owned by a corporation

Up to 30% foreign equity

1. Lending companies

Up to 60% foreign equity

1. Financing companies regulated by the SEC
2. Investment houses regulated by the SEC

List B: Foreign ownership is limited for reasons of security, defense, risk to health and morals, and protection of SMEs

Up to 40% foreign equity

1. Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police clearance
2. Manufacture, repair, storage and/or distribution of products requiring Department of National Defense clearance
3. Manufacture and distribution of dangerous drugs
4. Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks posed to public health and morals
5. All forms of gambling, except those covered by investment agreements with the Philippine Amusement and Gaming Corporation (PAGCOR) pursuant to R.A. 9487 or the PAGCOR Charter
6. Domestic market enterprises with paid-in equity capital of less than the equivalent of USD200,000
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

Investor incentives

To encourage investments particularly in preferred sectors of the economy, the Philippines offers various incentive schemes to qualified enterprises depending on the location and the registration of the proposed business activity. The more significant incentive programs are those provided to enterprises registered with the Board of Investments (BOI) under the Omnibus Investments Code (OIC), and Philippine Economic Zone Authority (PEZA) and other economic and freeport zones. Incentives are also provided to regional or area headquarters (RHQ) and regional operating headquarters (ROHQ).

Enterprises registered with the Board of Investments

The BOI, an agency attached to the Department of Trade and Industry (DTI), is the lead government agency responsible for the promotion of investments in the Philippines. Under the OIC, an investor may register with the BOI to enjoy certain incentives and other benefits provided that the investment is in a preferred area of economic activity specified by the BOI in the IPP.

To qualify to register with the BOI, the applicant must meet the following requirements:

1. A citizen of the Philippines, if the applicant is a natural person; or organized under Philippine laws and at least 60% of its capital is owned and controlled by citizens of the Philippines, if a partnership or any other association; or organized under Philippine laws and at least 60% of the capital stock outstanding and entitled to vote is owned and held by Philippine nationals and at least 60% of the members of the Board of Directors are citizens of the Philippines, if a corporation or cooperative.

   If the applicant does not possess the required degree of ownership by Philippine nationals, the following must be established:

   a. It proposes to engage in a pioneer project which, in the opinion of the BOI, cannot be readily and adequately performed by Philippine nationals, or if the applicant is exporting at least 70% of its total production.
   b. It obligates itself to attain the status of a Philippine national within 30 years from date of registration. A registered enterprise which exports 100% of its total production need not comply with this requirement.
   c. The pioneer area it will engage in is one that is not within the activities reserved by the Constitution or other laws of the Philippines to Philippine citizens or corporations owned and controlled by Philippine citizens.

2. The applicant is proposing to engage in a preferred project listed or authorized in the current IPP within a reasonable time or, if not so listed, at least 50% of its total production is for export or it is an existing producer which will export part of production; or that the enterprise is engaged or is proposing to engage in the sale abroad of export products bought by it from one or more export producers; or the enterprise is engaged or proposing to engage in rendering technical, professional or other services or in exporting television and motion pictures and musical recordings made or produced in the Philippines.

3. The applicant is capable of operating on a sound and efficient basis and of contributing to the national development of the preferred area in particular and of the national economy in general.

2014 Investment Priorities Plan

The Investment Priorities Plan (IPP) identifies priority investment areas which the government is actively promoting. The IPP is prepared by the Board of Investments (BOI), in consultation with the appropriate government agencies and the private sector, and approved by the President. The latest IPP is a rolling three-year plan, to be reviewed annually.

The 2014 IPP contains the following priority investment areas:

A. Preferred activities

1. Manufacturing
   Motor vehicle (excluding motorcycles, e-bikes and golfcarts) and motor vehicle parts and components; shipbuilding including parts and components; aerospace parts and components; chemicals; virgin paper pulp; copper wires and copper wire rods; basic iron and steel products, steel grinding balls, long steel products and flat hot/cold-rolled products; tool and die

2. Agribusiness and fishery
   Commercial production and commercial processing of agricultural and fishery products; production of animal and aqua feeds; commercial production of organic and inorganic fertilizers and pesticides; modernization of sugar mills; mechanized agricultural support services; agriculture support infrastructure such as facilities for drying, cold chain storage, blast freezing and bulk handling and storage

3. Services
   Integrated circuit design; creative industries/ knowledge-based services; ship repair; charging stations for electric vehicles; maintenance, repair and overhaul of aircraft; industrial waste treatment

4. Economic and low-cost housing (horizontal and vertical) Economic and low-cost housing and manufacture of modular housing components

5. Hospitals
   Establishment and operation of general and specialty hospitals and other health facilities.

6. Energy
   Exploration and development of energy sources (including energy crops or upstream biofuels); power generation plants utilizing conventional fuels, waste heat and other industrial wastes, subject to capacity installation gap based on the Department of Energy's five-year supply-demand forecast or up to 2019; ancillary services

7. Public infrastructure and logistics
   Airports and seaports for cargo and passenger; air, land mass and water transport, mass rail; LNG storage and regasification facility; bulk water treatment and supply

8. PPP projects
   Projects implemented under R.A. 6957 (Build-Operate-Transfer Law), as amended by R.A. 7718

B. Export activities

Covers the following:

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

C. Special laws

1. Industrial tree plantation
   Extensive plantation of forest land of tree crops (except fruit trees) for commercial and industrial purposes

2. Exploration, mining, quarrying and processing of minerals
   Exploration and development of mineral resources, mining/quarrying and processing of metallic and non-metallic minerals

3. Publication or printing of books/textbooks
   Content development intended for books and publication of books in print or digital format

4. Refining, storage, marketing and distribution of petroleum products

5. Rehabilitation, self-development and self-reliance of persons with disability
   Manufacture of technical aids and appliances for the use and/or rehabilitation of persons with disability, and the establishment of special schools, day care centers, homes, residential communities or retirement villages solely to suit the needs and requirements of persons with disability

6. Renewable energy
   Development of renewable energy facilities, including hybrid systems, and manufacture, fabrication and supply of locally-produced renewable energy equipment and components

