

# Philippines

<b>Capital City</b>	Manila
<b>Major Financial Center</b>	Makati City
<b>Population (2020)</b>	109.58 million
<b>Location</b>	Southeast Asia, archipelago east of Vietnam
<b>Major Languages</b>	Filipino, English (both official)
<b>Legal System</b>	Combination of civil law and common Law
<b>Square Miles</b>	115,831 sq mi
<b>Gross Domestic Product (2015)</b>	USD 367 billion
<b>Major Exports</b>	Electronic machinery, semiconductors, transport equipment, garments
<b>Currency</b>	Philippines Pesos (PHP)
<b>U.S. Dollar Exchange Rate (as of January 2021)</b>	USD 1 = PHP 48.05
<b>Euro Exchange Rate (as of January 2021)</b>	EUR 1 = PHP 58.69

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Section Author  
Joselito M. Bautista  
Partner  
Angara Abello Concepcion Regala & Cruz  
Email: [jmbautista@accralaw.com](mailto:jmbautista@accralaw.com)  
Website: <http://www.accralaw.com>



## Chapter 37

# What Type of Entity Should We Use to Set Up Our Business?

A foreign investor may establish a business presence in the Philippines either as a corporation, branch office, representative office, regional operating headquarters, or regional headquarters.

In choosing the type of entity which would be most appropriate, the foreign investor should consider the following factors:

- i. Allowed activities for the entity
- ii. Minimum capital requirements
- iii. Liability issues
- iv. Tax treatment.

## Corporation

The structure of a corporation in the Philippines is similar to the Limited Liability Company (LLC) structure in the United States in that the corporation becomes a legal entity separate and distinct from the foreign investor or any parent company.

A foreign-owned corporation registered in the Philippines is allowed to undertake any business activity not otherwise reserved to Philippine nationals by the Philippine Constitution and laws. The business activities restricted to Philippine nationals are described in Chapter 39.

**EXAMPLE:** If a foreign company wishes to establish a presence in the Philippines, it will most likely do so as a corporation. If individual investors wish to establish a stand-alone business to generate income in the Philippines, they will also most likely do so as a corporation.

**EXAMPLE:** Suppose a Swedish company establishes a wholly owned subsidiary corporation in the Philippines. That new corporation then executes a contract with a local company to supply auto parts, but then fails to supply those parts. In this situation, the purchaser would generally be limited to suing the Philippine subsidiary for the breach of contract, not its parent company in Sweden.

## Branch Office, Representative Office, Regional Headquarters, and Regional Operating Headquarters

In some circumstances, however, a foreign company may not want to establish a separate legal entity. Reasons for this may range from optimizing accounting, administration, and management arrangements with affiliated businesses, to tax planning reasons. In these situations, a foreign company may choose to instead establish a branch office, representative office, regional headquarters, or regional operating headquarters in the Philippines.

If this is the case, the foreign company is required to appoint a resident agent who may either be an individual residing in the Philippines or a corporation organized and registered in the Philippines and lawfully transacting business in the Philippines. The resident agent is responsible for receiving any court or legal summons or documents on behalf of the foreign company.

### Branch Office

A branch office may earn income in the Philippines; however, its activities will be limited to those activities which a foreign-owned company in the Philippines may legally engage in (see Chapter 39).

**EXAMPLE:** Suppose that the foreign company does not want to establish a corporation, but wants to engage in activities in the Philippines that would generate income. In this situation, the foreign company would most likely establish a branch office.

Philippine law treats all liabilities of the branch office as the liabilities of its head office overseas.

**EXAMPLE:** A Dutch company establishes a branch in the Philippines, and the branch is later served a summons stating that the Dutch company is being sued in a Philippine court. In this situation, the Dutch company would be responsible for this claim in all respects.

**EXAMPLE:** Suppose a multinational company establishes a branch in the Philippines, and the branch enters into a contract with a local Philippine company to provide services but fails to perform. In this situation, the Philippine company could then sue the head office of the multinational company directly.

## Representative Office

A representative office (sometimes referred to as a liaison office) of a foreign registered company may interact directly with the Philippine customers of its head office overseas but is not allowed to earn income. The representative office must also be fully subsidized by its head office.

A representative office may generally engage in the following activities:

- i. Disseminate information
- ii. Promote the head office's products
- iii. Perform quality control on the head office's products

A representative office does not have a legal identity separate from its head office overseas; therefore, (just as with a branch office) the head office is liable for all the liabilities of its representative office. Normally, however, the representative office will not incur significant liabilities in the Philippines due to the limited activities permissible (see above).

## Regional Headquarters and Regional Operating Headquarters

A Regional Headquarters ("RHQ") is an administrative branch office of a foreign registered company engaged in international trade and acts as a supervising, communicating, and coordinating center for such foreign company's subsidiaries, branches, or affiliates in the Asia-Pacific Region and other foreign markets.

**EXAMPLE:** A UK company, with offices throughout Asia, seeks to establish an office in the Philippines. The intention is for this new office's activities to be limited to only coordinating activities between the company's other offices in Asia. In this situation, the UK company would likely establish a RHQ in the Philippines.

The RHQ is not allowed to earn income. It is allowed to operate only as a cost center, and may not participate in the management of any subsidiary or branch office the multinational company may have in the Philippines, or solicit or market any of the head office's goods or services in the Philippines.

**EXAMPLE:** Same facts as above, but the UK company also has a branch office in the Philippines which sells goods in the Philippines. If the UK company establishes a RHQ, it would be prohibited from managing the branch office in the Philippines or promoting the head office's products or business there.

Because the RHQ does not earn income from sources within the Philippines and does not participate in managing any subsidiaries or branch offices located inside the Philippines, it is exempt from corporate income tax. It is also exempt from VAT and from all local government licenses, fees, and charges which are normally applicable, except for real property tax on land improvements and equipment which remain applicable. The RHQ also enjoys tax and duty free importation of equipment and materials necessary for training and conferences.

In contrast, the Regional Operating Headquarters (“ROHQ”) of a foreign company is allowed to earn income by performing qualifying services for its affiliates, subsidiaries, or branches located in the Philippines, in the Asia-Pacific Region, and in other foreign markets. These qualifying services include the following:

- i. General administration and planning
- ii. Business planning and coordination
- iii. Sourcing/procurement of raw materials and components
- iv. Corporate finance advisory services
- v. Marketing control and sales promotion
- vi. Training and personnel management
- vii. Logistics services
- viii. Research and development services and product development
- ix. Technical support and maintenance
- x. Data processing and communication
- xi. Business development

The ROHQ is required to declare to the Securities and Exchange Commission (SEC), each of its affiliates, branches, and subsidiaries to which it will provide these services and should not provide services to any other party which has not been so declared.

**EXAMPLE:** A Japanese car maker maintains multiple service centers for its customers all over the Philippines. The head office in Japan decides to establish a new office in the country to source certain spare parts for these service centers, and the intention is for the service centers to pay the new office for this service. In this situation, the Japanese company would likely establish the new entity as a ROHQ.

The ROHQ is not allowed to (either directly or indirectly) solicit or market any goods and services either on behalf of its head office or its branches, affiliates, subsidiaries, or any other company. ROHQs are also prohibited from engaging (either directly or indirectly) in the sale or distribution of goods or services of its head office, or the head office’s branches, affiliates, subsidiaries, or any other company.

**EXAMPLE:** Same facts as above, but the Japanese company also wants the new office to market and sell the Japanese company’s cars to the general public. In this situation, the marketing and selling of cars to the general public would not be permitted if the new entity was established as a ROHQ.

Note that a ROHQ is subject to Philippine corporate income tax and VAT, but is exempt from all kinds of local taxes and other government fees and charges, except real property tax on land improvements and equipment which remain applicable.

## Capital Required

The amount of paid-in capital required for a corporation and the assigned capital required for a branch office, representative office, regional headquarters, or regional operating headquarters are discussed in Chapters 38 and 39.

## Registration and Official Fees

Prior to transacting business in the Philippines, foreign-owned corporations, branch offices, representative offices, regional headquarters, and regional operating headquarters are required to obtain a license to do business from the SEC.

The filing fee payable for registering a corporation is equal to one fifth of one percent of the corporation's stated authorized capital stock or the subscription price of the subscribed capital stock, whichever is higher, but not less than PhP2,000.

There is also a legal research fee payable to the SEC equal to one percent of the above described filing fee and an additional fixed fee of PhP1,010 payable to the SEC for registering the Articles of Incorporation and Bylaws.

**EXAMPLE:** Suppose an Australian investor registers a corporation with its authorized capital stock set at PhP10,000,000. The government filing fee would be calculated as follows:

PhP20,000	Filing Fee
PhP200	Legal Research Fee
PhP1,010	Articles and Bylaws
<b>PhP21,210</b>	<b>Total</b>

The filing fee payable for establishing a branch office is one percent of the actual inward remittance by the head office overseas but shall not be less than PhP3,000. There is also a legal research fee payable to the SEC of one percent of the filing fee.

**EXAMPLE:** A Norwegian company establishes a branch office in the Philippines and sets the assigned capital at PhP10,000,000. The filing fee would be calculated as follows:

PhP100,000	Filing Fee
PhP1,000	Legal Research Fee
<b>PhP101,000</b>	<b>Total</b>

The filing fee for establishing a representative office is one tenth of one percent of the actual inward remittance from the head office overseas but shall not be less than PhP2,000. There is also a legal research fee payable to the SEC of one percent of the filing fee.

**EXAMPLE:** An Australian company establishes a representative office in the Philippines and sets its assigned capital at PhP1,500,000. The filing fee is calculated as follows:

PhP2,000	Filing Fee
PhP20	Legal Research Fee
<b>PhP2,020</b>	<b>Total</b>

The filing fee payable for establishing a RHQ is a fixed fee of PhP5,000.

The filing fee payable for establishing a ROHQ is one percent of the actual inward remittance of the head office overseas but shall not be less than one percent of the Philippine currency equivalent of US \$200,000 at the time of remittance. There is also a legal research fee payable to the SEC of one percent of the filing fee.

**EXAMPLE:** A Canadian company establishes a ROHQ in the Philippines and remits PhP10,000,000 into the Philippines for its operation. The filing fee is calculated as follows:

PhP100,000	Filing Fee
PhP1,000	Legal Research Fee
<b>PhP101,000</b>	<b>Total</b>

## Chapter 38

# What are the Legal Issues Associated with the Start-up of a Company?

There are many legal and practical issues associated with registering a foreign-owned corporation in the Philippines. The start-up process for a foreign owned corporation includes several steps:

- i. registering the corporation with and obtaining a business license from the Philippine Securities and Exchange Commission (“SEC”) (see Chapter 37)
- ii. registering with and obtaining a tax identification number from the Bureau of Internal Revenue (“BIR”)
- iii. registering as an employer with the Social Security System, the Home Development Mutual Fund, and the Philippine Health Insurance Corporation
- iv. registering with the Local Government Unit (“LGU”) to obtain a permit to do business at the corporation’s principal office and/or place of operation
- v. registering with several other government agencies if certain activities require special permits.

Shelf companies are not common in the Philippines; therefore, this procedure must be followed each time a foreign business is established.

### 1. Incorporators

Any person, partnership, association or corporation, singly or jointly with others but not more than fifteen in number, may organize a corporation for any lawful purpose or purposes. Each incorporator of a stock corporation must own or be a subscriber to at least one share of the capital stock.

An incorporator’s liability is similar to that of a shareholder, which is limited to his capital contribution to the corporation.