7. Tourism
   Tourism enterprises that are outside the tourism export zones and are engaged in the following:
   a. Tourist transport services whether for land, sea and air transport for tourist use;
   b. Establishment and operation of:
      – Accommodation establishments such as, but not limited to, hotels, resorts, apartment hotels, tourist inns, motels, pension houses, private homes for homestay, eco-lodges, condotels, serviced apartments, and bed and breakfast facilities
      – Convention and exhibition facilities or "meetings, incentives, conventions and exhibition" (MICE) facilities
      – Amusement parks
      – Adventure and ecotourism facilities
      – Sports facilities and recreational centers
      – Theme parks
      – Health and wellness facilities such as but not limited to spas
      – Agri-tourism farms and facilities
      – Tourism training centers and institutes
   c. Development of retirement villages
   d. Restoration/preservation and operation of historical shrines, landmarks and structures

Enterprises registered with the Philippine Economic Zone Authority

PEZA is the government agency tasked to promote investments, extend assistance, register, grant incentives to and facilitate the business operations of investors in export-oriented manufacturing and service facilities inside selected areas throughout the country proclaimed by the President as PEZA Special Economic Zones or Ecozones. Ecozones are highly developed or have the potential to be developed into agro-industrial, industrial, tourist/recreational, commercial or financial centers. Enterprises that register with PEZA and locate their operations within Ecozones are granted incentives even more extensive than those granted under the OIC to those enterprises registered with BOI.

The following enterprises are eligible to register with PEZA:

1. *Export manufacturing enterprise*
   Manufactures, assembles or processes resulting in the exportation of at least 70% of production.
2. *IT enterprise*
   Provides IT services of which 70% of total revenues is derived from clients abroad. Among the eligible IT service activities are IT-enabled services such as BPO, call centers, data encoding, transcribing and processing; software development and application; for business, media, e-commerce, education, entertainment; and content development for multi-media or internet purposes.
3. *Tourism enterprise*
   Operates sports and recreation centers, accommodation, convention and cultural facilities, and other special interest attraction activities/ establishments, with foreign tourists as primary clientele.
4. *Medical tourism enterprise*
   Provides medical health services, endorsed by the Department of Health, with foreign patients as primary clientele.
5. *Agro-industrial export manufacturing enterprise*
   Processes and/or manufactures agricultural products resulting in the exportation of its production.
6. *Agro-industrial bio-fuel manufacturing enterprise*
   Manufactures agricultural crops and eventual commercial processing which shall result in the production of clean energy such as bio-fuels and the like.
7. *Logistics service enterprise*
   Operates a warehouse facility for the storage, deposit, safekeeping of goods for PEZA-registered export manufacturing enterprises; and/or imports or locally sources raw materials, semi-finished goods for resale to PEZA-registered export manufacturing enterprises for use in their export manufacturing activities, or for direct export, or for consignment to PEZA-registered export manufacturing enterprises and eventual export.
8. *Economic zone developer and operator*
   Develops, operates and maintains Ecozones such as Manufacturing Ecozones, IT Parks, Tourism Ecozones, Medical Tourism Ecozones, Agro-industrial Ecozones, Retirement Ecozones, including required infrastructure, facilities and utilities.
9. *Facilities enterprise*
   Constructs, operates and manages buildings and other facilities inside Ecozones for lease to PEZA-registered enterprises.
10. *Utilities enterprise*
    Establishes, operates and maintains light and power systems, water supplier and distribution systems inside Ecozones.

Depending on the type of enterprise and business activity, an enterprise operating within an Ecozone is entitled to incentives granted to PEZA-registered enterprises under the OIC or Presidential Decree No. 66 creating the Export Processing Zone Authority (now PEZA), in addition to other incentives. These incentives include the following:

- Income tax holiday of four years for a non-pioneer project and six years for a pioneer project, or three years for an expansion project
- 5% special tax on gross income and exemption from all national and local taxes upon expiry of the income tax holiday
- Tax and duty free importation of raw materials, capital equipment, machinery and spare parts
- Tax credit on import substitution
- Exemption from wharfage dues and export tax, impost or fees
- Value-added tax (VAT) zero-rating of local purchases of goods and services
- Tax credits for exporters using local materials as inputs as provided by the Export Development Act of 1994
- Additional deduction for incremental labor and training expenses
- Simplified import-export procedures
- Employment of non-resident foreign nationals in supervisory, technical or advisory positions

Enterprises registered with the Subic Bay Metropolitan Authority and the Clark Development Corporation

The Subic Bay Freeport and Special Economic Zone (Subic Bay Freeport or SBF), is a special economic and freeport zone managed and operated by the Subic Bay Metropolitan Authority (SBMA). Occupying the former United States Naval facility, it was created under the Bases Conversion Development Act of 1992 and envisioned to be a self-sustaining tourism, industrial, commercial, financial and investment center to attract and promote foreign investments, and generate employment opportunities in the area. It was also established to be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the SBF.

Investors can register with SBMA either as an SBF Enterprise or an SBF Regional Enterprise. An SBF Regional Enterprise is any multinational company whose purpose is to engage in regional and/or international trade/services and business activities, and establishes within the SBF its seat of management and the situs of its business transactions.

Enterprises registered with SBMA and located within SBF can avail of the following incentives, among others:

- Five percent final tax on gross income earned in lieu of all local and national taxes
- Tax and duty-free importation of capital equipment, raw materials, supplies and spare parts
- Allowable income from sources within the Philippine customs territory of up to 30% of total income
- Liberalized foreign ownership requirements
- Visa-free entry for 14 days, renewable
- Special visas to foreign nationals

Similar to SBF, the Clark Special Economic Zone (CSEZ) was created under the Bases Conversion Development Act of 1992. In 2007, under R.A. 7227, a portion of the CSEZ was declared the Clark Freeport Zone (CFZ) to be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the CFZ. Today, CSEZ is known simply as CFZ.

Enterprises that intend to locate within the CFZ should register with the Clark Development Corporation (CDC). Generally the same set of incentives is given to investors located within the SBF and the CFZ.

In addition, Special Ecozones may be created by the President within the CFZ, subject to the concurrence by resolution of the local government units directly affected and upon recommendation of PEZA. Duly registered business enterprises in Special Ecozones created within the CFZ shall be entitled to the same tax and duty incentives under the OIC, provided that for the purpose of administering these incentives, PEZA shall register, regulate and supervise all registered enterprises within the Special Ecozones.

Regional or Area Headquarters and Regional Operating Headquarters

Under R.A. 8756, various incentives are available to multinational companies establishing an RHQ or ROHQ in the Philippines. Foreign personnel of RHQs and ROHQs are also eligible for certain incentives.