Also, upon incorporation, the corporation is required to appoint the corporation’s treasurer who should be a resident of the Philippines and such person is required to open the Treasurer-in-Trust account (see Section 12 below). For

purposes of complying with the residency requirement, Philippine law considers all Philippine citizens who reside in the Philippines and foreigners who hold any Philippine visa which is valid for at least one year as residents of the Philippines.

## 2. Timing

Registration of a corporation with the SEC normally takes approximately one to three weeks, depending on the type of business which the corporation will engage in and the availability of documents and information required from the incorporators.

Post-incorporation registrations with the BIR, LGU, and others (see above) normally take an additional four to six weeks.

## 3. Filings

All required documents and applications associated with the registration of a corporation are required to be filed with the main office of the SEC in Metro Manila, or if the principal office is located at an area where an extension office of the SEC exists, at such SEC extension office.

## 4. Company Name

The first step in the corporation registration process is to reserve the corporation's proposed name through the SEC's online verification system at [www.sec.gov.ph](http://www.sec.gov.ph).

The name reservation process normally takes approximately one to three days.

Names requested which are deceptive or confusingly similar to an existing business name, or if such name is restricted by law or use is contrary to existing law, will not be approved. The approved name will be reserved for 30 days at one time and may be renewed upon expiration. Upon final registration of the corporation the approved name will be permanently reserved for the corporation.

Many times, the name reservation process delays the corporation's registration because the names submitted are similar to a name previously registered and, therefore, will not be allowed. Therefore, when possible, the incorporators should select names which are unique in character.

## 5. Signatures

After reservation of the name, the incorporators prepare the Articles of Incorporation (Articles) and Bylaws of the corporation (see Section 7 below).

Each of the incorporators is required to sign the Articles. This may cause logistical problems if the incorporators are located in different parts of the world, since each will be required to sign the same document.

Also, if the Articles are signed by the incorporators while they are outside the Philippines, Philippine law requires that the Articles be notarized and authenticated by a Philippine consul, or apostilled, in the country where each incorporator is present at the time he signs the Articles.

**EXAMPLE:** Five investors seek to register a corporation in the Philippines, and each acts as an incorporator. During the corporation registration process, the Articles are distributed to the five incorporators for signature, and one of the incorporators is in Mexico. In this situation, such incorporator would be required to have his signature on the document notarized and authenticated at the Philippine Embassy or consul in Mexico.

In most cases, this logistical problem is solved by designating Philippine-based individuals to act as incorporators, who will thereafter assign the shares to the ultimate shareholders of the corporation.

## 6. Principal Office

A corporation is required to provide the exact address in the Philippines where its principal address is to be located. The exact address must include the street number, street name, barangay, city or municipality and if applicable, the name of the building, the number of the building, and the number of the room or unit.

When applying for BIR registration and business permit registration, the applicant will be required to submit one of the following as proof of the location of the corporation's principal office:

- i. Proof of ownership of the office space, or
- ii. A lease contract, or
- iii. A certificate by the owner of the office premises confirming his permission for the applicant to use the office space as its place of business.

## 7. Articles of Incorporation

The Articles of Incorporation set forth the basic information about the corporation, such as the name of the corporation, the specific purpose or purposes for which the corporation is being incorporated, the location of its principal office, the term for which the corporation is to exist, the names of the incorporators, the number of directors on the board (which shall not be more than 15), the amount of the authorized capital stock, and other relevant information.

Standard forms of the documents required to incorporate are available at [www.sec.gov.ph](http://www.sec.gov.ph). Most applicants use such standard forms to avoid delays in the examination and evaluation by the SEC.

## 8. Capital Stock

The capital stock is the amount stated in the Articles to be subscribed and paid in by the shareholders, either in cash or non-cash assets (including labor and past services actually rendered).

Under Philippine law, all or a portion of the corporation's issued capital may be purchased using past services rendered by subscriber(s) to the corporation in good faith as consideration. In such cases, the value of the services must be ascertainable and based on the fair market value of the services. Future services are not allowed as consideration for share subscription.

**EXAMPLE:** An engineer constructs a building to be owned by the corporation. Instead of paying the engineer in cash, the directors of the company and the engineer may agree that the engineer receives newly issued shares as payment for those services.

If the consideration for the shares issued to a shareholder is to be paid using a non-cash asset, its value must be equal to the value of the stocks issued. In such cases where non-cash assets are to be contributed, the shareholder will need approval of the valuation by the SEC.

**EXAMPLE:** Korean investors register a corporation in the Philippines and set its capital stock at PhP12million fully paid up. In the event that the corporation's initial shareholders wish to fund all or a portion of the capital stock using non-cash assets, they must receive advance approval from the SEC of the non-cash assets' valuation in order to do so.

## 9. Minimum Capital

Stock corporations shall not be required to have a minimum capital stock, except as otherwise specifically provided by special law.

Higher paid-up capital requirements are applicable to corporations which participate in sectors such as commercial banks, insurance companies, investment houses, retail trade, and other specific industries or businesses.

## 10. Directors

Directors (maximum of fifteen) are responsible for the management of the corporation and owe fiduciary duties to the shareholders. Each director is required to hold at least one share of the corporation. Unless the activity of the corporation is nationalized, directors are not required to be residents of the Philippines.

## 11. Filing Fees

The official filing fees payable to the SEC are discussed in Chapter 37.

## 12. Bank Accounts

As part of the incorporation process, the corporation is required to open a Treasurer-in-Trust account in the same bank where the paid-in capital is deposited.

A Treasurer-in-Trust account is established by the initial treasurer of the corporation by opening a bank account in his own name, in trust for the corporation, to which the paid-in capital will be remitted thereafter.

Upon issuance of the SEC registration, the corporation may convert the Treasurer-in-Trust account into a regular savings or current account in the name of the corporation.

### 13. Public Access to Company Details

After corporate registration is complete, details of the corporation such as the shareholders list, list of directors, Articles of Incorporation, the corporation's address, etc. will be kept on file by the SEC and accessible to the public.