An RHQ is defined as an office whose purpose is to act as an administrative branch of a multinational company engaged in international trade which principally serves as a supervision, communications and coordination center for its subsidiaries, branches or affiliates in foreign markets and does not earn or derive income in the Philippines.

An RHQ can benefit from the following incentives:

- Exemption from paying income tax. An annual information return of a tax-exempt corporation shall be filed with the Bureau of Internal Revenue (BIR) to effect exemption.
- Exemption from VAT. In addition, the sale or lease of goods and property and the rendition of services to RHQs shall be subject to 0% VAT rate.
- Exemption from local taxes, fees or charges imposed by a local government unit except real property tax on land improvements and equipment.
- Tax and duty free importation of equipment and materials for training and conferences and which are not locally available, subject to prior approval of the BOI

An ROHQ is defined as a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines and in other foreign markets.

An ROHQ can avail of the following incentives:

- Subject to a preferential income tax rate of 10% of taxable income
- Exemption from local taxes, fees or charges imposed by a local government unit except real property tax on land improvements and equipment.
- Tax and duty free importation of equipment and materials for training and conferences and which are not locally available, subject to prior approval of the BOI

Expatriates of RHQs and ROHQs, their respective spouses and unmarried children under 21 years old are issued multiple entry special visas valid for a period of three years and extendible for another three years subject to certain requirements. Foreign personnel can enjoy tax and duty free importation of personal and household effects provided that these arrive within 90 days before or after conversion of the expatriate's admission category to multiple entry visa. They are subject to withholding tax of 15% on compensation income, the same tax treatment of which is applicable to Filipinos employed and occupying the same positions as the expatriates although Filipinos have the option to be taxed at either 15% of gross income or at the regular tax rate on their taxable income.

Setting up and operating a business

Forms of business organization

There are three principal forms of business organization in the Philippines: sole proprietorship, partnership and corporation.

Sole proprietorship

A sole proprietorship is a business owned by an individual who has full authority in the company and full control of its assets, and is personally responsible for all liabilities. The sole proprietor has unlimited liability, as the law basically treats the business and the owner as one and the same.

As a general rule, foreigners may put up single proprietorships in the Philippines in business activities where the constitution and the laws do not impose any restriction or limitation on ownership equity.

A sole proprietorship must register with the Bureau of Trade Regulation and Consumer Protection, an agency under the DTI.

Partnership

A partnership may be organized by at least two individuals who bind themselves to contribute money or industry to a common fund, with the intention of pursuing a common business objective and dividing the profits among themselves. A partnership is a juridical entity, which means that it has a personality distinct and separate from that of the partners. As a general rule, the liability of partners in a partnership organization is unlimited in the sense that the all the partners are liable even with respect to their individual properties after the assets of the partnership have been exhausted. In the case, however, of a limited partnership, the law allows the limitation of the liability of certain partners to the extent of the amount contributed to the partnership. A foreign investor may invest as a limited or general partner in a partnership.

A partnership is required to be registered with the SEC.

Corporation

A corporation is a juridical entity established under the Corporation Code and regulated by the SEC with a personality separate and distinct from that of its stockholders. The liability of the shareholders of a corporation is limited to the amount of their share capital.

Foreign investors may establish a domestic corporation subject to restrictions and limitations on foreign ownership under the Constitution and laws of the Philippines. The domestic corporation may be a wholly-owned subsidiary or a joint venture with a Philippine national as partner.

If a foreign company chooses not to incorporate a separate Philippine legal entity, it may establish its presence in the Philippines through various investment vehicles.

Branch office

Instead of organizing a domestic corporation, a foreign company may decide to conduct business in the Philippines by establishing a branch to carry out the business activities of its head office. Being merely an extension office, the branch is managed by its parent company through its representative who need not be a citizen of the Philippines.

The branch must have a minimum paid in capital of USD200,000, which may be reduced to USD100,000 if the activities involve advanced technology or if it employs at least 50 direct employees. A branch that is considered as an export enterprise is not subject to minimum assigned capitalization requirements.

A branch has to obtain a license to do business in the Philippines from the SEC. In general, branches and subsidiaries are subject to the same registration fees, requirements for business licenses and investment, and tax rates. However, a 15% branch profits tax is levied on the after-tax profits remitted by a branch to its head office.

Representative office

A representative office deals directly with the clients of its head office. It is not permitted to engage in trading activities in the Philippines and is limited to undertaking activities for its head office such as information dissemination and promotion of the head office's products. A representative office does not derive income from the host country and is therefore fully subsidized by its head office. A minimum inward remittance of USD30,000 is required.

A representative office must secure a license from the SEC to do business in the Philippines.

Regional or area headquarters

An RHQ acts as an administrative branch of a multinational company engaged in international trade. It serves as a supervisory, communication and coordinating center for subsidiaries, affiliates and branches in the Asia-Pacific region and other foreign markets. It does not derive any income from Philippine sources and does not participate in the management of any subsidiary or branch office that the multinational company has in the Philippines. At least USD50,000 must be remitted into the Philippines every year to cover operating expenses.

An RHQ must register with and obtain a license from the SEC.

Regional operating headquarters

An ROHQ is a foreign business entity that is permitted to derive income in the Philippines by carrying out qualifying services to its affiliates, subsidiaries or branches in the Asia-pacific region and other foreign markets. Such activities include general administration and planning; business planning and coordination; corporate finance advisory services; marketing control and sales promotion; logistics services; research and development, and product development; technical support and maintenance; and data processing and communication. An initial remittance of at least USD200,000 into the Philippines is required.

An ROHQ must register with and obtain a license from the SEC.

Organizing a corporation

Requirements of a corporation

Capitalization

At least 25% of the authorized capital must be subscribed and issued, and at least 25% of the subscribed capital must be paid-up, the amount of which must not be less than PHP5,000.

In general, a foreign-owned domestic corporation, or one whose foreign equity exceeds 40%, is required to have a paid-in capital of at least USD200,000 which must be remitted into the Philippines. This requirement may be reduced to USD100,000 if it involves advance technology or employs at least 50 direct employees. An export-oriented enterprise may ask for an exemption from this requirement.

Types of shares

Capital may be divided into multiple classes of shares, with varying property and voting rights. Typical classifications are common and preferred, and “A” and “B” shares. Only Filipinos may hold “A” shares, while foreigners may hold “B” shares. Issues of B shares are subject to foreign equity limits imposed on the particular activity of the corporation and with respect to the FINL.

Control is usually by simple majority, but approval by two-thirds of the shareholders is required to increase capital, amend the articles of incorporation or declare dividends.

Incorporators

Five to 15 incorporators are required, majority of whom must be residents of the Philippines, unless other laws allow otherwise. Each incorporator must subscribe to at least one share in the corporation.

Directors

Five to 15 directors are required, majority of whom must be residents of the Philippines, unless other laws allow otherwise. Each director must own at least one share in the corporation.

Corporate officers

As a general rule, the corporate officers of a corporation consist of the president who is required to be a member of the board of directors, the corporate treasurer, and the corporate secretary who is required to be both a resident and a citizen of the Philippines. Other corporate officers may be designated under the by-laws of the corporation.

Registering a corporation

A corporation is required to register with the SEC. Among others, the SEC registers, regulates, licenses and supervises all corporations doing business in the Philippines, including foreign corporations operating as a branch, representative office, RHQ or ROHQ.

The following primary documents are to be submitted to the SEC when applying for incorporation:

- the name verification slip
- the articles of incorporation and by-laws, and
- the treasurer’s affidavit indicating that the necessary capital has been subscribed to and paid up

Proof of inward remittance by non-resident aliens and foreign corporate subscribers who want to register their investment with the BSP is required for corporations with foreign equity.

The issuance of a certificate of incorporation from the SEC signifies the commencement of corporate existence and juridical personality of a corporation. However, before starting actual operations, the company must also register with other government agencies such as the BIR, the Social Security System (SSS), the Home Development Mutual Fund (HDMF) and the Philippine Health Insurance Corporation (PhilHealth). Business licenses must be obtained from the local government unit where its principal office will be located. If the corporation is being organized as a bank or other financial intermediary, a certificate of authority is necessary from the Monetary Board of the BSP.

It is recommended that foreign investors register all inward transfers of foreign exchange for investment purposes with the BSP to facilitate future profit remittances and capital repatriation through the domestic banking system.

In addition to registering with the SEC, a qualified investor has to register with the BOI if it is seeking incentives from the government under the OIC. Among others, a project study is required using the outline prescribed by the BOI.

An entity that will locate in any of the special economic zones and freeport authorities must also register with the appropriate agency such as PEZA, SBMA and CDC to avail of incentives.

Rules on mergers and acquisitions

Philippine law does not restrict mergers per se, and there is no legal distinction between horizontal mergers (within the same industry) and vertical mergers (between firms at different points on the production or distribution chain).

Mergers of share corporations, however, normally cannot bypass the SEC, since they usually necessitate changes in the companies' articles of incorporation and equity structures, which require notification to the SEC. The Corporation Code requires trustees of the merging firms to submit the plan to their shareholders, and shareholders representing at least two-thirds of the outstanding capital shares of each corporation should approve the plan to be able to proceed. Once approved, the articles of merger or consolidation must be submitted to the SEC, which may require a hearing if the proposed merger or consolidation is seen to be inconsistent with the Corporation Code or any existing laws.

The Securities Regulation Code requires a company pursing an M&A transaction with a listed company to offer to buy shares held by minority stockholders. If it intends to acquire at least 35% of the voting rights of the listed company at any one time, it is required to make a tender offer. The tender offer is also required if the intention is to acquire at least 30% of the voting rights of the listed company over a period of one year.

Under the FIA, a foreign company may merge or acquire a local company unless foreign ownership is prohibited or limited by the Constitution and existing laws or the FINL.

Enterprises registered with the BOI or operating under special incentives must notify the BOI or the appropriate agency of any intent to merge with other companies. If a foreign company operating in the Philippines is involved in a merger or consolidation in its home country, it must file a copy of the articles of merger or consolidation with the SEC. If the foreign company doing business in the Philippines has been absorbed, it must apply for a new license to operate in the country.

Most M&A transactions in the Philippines do not require special statutory or regulatory approval. In most cases, the parties only need to obtain corporate approvals to authorize the transaction and comply with general rules and regulations to execute and implement it. However, special regulations apply in M&As in certain regulated industries such as banking, insurance and telecommunications where the respective regulatory body needs to regulate and approve their proposed transaction.

Accounting and reporting requirements

Business records required by law

Corporations should maintain a stock and transfer book duly registered with the SEC, and books of accounts registered with the BIR consisting of the following:

- General ledger
- General journal
- Purchase journal
- Sales journal
- Cash receipts/disbursements journal

Books must be maintained in Filipino, English or Spanish. Accounting records may also be kept in functional currency.

The adoption of a computer-based accounting is allowed subject to certain conditions and requires a permit from the BIR.

The accounting year or period of the company is fixed in its by-laws and must be used consistently. Any change requires prior approval by the SEC and the BIR. Corporate records should be open to inspection by any stockholder and representative of the SEC, BIR and government agency regulating the business of the company during their routine examination.

Preparation of financial statements

The contents of financial statements are determined through the use of the Philippine Financial Reporting Standards (PFRS) or other comprehensive basis of accounting as may be allowed or prescribed by regulations.

Frequency of reporting

Companies should prepare and submit audited financial statements to the concerned government agencies (e.g., SEC, BIR) annually. Some companies such as banks, insurance companies and investment houses are also required to prepare and submit interim audited financial statements to the appropriate agencies such as the BSP and the Insurance Commission.

Listing on the Philippine Stock Exchange

A company may offer and list its shares on the Philippine Stock Exchange (PSE) and become a listed or publicly-owned company. Under the revised listing rules of the PSE, listing means the admission of securities for trading and the inclusion in the certified registry of the Exchange.

Usually, a company decides to go public to be able to access capital markets to raise money to meet working capital needs, invest in facilities and equipment, acquire other businesses, or pay existing debt. Moreover, raising new capital through an additional public offering is easier and less expensive when the company is already listed on the PSE.

A company may be listed on any of the following: First Board, Second Board or Small- and Medium-Enterprises (SME) Board, depending on market capitalization and other criteria. Listed companies are classified into the following sectors: Financial, Industrial, Holding Firms, Property, Services, and Mining and Oil.