### 14. Documentary Stamp Tax

At the conclusion of the registration process, the SEC will issue the Certificate of Incorporation. At such time the corporation will be required to pay a stamp tax equivalent to P2.00 for each P200, or fraction thereof, of the par value of the corporation's subscribed capital stock. The payment of the stamp tax is due on the fifth day of the following month after the incorporation.

**EXAMPLE:** Swedish investors establish a corporation in the Philippines and subscribe to the capital stock of PhP20million. The SEC issues the corporation's Certificate of Incorporation on June 3rd. The stamp tax payable by the corporation will be calculated as follows:

PhP20million capital stock/100=PhP200,000 stamp tax payable.

Such amount should be paid by July 5th.

## Chapter 39

# What are the Legal Issues Associated with Operating as a Foreign Company?

For purposes of this chapter, a foreign company is defined as one formed, organized, or existing under any laws other than those of the Philippines. A corporation is also considered foreign or a “non-Philippine national” if more than 40% of its capital is held by foreigners.

**EXAMPLE:** A company established in the US and owned by US citizens is considered a foreign company and a non-Philippine national.

**EXAMPLE:** A Japanese company and a local Philippine company establish a joint venture company in the Philippines in which the Japanese company holds 45% of the shares, while the Philippine company holds the remaining 55%. This joint venture company will be classified as a foreign company and a non-Philippine national because more than 40% of its capital is held by a foreign company.

This chapter discusses the rules applicable to foreign companies doing business in the Philippines.

### 1. License to Do Business Requirement

Foreign companies establishing either a subsidiary corporation, branch office, representative office, regional operating headquarters, or regional headquarters are required to obtain a license to do business by registering their desired entity with the Securities and Exchange Commission (SEC) prior to commencing operations.

## 2. Regulated Activities

Philippine law regulates the activities which foreign companies may engage in. There are certain activities which are reserved only for domestic companies wholly owned by citizens of the Philippines, and to companies which are considered as “Philippine nationals.” In general, a company is considered a “Philippine national” if it is organized under the laws of the Philippines, and at least 60% of its capital stock outstanding and entitled to vote in the election of directors are held by citizens of the Philippines.

Among the activities which are reserved for Philippine nationals (i.e., Filipino citizens or Philippine corporations which are at least 60% Filipino-owned) are development and utilization of natural resources (including mining, except those covered by a financial and technical assistance agreement entered into with the President for large scale mining activities), ownership of land, and ownership and management of public utilities. Other activities require a higher percentage of Filipino ownership, such as ownership and management of mass media (100% Filipino ownership) and advertising (70% Filipino-ownership). However, the general rule is that foreigners and foreign-owned companies can do business or invest in a Philippine domestic enterprise up to 100% of its capital, except in those business activities included in the Foreign Investment Negative List (the important activities listed therein being the activities mentioned above).

## 3. Capitalization Requirements

Generally, corporations registered in the Philippines which have foreign shareholdings exceeding 40% of the total shares (which have voting rights) and that meet the definition of a domestic market enterprise, are required to have a minimum paid-up registered capital of no less than US \$200,000 or the equivalent thereof.

A domestic market enterprise is an enterprise that produces goods for sale or provides services to the domestic or local market entirely, or whose export sales consistently fail to represent at least 60% of total annual sales.

**EXAMPLE:** A UK company establishes a subsidiary corporation in the Philippines to produce thumb tacks; 55% of the thumb tacks produced are exported annually, while the remaining 45% are sold locally. In this situation, the corporation would be legally classified as a domestic market enterprise, and the subsidiary corporation would be required to have a paid-up registered capital of no less than US \$200,000.

**EXAMPLE:** Several German investors and a Philippine investor enter into a joint venture agreement to establish a corporation in the Philippines which will produce furniture. They are committed to exporting 100% of their production abroad. In this situation, the joint venture corporation will not be required to have a minimum paid-up capital of US \$200,000.

**EXAMPLE:** A US company establishes a corporation in the Philippines to engage in call center services, with 70% of its customers based abroad and the remaining 30% based locally. In this situation, the corporation will not be classified as a domestic market enterprise, and the minimum US \$200,000 capital requirement will not apply.

Note, however, that Philippine law provides that corporations legally classified as foreign and falling under the legal classification of a domestic market enterprise, may have the minimum paid-up capital requirement reduced from US \$200,000 to US \$100,000, if the corporation utilizes advanced technology (as determined by the Philippine Department of Science and Technology) or employs a minimum of fifty direct employees.

**EXAMPLE:** Japanese investors establish a company in the Philippines which falls under the legal classification of a domestic market enterprise. The company then employs 150 workers. In this situation, the company will be required to have a minimum paid-up capital of US \$100,000.

**EXAMPLE:** Swiss investors establish a domestic market enterprise company in the Philippines to perform product research and development. If the Philippine Department of Science and Technology determines that this corporation utilizes advanced technology, the company's minimum registered capital is US \$100,000.

In general, foreign companies are not allowed to engage in retail trade activities, except where the foreign company

- i. has paid-up capital of at least US \$2,500,000, provided that the investment per store is not less than US \$830,000 or
- ii. specializes in high end or luxury products, provided that the paid-up capital per store is not less than US \$250,000.

## 4. Nominee Shareholders

Generally, nominee shareholders are individuals or companies that agree to hold shares on behalf of the true owner(s) of the shares. In a typical nominee arrangement, the nominee shareholder and the true owner will execute an agreement which provides that the nominee shareholder agrees to hold the shares in the nominee's name only, but the true owner retains all rights of ownership and control (voting rights, rights of transfer, receiving dividends, etc.) of the shares.

However, under Philippine law, any similar type of arrangement which aims to circumvent legal restrictions on the foreign ownership of shares in a corporation is prohibited, and both the guilty foreign and Philippine parties may be subjected to a fine of not less than five thousand pesos and imprisonment of not less than five or more than fifteen years. This law is referred to as the Anti Dummy Law.