A company that wishes to list on the Exchange is required to submit its listing application and all documentary requirements to the PSE, and concurrently file its registration statement with the SEC. Certain criteria and requirements have to be met including those relating to track record, operating history, capital structure and minimum public offer. The applicant has the discretion to determine the offer price, except when listing on the SME Board where the price will be subject to the approval of PSE.

Upon listing, the company has to comply with certain disclosure requirements on a continuing basis. These include annual and quarterly reports, top 100 stockholders, foreign ownership, as well as disclosures on any information about transactions made by the company or its officials that may affect, among others, the economic or financial performance of, or equity situation in the company.

Taxation

Business taxation

Overview

The basic source of Philippine tax law is the National Internal Revenue Code (NIRC) of 1997, as amended. Cities, municipalities and barangays where the company is located also have the authority to impose tax pursuant to the Local Government Code (LGC) of 1991. The taxes, licenses, and fees imposed by these local governments differ from those imposed under the NIRC.

Companies doing business in the Philippines are generally subject to corporate income tax, minimum tax, withholding taxes, VAT, documentary stamp tax and property tax. Branches of foreign entities in the Philippines are taxed on profits remitted to the foreign head office.

Residence

A corporation is a resident if it is incorporated in the Philippines or, in case of foreign corporations, if it establishes a branch in the Philippines.

Taxable income and rates

Philippine (domestic) corporations are taxed at 30% of taxable income from all sources.

Resident and non-resident foreign corporations are taxed at 30% on gross income from Philippine sources.

ROHQs are taxed at a rate of 10% of taxable income.

For domestic and resident foreign corporations, a minimum corporate income tax (MCIT) of 2% of gross income is imposed beginning on the 4th taxable year following the year of commencement of operations. The MCIT will be due when it is greater than the tax computed using the regular rate. Any excess of MCIT over the normal income tax may be carried forward and credited against the normal income tax for the following three taxable years.

Different rates apply to specific types of businesses such as:

- International carriers doing business in the Philippines - 2.5% final tax on gross Philippine billings
- Offshore banking units - 10% final tax on onshore income and interest income derived from foreign currency loans granted to residents
- Non-resident owner or lessor of vessels chartered by Philippine nationals - 4½% on gross rentals
- Non-resident owner or lessor of aircraft, machineries and other equipment - 7½% of gross rentals or fees
- Non-resident cinematographic film owner, lessor, or distributor - 25% of gross income from Philippine sources

Foreign corporations with registered branches in the Philippines are subject to15% tax on profits earmarked by the branch for remittance to the head office.

A tax of 10% is imposed on domestic and resident foreign corporations as penalty for any improperly accumulated income.

Withholding taxes for domestic and resident foreign corporations include the following:

- 20% final tax on interest in bank deposits and deposit substitutes
- 7½% final tax on interest income received from a depository bank under the expanded foreign currency deposit system
- 6% final tax on sale of real property not used in business (domestic corporation only)
- 32% final tax on the grossed-up monetary value of fringe benefits given to supervisory and managerial employees
- 5% on net capital gains for sale of shares not traded in the stock exchange that is not over PHP100,000.00. The excess over PHP100,000.00 shall be subject to a further 10% final tax

Intercorporate dividends from a domestic corporation to another domestic corporation and from a domestic corporation to a resident foreign corporation are exempt from income tax.

Withholding taxes for non-resident foreign corporations include the following:

- 20% final tax on interest on foreign loans
- 5% on net capital gains for sale of shares not traded in the stock exchange that is not over PHP100,000.00.
  The excess over PHP100,000.00 shall be subject to a further 10% final tax
- Intercorporate cash and property dividend from a domestic corporation to a non-resident foreign corporation is generally subject to 30% final tax. The tax rate may be reduced to 15% if the country where non-resident foreign corporation is domiciled allows a tax credit against the tax due from the other contracting non-resident foreign corporation (domestic corporation) equal to 15% deemed to have been paid in the Philippines. Lower rate may also apply under applicable tax treaty.

Double taxation relief

Tax treaties

The Philippines has a broad tax treaty network, the aim of which is to eliminate double taxation and provide for reduced rates of withholding tax on dividends, interest and royalties. The treaties generally follow the Organization for Economic Cooperation and Development (OECD) model treaty, which provides relief from double taxation on all types of income and limits the taxation by one country of companies resident in the other and protecting company resident in one country from discriminatory taxation in the other. The treaties also generally contain OECD-compliant exchange of information provisions.

Tax treaty relief is not automatic. A confirmatory tax treaty relief ruling must be lodged first from the International Tax Affairs Division (ITAD) of the BIR before the provisions of the tax treaty are applied. Such application and request for ruling must state the nature, mechanics and conditions of the specific transaction applied and must be submitted together with the necessary documentation as required by ITAD.

Anti-avoidance rules

Transfer pricing

The Philipine transfer pricing rules adhere to the OECD (Organization for Economic Cooperation and Development) Transfer Pricing Guidelines and Arm's Length Principle as the standard in determining the appropriate transfer pricing between related parties.

The transfer pricing rules require taxpayers to prepare and maintain contemporaneous documentation, i.e., the transfer pricing documentation should exist or 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. There is no requirement to attach the transfer pricing documentation with the income tax return but it should be presented or submitted during tax examination.

Philippine tax treaty network

Australia	Kuwait
Austria	Malaysia
Bahrain	Netherlands
Bangladesh	New Zealand
Belgium	Nigeria
Brazil	Norway
Canada	Pakistan
People's Republic of China	Poland
Czech Republic	Romania
Denmark	Russia
Finland	Singapore
France	Spain
Germany	Sweden
Hungary	Switzerland
India	Thailand
Indonesia	United Arab Emirates
Israel	United Kingdom
Italy	United States
Japan	Vietnam
Korea (R.O.K.)	

Thin capitalization

The Philippines does not have thin capitalization rules, although the SEC usually allows a 75:25 debt-to-equity ratio.

Controlled foreign companies

The Philippines does not have controlled foreign company (CFC) rules.

Administration

Tax year

Corporations may use the calendar year or their own fiscal year as the basis for filing income tax returns.

Filing and payment

The Philippines operates a self-assessment system. Corporate income tax payments are due and payable within 60 days of the close of each of the first three quarters of the taxable year. A final return covering the total taxable income of the corporation for the preceding calendar or fiscal year must be filed on or before the 15th day of the fourth month after the close of the firm's taxable year. The final tax return must include the audited financial statements of the company. Late payments incur a surcharge equivalent to 25%, annual interest of 20%, and compromise penalty all based on the amount due.

Statute of limitations

The general statute of limitations for the government to audit a taxpayer's return is three (3) years from the last day of filing the return or date the return is filed (if filed after the last day). However, in the case of false or fraudulent tax return, with intent to evade tax, and failure to file the return, the statute of limitations shall be ten (10) years from the date of discovery of the falsity, fraud in the return or failure to file the return.

The filing of an amended return restarts the period. For collection purposes, the period of limitation to collect the taxes is five (5) years as from the date of the assessment by the tax authorities.

Tax authorities

The BIR, which falls under the Department of Finance, administers and enforces the taxation system. The Commissioner of the BIR has exclusive jurisdiction to interpret the provisions of the Philippine tax code, as well as authority to decide disputed assessments, grant refunds of taxes, fees and other charges and penalties, modify payment of tax and abate or cancel a tax liability. Taxpayers can appeal decisions by the Commissioner directly to the Court of Tax Appeals.

The Commissioner issues administrative guidance, which may be relied on in interpreting the tax code, which comes in the form of regulations, orders, rulings, circulars and BIR rulings.

Other taxes on business

Local income tax

Municipalities and cities may impose a local business tax on the gross receipts of certain businesses. Local business taxes are payable either annually or quarterly.

Withholding taxes

Dividends

Dividends paid by a domestic corporation to its foreign parent are generally taxed at 30%. However, if the home country of the recipient allows an additional credit of 15% as tax deemed paid in the Philippines, the tax is reduced to 15%. The rate may be reduced under a tax treaty.

Interest

Interest paid to non-resident corporations is subject to a withholding tax of 20% on interest for foreign loans unless the rate is reduced under a tax treaty. A 10% withholding tax applies to interest paid by local companies and certain other entities on loans from offshore banking units.

Royalties

Royalties paid to non-resident corporations are subject to a withholding tax of 30% unless the rate is reduced under a tax treaty.

Branch remittance tax

A branch profit remittance tax at the rate of 15% is imposed on profits remitted abroad by a Philippine branch of a foreign corporation to its head office. However, the branch remittance tax does not apply to the following cases:

- Profit remitted by a firm registered with the PEZA
- Interest, dividends, rents, capital gains, royalties, technical services fees, annuities, emoluments, premiums or other fixed or determinable income are not considered as branch profits unless such income items are effectively connected with the conduct of the firm's business in the Philippines

Wage tax/social security contributions

A corporate employer is required to withhold tax on the compensation of its employees.

Resident corporations (domestic or foreign) are also liable for a 32% tax on the grossed-up monetary value of fringe benefits to non-rank-and-file employees, unless the fringe benefits is necessary for the trade, business or profession of the company, or when the fringe benefits are for the convenience or advantage of the employer. Both the employer and the employee must make social security contributions. The employee portion is withheld from the salary by the employer. The employer contribution is deductible for corporate income tax purposes. Both the employer and the employee pay monthly contributions to the SSS, PhilHealth and HDMF corresponding to the salaries of those covered employees. The employee portion is withheld by the employer from the employee's salary.

Other income

The withholding tax on technical assistance and service fees for services carried out in the Philippines is 30%. The rates on income from rentals and leases are as follows:

- Payments to non-resident cinematographic film owners, lessors or distributors - 25%
- Rentals, lease or charter fees from leases or charters of vessels to Philippine citizens or corporations - 4.5%
- Rentals, charters and other fees from the lease of aircraft, machinery and other equipment - 7.5%.

Indirect taxes

Value added tax

VAT is levied on the supply of goods and the provision of services, and on importation. VAT taxpayers are normally entitled to deduct VAT on the goods and services they acquire if they are used to produce other goods and services subject to VAT or if VAT was paid on transactions related to international trade or on deductible transactions conducted outside the Philippines.

The VAT rate is 12% while a number of transactions are exempt. A zero percent (0%) VAT rate applies to the export of goods and services related to processing, manufacturing or repackaging goods for export (if paid in foreign currency accounted for under the rules of the Philippine Central Bank). As such, zero rating applies to sales of raw materials and services rendered by contractors and subcontractors to export firms registered with the BOI.

VAT registration is mandatory for all taxpayers whose taxable transactions in the Philippines exceed PHP 1,919,500.

The VAT return/declaration must be filed by the 20th day following the close of the month (for the monthly returns) and not later than the 25th day following the close of each taxable quarter (for quarterly returns).

Capital tax

The Philippines does not levy capital duty.

Real estate tax

A property tax is levied on real property at a rate that depends on the location of the property. The tax should not exceed 3% of the assessed value per the tax declaration.

Gratuitous transfers of property are subject to a donor's tax at graduated rates ranging from 2% to 15% or 30% of the fair market value of the property at the time of the donation.

In addition to real property tax, local governments impose tax on nearly all businesses operating within their jurisdictions. Rates vary but are usually a small percentage of gross annual sales.

Transfer tax

A local transfer tax on real property is levied at a rate of 50% of 1% of the gross sales price or fair market value of the property, whichever is higher, on the transfer or sale of real property.

Stamp duty

A documentary stamp tax is imposed on instruments such as bonds and certificates of indebtedness, share certificates, sales agreements, bank drafts, bills of exchange, letters of credit, insurance policies, bills of lading, lease agreements, mortgages, charter parties and warehouse receipts. The rate of the stamp tax is either fixed or based on the value of the document.

Customs and excise duties

All articles imported from a foreign country into the Philippines are subject to duty upon each importation, even though previously exported from the Philippines. Unless duly authorized by the government or its legal representative, certain items may not be imported (ammunitions, firearms, among others).

Excise taxes, both specific and ad valorem, are levied on wines and spirits, beer, cigarettes and tobacco products, lubricating oils and grease, processed gas, waxes, denatured alcohol, cinematographic films, saccharine, coal, cars, non-essential goods, mineral products, naphtha and other similar products of distillation, asphalt, and petroleum and other fuel products.

Labor

The Labor Code of the Philippines consolidates all labor and social laws to protect labor, promote employment and human resources development, and ensure industrial peace. The Labor Code contains provisions regulating conditions of work, specifically on employment of women and minors, and imposes general occupational health and safety standards for certain types of work.

Employee rights and remuneration

Wages and benefits

R.A. 6727, also known as the Wage Rationalization Act, provides for regional tripartite wage and productivity boards to determine and fix minimum wage rates on the regional, provincial and industrial levels.