**EXAMPLE:** A French investor seeks to establish a wholly owned corporation in the Philippines for the purpose of purchasing land in the Philippines. The French investor then enters into an arrangement with a Philippine person or entity for the latter to hold 60% of the shares of the corporation on the French investor's behalf, to enable the corporation to acquire land. In this situation, both the foreign investor and the Philippine party would be guilty of violating the Anti Dummy Law and would be subject to the aforesaid penalties.

## Chapter 40

# What is the Process to Obtain a Work Permit?

Foreigners seeking to work in the Philippines are generally required to obtain an alien employment permit and a work visa prior to commencement of work.

This chapter discusses the requirements and application procedures to obtain an employment permit and a work visa.

## Entry into the Philippines

Foreigners seeking to visit and subsequently work in the Philippines may be admitted under either of the following procedures:

“Restricted” nationals, which include nationals from the People’s Republic of China and India, among others, are required to obtain an entry visa from the Philippine embassy or consulate in their country of nationality or place of residence prior to their entry into the Philippines.

Foreigners who are not classified as “restricted” by the Department of Foreign Affairs (“DFA”) may enter the Philippines without a visa and are granted upon arrival an authorized stay of thirty days. Upon timely application, such 30-day stay may be extended initially for 29 days, referred to as a “visa waiver”, and thereafter for one to two months at a time, for a total stay of not more than twenty-four months for restricted nationals and thirty-six months for non-restricted nationals, starting from the date of applicant’s latest recorded arrival.

## Special Work Permit

Foreigners planning to engage in specific activities or render services outside of an employment arrangement temporarily in the Philippines for a maximum period

of six months may apply for a Special Work Permit (“SWP”) in order to allow them to work in the Philippines without the need to obtain a work visa. These include but are not limited to the following:

- i. Professional athletes, coaches, trainers and assistants;
- ii. International performers with exceptional abilities;
- iii. Artists, performers and their staff, who perform before an audience for a fee, subject to compliance with the requirements of the concerned agency, office or body;
- iv. Service suppliers coming primarily to perform temporary services and who do not receive salary or other remuneration from a Philippine source other than expenses incidental to their temporary stay;
- v. Treasure hunters authorized to search for hidden treasures with permit from the concerned government agencies and instrumentalities;
- vi. Movie and television crews authorized to film in the country by the relevant regulatory office, body or agency;
- vii. Foreign journalists practicing their profession or covering a specific event in the country;
- viii. Trainee/s assigned in government instrumentalities, government owned and control corporations (“GOCC”) and private entities;
- ix. Lecturers, researchers, trainers and others pursuing academic work, who are assigned in schools, universities, educational and research institutions, government agencies and other entities (with or without compensation);
- x. Religious missionaries and preachers;
- xi. Commercial models and talents;
- xii. Culinary specialists/Chefs;
- xiii. Professionals; and
- xiv. Consultants or specialists.

An SWP is valid for an initial period of three months and is extendible only once for another three months. The SWP is not a work visa and its holder must maintain a valid tourist visa while in the Philippines.

## Special Temporary Permit

All foreign nationals who intend to work as professionals in the country for a limited period of time are required to secure a Special Temporary Permit (“STP”) from the Professional Regulation Commission (“PRC”). These professions include but are not limited to:

- i. Accountancy
- ii. Architecture
- iii. Engineering
- iv. Dentistry
- v. Medicine
- vi. Nursing
- vii. Professional Teachers.

## Alien Employment Permit

An Alien Employment Permit (“AEP”) is issued by the Department of Labor and Employment (“DOLE”) to foreign nationals who are permitted to work pursuant to an employment arrangement with a Philippine-based company, such that there is an employer-employee relationship.

An AEP is one of the requirements for foreign nationals who are applying for the Pre-arranged Employment Visa, a Treaty Trader Visa, and the Philippine Economic Zone Authority (“PEZA”) and Board of Investments (“BOI”) Visas.

The general rule is that all foreign nationals allowed to work in the Philippines are required to apply for and obtain an AEP before starting work, subject to the following exceptions:

- i. All members of the diplomatic service and foreign government officials accredited by and with a reciprocity arrangement with the Philippine government;
- ii. Officers and staff of international organizations of which the Philippine government is a member and their lawful spouses;
- iii. Owners and representatives of foreign principals whose companies are accredited by the Philippine Overseas Employment Administration, who come to the Philippines for a limited period and solely for the purpose of interviewing Filipino applicants for employment abroad;
- iv. Foreign nationals who come to the Philippines to teach, present and/or conduct research studies in universities and colleges as visiting, exchange, or adjunct professors under formal agreements between the universities or colleges in the Philippines and foreign universities or colleges, or between the Philippine government and the foreign government, provided that the exemption is on a reciprocal basis;
- v. Permanent resident foreign nationals and probationary or temporary resident visa holders under Section 13(a-f) of the Philippine Immigration Act of 1940 and Section 3 of the Alien Social Integration Act of 1995 (RA 7917)
- vi. Refugees and Stateless Persons;
- vii. All other foreign nationals granted exemption by law.

Applications for an AEP are submitted to the DOLE Regional Office having jurisdiction over the intended place of work. The following documents are required to be submitted to the DOLE:

- i. Request letter addressed to DOLE
- ii. Duly accomplished AEP application form
- iii. Photocopy of passport, with valid temporary visitor's visa
- iv. Original copy of notarized Contract of Employment/Appointment or Board Secretary's Certificate of Election
- v. Latest mayor's permit or business permit, PEZA Certificate of Registration (for PEZA- registered companies, Philippine Contractors Accreditation Board (PCAB) license (for construction companies)
- vi. Proof of applicant's Tax Identification Number (TIN)
- vii. Certified True Copies of the Company's Securities and Exchange Commission (SEC) registration, articles of incorporation, by-laws and latest General Information Sheet
- viii. Special Temporary Permit, if applicable
- ix. Authority to Employ Foreign National from the Department of Justice (DOJ), if applicable
- x. Current AEP card (if renewal application).