The minimum daily wage rate in Metro Manila (the National Capital Region) as of January 2015 is PHP466 for non-agricultural workers and Php429 for agricultural workers. The rate includes basic pay and cost of living allowance. Outside Metro Manila, minimum daily wage rates for non-agricultural workers range from PHP205 (in Region V – Bicol Region) to PHP362.50 (in Region IV-A – Cavite, Laguna, Batangas and Quezon provinces).

Some types of establishments such as distressed companies, new business enterprises, service establishments employing less than ten persons and companies affected by natural disasters are exempt from complying with the orders of the wage boards. Companies seeking exemptions have to apply with the regional wage boards which will conduct public hearings prior to making a decision.

Basic benefits of employment that employers are required to provide to their employees include the following:

- ***13th month pay***
  All rank and file employees, with certain exceptions, are entitled to a 13th month pay equivalent to 1/12 of the basic salary received within the year which must be given not later than December 24 of every year.
- ***Contribution to the Social Security System (SSS)***
  Both the employer and the employee are required to contribute for the social security benefits (sickness, maternity, disability, death/funeral, and retirement) of the latter. The amount of contribution depends on the employee's monthly salary and is based on the Social Security System Contribution Schedule. Beginning January 1, 2014, the employer's monthly contribution for each employee ranges from PHP80.70 to PHP1,208.70 for each employee.

Minimum daily wage rates for non-agricultural workers in selected cities and provinces

City/Province	Wage rate in PHP
National Capital Region	429 - 466
Baguio City	263 - 280
Aurora, Bataan, Pampanga, Zambales	298 - 349
Cavite, Laguna, Batangas	261 - 362.50
Iloilo, Bacolod	245 - 287
Cebu, Bohol	295 - 340
Cagayan de Oro	291 - 306
Davao	317
General Santos	270

Note: Rate includes basic pay and cost of living allowance (COLA) as of October 2013
Source: National Wages and Productivity Commission, Department of Labor and Employment

- ***Contribution to the National Health Insurance Program (NHIP)***
  Both the employer and the employee are required to contribute for the medical insurance of the latter. The employer's monthly contribution depends on the employee's monthly salary and is based on the Philhealth Premium Contribution Schedule. The employer's monthly contribution for each employee ranges from PHP105 to PHP750.
- ***Contribution to the Home Development and Mutual Fund (HDMF or the Pag-ibig Fund)***
  Both the employer and the employee are required to contribute to the latter's Pag-ibig Fund which provides access to housing programs, and savings and short-term loan benefits. Currently, the maximum employer counterpart contribution is set at Php100.00 per month for each employee.
- ***Service incentive leave***
  Every employee who has rendered at least one year of service is entitled to a yearly service incentive leave of five days with pay.
- ***Maternity leave***
  A female employee is entitled to 60 calendar days maternity leave with full pay for normal delivery and 78 calendar days for caesarean delivery for the first four deliveries/miscarriages.The maternity benefit shall be for the account of SSS although the employer is mandated to advance the maternity leave benefit to the employee.
- ***Paternity leave***
  Unlike the maternity leave benefit which is for the account of SSS, the paternity leave benefit is for the account of the employer. Legally married male employees are entitled to seven days of paternity leave with full pay for each of the first four legitimate children.

- *Parental leave*
  In addition to any other existing leave privileges being given by the company, parental leave of not more than seven working days every year shall be given to any solo parent employee who has rendered service of at least one year.

Managerial and supervisory employees may enjoy additional fringe benefits which are furnished by the employer in cash or in kind. Examples of such benefits are housing, vehicle, expense account and membership fees in social clubs.

Working hours and overtime and holiday pay

The normal hours of work of any employee shall not exceed eight hours a day. The normal workweek in manufacturing is 44 to 48 hours, while other sectors observe a 40-hour workweek. Employees are required to have at least one day of rest after every six consecutive normal work days.

The minimum overtime rate is 25% over the hourly rate. Work performed on a rest day or a regular legal holiday shall be paid 200% of the basic salary for the first eight hours, and an additional 30% of the hourly rate for work in excess of eight hours. Employees are paid their normal daily wage during unworked regular holidays.

There is a “no work, no pay policy” for special non-working holidays. Therefore, employees who do not work on these days are not entitled to receive payment, unless there is a provision in the collective bargaining agreement, or a company practice or policy that permits such compensation. Employees who work on these days are entitled to 130% of their daily rate for the first eight hours, and a 30% premium thereafter. If the special non-working holiday falls on the employees’ rest day, they are entitled to 150% of their regular daily rate for the first eight hours, and a 30% premium thereafter.

Night-shift employees must be paid at least 10% more than the regular wage rate for each hour of work performed between 10 pm and 6 am.

Retirement

The retirement age of a private sector employee is primarily determined by the existing collective bargaining agreement, other applicable employment contract or retirement plan. In the absence of any such agreement, contract or retirement plan, an employee may decide on an optional retirement upon reaching the age of 60 years or more if he has served for at least five years in the company, but not beyond 65 years which is the compulsory retirement age. Upon retirement of an employee, whether optional or compulsory, his services may be continued or extended on a case to case basis upon agreement of the employer and employee.

Qualified employees shall be entitled to retirement benefits under R.A. 7641 in the absence of any applicable agreement, contract or retirement plan. Under R.A. 7641, the retirement pay for every private sector employee should be equivalent to at least one-half of his or her monthly salary multiplied by the number of years of service. The term one-half month salary shall mean 15 days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five days of service incentive leaves.

In case there is such an agreement, contract or retirement plan, the employee shall be entitled to the retirement benefits provided for in such agreement, contract or retirement plan, which shall not be less than what is provided for under R.A. 7641.

Retail, service and agricultural establishments employing fewer than 10 persons are exempt from providing the required retirement benefits.

Termination of employment

Under the Labor Code, an employer may terminate an employee for any of the following just causes:

1. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work
2. Gross and habitual neglect by the employee of his duties
3. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative
4. 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
5. Other causes analogous such as dishonesty, abandonment and conflict of interest

The employer is required to observe proper termination process to give the employee ample opportunity to respond to the charges against him and to defend himself.

The termination of an employee for just cause does not entitle the employee to any termination pay provided in the Labor Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice.

The employer may also terminate an employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking. An employee who is terminated due to installation of labor-saving devices or redundancy shall be entitled to a separation pay equivalent to at least his one month pay or at least one month pay for every year of service, whichever is higher. In the case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one month pay or at least one-half month pay for every year of service, whichever is higher.

Labor-management relations

The Labor Code contains several provisions which are beneficial to labor. Among others, it provides the guidelines in the organization and membership in labor unions as well as in collective bargaining. Employees, with certain exceptions such as managerial and confidential employees, have the right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining. Strikes are also authorized as long as they comply with the strict requirements under the Labor Code, and workers who organize or participate in illegal strikes may be subject to dismissal. On the other hand, employers have the right to lock out employees under valid grounds.

Most unions are in the manufacturing sector. As of June 2013, there are 10 labor centers that host 135 labor federations and 7,349 independent unions unaffiliated with any federation in the private sector. Labor federations can be established by at least 10 unions covered by collective-bargaining agreements.

Employment of foreigners

Although it is the government's policy to prioritize the use of local human resources, it permits the employment of foreign nationals consistent with its policy to attract foreign investors. Visa requirements for certain categories of aliens have been liberalized to allow them to work in the Philippines.

All foreigners, whether residents, non-residents or refugees, have to secure an Alien Employment Permit (AEP) from the Department of Labor and Employment to authorize them to work in the Philippines. This covers all foreigners who intend to engage in gainful employment in the Philippines; foreign professionals who are allowed to practice their profession in the Philippines under reciprocity and other international agreements; and holders of Special Investors Resident Visa (SIRV), Special Retirees Resident Visa (SRRV), Treaty Traders Visa (9d) or Special Non-Immigrant Visa (47(a)2) as long as they occupy any executive, advisory, supervisory, or technical position in any establishment.

Those exempted from this requirement include members of the diplomatic community, foreign government officials accredited by the Philippine government, officers and other staff of international organizations of which the Philippine government is a cooperating member, and their legitimate spouses interested to work in the Philippines. Also exempted are foreigners elected as members of the Governing Board of a corporation in the Philippines as long as they do not occupy any other position and their functions are limited to voting in the affairs of the corporation.

The AEP is issued after it has been determined that no Filipino citizen is available who is competent, able and willing at the time of application to perform the services for which the alien will be employed, and that the admission of the alien will be beneficial to the public interest.

Work visas

Foreigners seeking employment, do business and/or invest in the Philippines may apply for authorization to work or other appropriate visa provided for under the Philippine Immigration Act, as amended, or other applicable special laws.

Pre-arranged Employment Visa

A foreigner who will be occupying an executive, technical, managerial or highly confidential position in a company for at least one year, not to exceed five years, may apply for a pre-arranged employment visa under Section 9(g) of the Philippine Immigration Act. This type of visa is valid for the duration of the AEP or the employment contract, whichever is shorter.

Pending the approval of the application for this type of visa, a foreigner may apply for a Special Work Permit which is normally valid for a period of three months from date of issuance.

Treaty Trader Visa

Under Section 9(d) of the Philippine Immigration Act, a foreigner may enter the Philippines as a treaty trader if he is a national of a country with which the Philippines has a reciprocal agreement for the admission of treaty traders or investors. At present, the Philippines has such an agreement with the United States, Japan and Germany.

A treaty trader refers to any treaty investor or an alien employed by a treaty investor in a supervisory/executive position and who is of the same nationality as the majority shareholder of the sponsoring firm.

Multiple Entry Special Visas

Under the OIC, foreign personnel of RHQs or ROHQs of multinational companies, their respective spouses, and unmarried children under 21 years of age, if accompanying them, shall be issued a multiple entry special visa to enter the Philippines valid for a period of three years.

Under Presidential Decree No. 1034, foreign personnel of offshore banking units of foreign banks duly licensed by the BSP, their spouses and unmarried children under 21 years of age, if accompanying them, shall also be issued a multiple entry special visa valid for a period of one year.

Special Non-immigrant Visas

A special non-immigrant visa shall be issued to foreigners based on public interest or public policy considerations, pursuant to Section 47(a)(2) of the Philippine Immigration Act. This covers those who will be employed by companies registered with PEZA and the BOI, and those who will be temporarily assigned to work in government projects such as those involving power generation, oil exploration and infrastructure projects.

Special Subic-Clark Work Visa

Special multiple entry visas shall be given to foreign executives and other foreign nationals who possess highly technical skills who will be employed by locators within SBF and CFZ. Holders of this type of visa are exempt from exit clearance certificates, re-entry permits and special return certificates.

Resident/Investor visas

Aside from work visas, other types of visas are available to foreign nationals which will allow them to work in the Philippines, subject to certain restrictions and requirements.

Special Investor's Resident Visa

A Special Investor's Resident Visa (SIRV) entitles the holder to stay indefinitely in the Philippines with multiple entry privileges, as long as the required investment is maintained. The SIRV is issued by the Bureau of Immigration (BI) upon the endorsement of the BOI.

The foreigner must invest at least USD75,000 (reduced to USD50,000 if for an investment in a qualified tourist-related project or tourism establishment as determined by the Department of Tourism) in publicly-listed corporations, companies engaged in areas listed in the IPP, and/or companies in the manufacturing and service sectors.

Special Resident Retiree's Visa

The Special Resident Retiree's Visa (SRRV) is issued to foreigners and overseas Filipinos by the BI under the Retirement Program of the Philippine Retirement Authority (PRA). It entitles the holder to multiple-entry privileges with the right to stay indefinitely in the Philippines as long as the required minimum dollar deposit requirement (depending on age and other categories) is maintained.

Special Visa for Employment Generation

A Special Visa for Employment Generation (SVEG) may be granted to a qualified non-immigrant foreigner who will employ at least 10 Filipinos in a lawful and sustainable enterprise, trade or industry. Qualified foreigners who are granted the SVEG shall be considered special non-immigrants with multiply entry privileges and conditional extended stay, without need of prior departure from the Philippines.

Special Subic-Clark Investor's Visa

The Special Subic-Clark Investor's Visa (SS-CIV) entitles a qualified investor to a resident status which will allow him to stay indefinitely at the SBF or the CFZ and multiple entries into the Philippines without the need for exit clearance certificates, re-entry permits and special return certificates. The visa remains valid as long as the investment of not less than USD250,000 is maintained within the SBF or the CFZ.

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