The AEP is normally issued two weeks after the application is completed and government fees are paid. The validity of the AEP is usually made coterminous with the term stipulated in the employment contract and the corresponding work visa, extendible.

## Provisional Work Permit

Foreign nationals who intend to commence work while their applications for AEP and working visas are still pending must secure a Provisional Work Permit ("PWP"). The PWP is valid for an initial duration of three months, extendible only once, for another three months.

## Visa Conversion

Following their arrival in the Philippines, foreigners may apply for the conversion of their visa status from that of a temporary visitor to any of the several categories of working visas (see below).

## Work Visas

For foreigners who will be working in the Philippines under an employment arrangement and/or for a period of more than six months, the most common types of work visas applied for are the pre-arranged employment visa, treaty trader visa, PEZA/BOI visa, and the multiple entry special non-immigrant visa.

The factors which determine which working visa is the most appropriate for the foreign employee in a given situation include the structure of the employer corporation and its activities, the corporation's location, and the nationality of the foreign employee, as discussed below.

### 1. Pre-arranged Employment Visa

The Pre-arranged Employment Visa, (also known as the 9g visa), is the most common type of work visa and is available to foreigners employed in any lawful occupation where a valid employer-employee relationship exists. It is usually applied for in the absence of special qualifications for other visas under special laws.

The documents required when applying for a Pre-arranged Employment Visa at the Bureau of Immigration ("BI") are as follows:

- i. Joint request letter from the petitioner-company and applicant;
- ii. Consolidated General Application Form duly accomplished and notarized;
- iii. Original copy of notarized Contract of Employment/Appointment or Board Secretary's Certificate of Election;
- iv. Photocopies of SEC documents (Certificate of Registration, Articles of Incorporation, Latest General Information Sheet) or DTI Certificate of Registration of Business Name and Business Permit, as applicable;
- v. Photocopy of the Company's latest Income Tax Return (ITR) with proof of payment;
- vi. Notarized Certification as to the number of foreign and local employees;
- vii. Applicant's Alien Employment Permit certified by the DOLE;
- viii. Applicant's BI Clearance Certificate
- ix. Photocopy of the identification page of the foreigner's passport and admission stamp showing that the foreigner is authorized to stay in the Philippines for at least twenty calendar days after the date of filing the visa application with the BI.

An employer in the Philippines is required to submit the above listed documents on the employee's behalf and pay the applicable filing fees. The BI is technically supposed to rule on the application within one month of the time of filing of the application, but the actual period may be longer.

If the application is approved by the BI, the Pre-arranged Employment Visa will be stamped on the foreigner's passport.

In the event that the foreign employee's legal spouse and/or unmarried children below twenty-one (21) years of age are to accompany the foreign employee to the Philippines, the following documents are required to be submitted to the BI, together with the foreign employee's application, in order to secure a 9g visa for the dependent(s).

- i. Copy of marriage certificate of the foreign employee and spouse, which shall be apostilled, certified or authenticated by the Philippine Embassy or Consulate in or nearest to the place where the marriage ceremony occurred, submitted together with an English translation (if prepared in a language other than English)
- ii. Copy of birth certificates of minor, unmarried children, apostilled, certified or authenticated by the Philippine Embassy or Consulate in or nearest to the dependent's place of birth, submitted with an English translation (if prepared in a language other than English)
- iii. Photocopy of the identification page of the passport of the foreign employee's accompanying spouse and/or dependents and admission stamp showing an authorized stay of at least twenty calendar days after the date of filing with the BI.

Pre-arranged Employment Visa holders are also required to secure an Alien Certificate of Registration Identification Card ("ACR-I Card"). The ACR I-Card is a microchip-based credit card-sized identification card issued to registered foreigners containing personal information such as name, age, date and place of birth. The ACR I-Card must be presented every time the foreigner travels in and out of the Philippines.

## **2. Treaty Trader Visa**

The Treaty Trader Visa, (also known as the 9d visa), is only available to citizens of Japan, the US, and Germany because these are the countries that afford similar immigration privileges to citizens of the Philippines.

The Treaty Trader Visa is issued to foreigners who seek to enter the Philippines solely for the purpose of carrying on substantial trade between the Philippines and his country of nationality or developing and directing the operations of a business in the Philippines, in which either the foreign applicant or his employer outside the Philippines has already invested or is actively in the process of investing a substantial amount of capital.

**EXAMPLE:** A German investor makes a substantial investment in a corporation in the Philippines and seeks to move to the Philippines to manage the corporation. The German investor will likely qualify and would be eligible to receive a Treaty Trader Visa.

**EXAMPLE:** Same facts, but the investor is from Ireland. The investor would not qualify for a Treaty Trader Visa as only citizens of Japan, the US, and Germany qualify to receive such visa.

It is required that the foreigner's employer must be an organization of the same nationality as the foreign employee, and the foreigner must be assigned to the Philippine company where the investment is made.

**EXAMPLE:** A Japanese company makes a substantial investment in a Philippine corporation and seeks to send a US national to manage the corporation. In this situation, the US individual would not qualify for a Treaty Trader Visa as the nationalities of the employer and the employee are different.

The requirements, procedure and timeline to obtain the Treaty Trader Visa from the BI are the same as those applicable to obtain a Pre-arranged Employment Visa (see previous section). Treaty Trader Visa holders are also required to secure an AEP and ACR I-Card.

### 3. PEZA and BOI Visas

The PEZA and BOI Visas (also known as 47a2 visas), are issued to foreign nationals employed as officers or those holding supervisory, technical, or advisory positions with Philippine corporations which are registered with the Philippine Economic Zone Authority ("PEZA") or the Board of Investments (BOI). This visa can also be issued to foreign employees temporarily assigned to work on government projects.

**EXAMPLE:** Australian investors establish a corporation in the Philippines which is registered for incentives with the BOI and which employs a UK national to be the corporation's managing director. In this situation, the UK national may apply for a BOI visa.

The following are the documents required to be submitted to the PEZA or BOI (as applicable), in order to apply for either a PEZA Visa or BOI Visa:

- i. Valid passport of the foreign employee and his dependents
- ii. PEZA or BOI application form
- iii. Department of Justice (DOJ) application form
- iv. PEZA or BOI endorsement

- v. Declaration by the employer of the number of foreign and Filipino employees
- vi. Employment Contract
- vii. Original Marriage Certificate for dependent legal spouse of the foreign employee, if applicable
- viii. Birth certificate(s) of unmarried dependent child(ren) of the foreign employee who are less than twenty-one (21) years old, if applicable
- ix. Affidavit of support and guaranty of return fare for foreign employee's dependents by the employer, if applicable
- x. Signed curriculum vitae of the foreigner
- xi. Organizational chart of the corporation
- xii. Affidavit of support in favor of foreigner.

After the above described documents are found to be in order and the filing fees are paid, the application is then forwarded to the Department of Justice (DOJ) for endorsement.

If approved by the DOJ, the application and supporting documents are then forwarded to the BI for issuance of the visa. The application is then forwarded to the PEZA or BOI (as applicable) for further processing before notifying the foreign employee that the application has been approved. The visas are valid for and renewable every year.

Holders of BOI and PEZA Visas are required to secure AEPs. BOI Visa holders are required to secure an ACR I-Card while PEZA Visa holders are exempted from securing the ACR I-Card as well as from paying for Emigration Clearance Certificate (ECC) and Special Return Certificate (SRC).

#### **4. Multiple Entry Special Non-immigrant Visa**

Under applicable law, multiple entry special non-immigrant visas are available to foreign personnel of regional or area headquarters of multinational companies ("RHQ") and to foreign personnel of regional or area operating headquarters of multinational companies ("ROHQ"), and their respective spouses and unmarried minor dependents under twenty-one years of age. A multiple entry visa is valid for a maximum of three years and may be extended upon meeting certain conditions.

The requirements for a multiple entry visa are as follows:

- i. Notarized letter request by a responsible officer of the company intending to engage the foreign national applicant
- ii. Completed general application form
- iii. Photocopy of the relevant pages of the applicant's passport containing the latest arrival or updated stay

- iv. Copy of the company's Certificate of Registration issued by the Securities and Exchange Commission
- v. Notarized contract of employment
- vi. Certification from the employer
- vii. BI Clearance Certificate.

Multiple entry visa holders are exempted from the requirement of securing AEP and ACR I-Card as well as from ECC/SRC Payments.



## Chapter 41

# What Incentives are Available to Foreign Investors by the Government?

The agencies of the Philippine government responsible for attracting specific types of investments include the Board of Investments (“BOI”), Philippine Economic Zone Authority Subic Bay Metropolitan Authority, the Clark Development Corporation, among others (see list at the end of this chapter). Each of these agencies may grant investment incentives if the foreign investor engages in specific areas of promoted activities and/or locates its project in designated areas.

Below is a description of the investment incentives made available by each agency, as well as the corresponding application procedures.

### Board of Investments

Qualifying foreign investors investing in promoted activities (see below) may apply with the BOI to receive various incentives.

Investors seeking to obtain BOI registration and incentives are required to submit a completed application and supporting documents, and pay the filing fee.

The application normally takes one to two months to process and, if successful, the BOI will issue a Certificate of Registration to the applicant.

## 1. Tax Exemptions

The BOI has authority to grant qualifying companies income tax exemptions for the following periods:

- i. Six years for new projects granted pioneer status (see below)
- ii. Six years for projects locating in less developed areas, regardless of status (pioneer or non-pioneer) or type of project (new or expansion) (see below)
- iii. Four years for new projects granted non-pioneer status
- iv. Three years for expansion and modernization projects.

These tax exemption periods are to commence on the project's target starting date or the project's actual starting date, whichever occurs first (but in no case prior to the date of BOI approval).

**EXAMPLE:** A French company establishes a presence in the Philippines and applies for and receives pioneer status (see below) with the BOI. In its application to the BOI, the French company states the target starting date for the project as May 1st. The application was approved by the BOI on February 1st, and its actual starting date is July 1st in the next year. Using these facts, the French company's tax holiday would begin on May 1st.

### a. Pioneer Status

Pioneer status is available to projects whose final products involve substantial use and processing of domestic raw materials from the Philippines:

- i. The project manufactures, processes or produces, (not merely assembles and/or packages) goods, products, commodities, or raw materials which have not been or are not being produced in the Philippines on a commercial scale.
- ii. The project uses a design, formula, scheme, method, process or system of production that transforms any element, substance, or raw materials into another raw material or finished goods which is new and untried in the Philippines.
- iii. The project pursues agricultural, forestry, and mining activities and/or services, including the industrial aspects of food processing.
- iv. The project produces non-conventional fuels or manufacturing equipment which utilizes non-conventional sources of energy; or uses or converts to coal or other non-conventional fuels or sources of energy in its production, manufacturing, or processing operations.

When considering applications for pioneer status, the BOI takes into consideration the risks and magnitude of investment by the investors engaged in any of the above activities.

**EXAMPLE:** A joint venture between an Australian company and a Philippine company develops a multimillion dollar project in the Philippines to produce crude palm oil by using local raw materials, and they apply with the BOI for Pioneer status. Using these facts, the project will likely be granted pioneer status by the BOI and, therefore, qualify for a six-year tax exemption.

### **b. Investment in Less Developed Areas**

The Philippine government encourages investment in the country's less developed areas and poorest provinces ("Less Developed Areas") by granting tax incentives to those who will invest there.

New projects (whether pioneer, non-pioneer or those located in Less Developed Areas) which qualify under any one of the following three criteria may receive bonus years for income tax exemption, not to exceed an aggregate of eight years:

- i. The project meets the prescribed ratio of capital investment in equipment to number of workers as set by the BOI (not to exceed US \$10,000 per one worker).

**EXAMPLE:** A Korean company establishes a factory in Sulu province to produce auto parts and pursues the eight-year maximum tax exemption with the BOI. The BOI states that in order to qualify for the eight-year tax exemption, the project will be required to have the ratio of its investment in capital equipment to number of factory workers at US \$10,000 for every one worker. The project will employ twenty factory workers. In this situation, the amount of investment in capital equipment required for the project to qualify to receive the tax exemption for eight years would be US \$200,000.

- ii. The project utilizes indigenous raw materials in the Philippines at a percentage set by the BOI, which will be at least 50% of the total cost of raw materials during the promotion period.

**EXAMPLE:** A Swiss food producer establishes a factory in Ifugao province and seeks to obtain the maximum tax exemption available from the BOI for the project. The BOI states that in order to receive an eight-year maximum tax exemption, a minimum of 70% of its total cost of raw materials used in production must be from indigenous materials.

- iii. The project has an annual net foreign exchange savings or earnings of at least US \$500,000 per year during its first three years of operation.

**EXAMPLE:** A Japanese producer of office supplies establishes a factory in Aurora province and has revenue exceeding US \$1.1 million (all earned from export sales) in each of its first three years of operation. In this situation, the project would likely qualify for an eight-year tax exemption.

Enterprises registered with the BOI may also receive the benefit of customs duty exemptions for specified imported items. These items include required supplies and spare parts, not locally available at reasonable prices, sufficient quantity, and comparable quality. They also include those items imported tax and duty-free by a registered enterprise with a bonded manufacturing warehouse.

## 2. Additional Tax Deductions

An additional income tax deduction representing 50% of the wages paid to skilled and unskilled project workers may also be granted by BOI if the project meets the prescribed ratio of investment in capital equipment to the number of project workers, and the project is not related to mining or forestry.

This incentive may not be granted simultaneously with an income tax holiday.

**EXAMPLE:** A Dutch investor registers a corporation and establishes a factory to produce vacuum cleaner parts just outside of Manila. The BOI advises that in order for the project to receive an additional income tax deduction of an amount representing 50% of the wages paid to its staff, the corporation is required to maintain a ratio of US \$1.5 million of capital equipment to one worker.

This additional deduction is doubled if the activity is located in Less Developed Areas.

**EXAMPLE:** Same facts as above, but the project is located in Tawi-tawi province. In this situation, the project would qualify to receive an additional income tax deduction up to 100% of the wages paid (instead of only up to 50% as stated above).

## 3. Additional Incentives

BOI registered companies are likewise allowed to employ foreigners for supervisory, technical, and advisory positions for a period not exceeding five years from the time of the company's registration with the BOI. This employment period may be extended subject to the BOI's discretion. (For the normal rules applicable to employing foreigners see Chapter 40).

Additional incentives available to BOI registered companies include

- i. simplified customs procedures for the importation of equipment, spare parts, raw materials and supplies, and exports of processed products by registered enterprises
- ii. access to the utilization of the bonded warehousing system in all areas required by the project (subject to such guidelines as may be issued by the BOI upon consultation with the Philippine Bureau of Customs)

## Enterprises Registered with Special Economic Zone Authorities

Location-specific incentives are available to enterprises operating in the following areas (known as the Ecozones) and registered with the listed special economic zone authorities:

- i. Bases Conversion and Development Authority
- ii. Subic Bay Metropolitan Authority
- iii. Clark Development Corporation
- iv. Philippine Economic Zone Authority
- v. Zamboanga City Special Economic Zone Authority
- vi. Aurora Special Economic Zone Authority
- vii. Cagayan Economic Zone Authority.

Some of the major incentives available to projects locating in Ecozones include the following:

- i. Net operating loss carry-over
- ii. Accelerated depreciation
- iii. Exemption from export tax
- iv. Exemption from local taxes and licenses.



## Chapter 42

# What are the Legal Issues Associated with Foreign Ownership of Land?

Foreigners are, as a general rule, prohibited from owning land in the Philippines, except as stated below.

### 1. Condominium Ownership

Philippine law allows foreign individuals and foreign-held companies to purchase and own condominium units, provided that title to the common areas is held by a corporation and foreign interest in the condominium corporation does not exceed 40% as further explained below.

#### **a. Title to the Common Areas, Including the Land, is Held by a Condominium Corporation, not by the Condominium Owners Directly**

**EXAMPLE:** A UK individual seeks to purchase a condominium unit in a building in Manila where the unit owners directly own the land in which the building is located, the swimming pool area, lobby, and other common areas, as co-owners thereof. In this situation, the UK individual would not be allowed to purchase the unit.

If the common areas are held by a condominium corporation, Philippine law requires that owners of units in the condominium development automatically become shareholders of the condominium corporation in the same proportion to their ownership interests in the common areas.

**EXAMPLE:** A Singaporean holds 16% of the total sellable space in a condominium building, and therefore, has a corresponding 16% interest in the common areas. Under Philippine law, he would automatically be a 16% shareholder of the condominium corporation.

### **b. Foreign Interest in the Condominium**

A foreign interest in the condominium corporation and condominium's common areas may not exceed 40%.

**EXAMPLE:** A large condominium development is established with a condominium corporation as the owner of all of the development's common areas, including the land on which the condominium building is located. The ownership of the units in the development, and therefore the corresponding shareholdings in the condominium corporation, is as follows: US 15%, UK 10%, Japanese 15%, and Philippine 60%. Later, a Philippine condominium owner/shareholder attempts to sell condominium units representing 5% of his condominiums/shareholdings in the condominium corporation to the US shareholder. Such transfer would not be permissible because the foreign interest in the condominium corporation and the condominium's common areas, including the land on which the condominium building is located, would exceed 40%.

However, if the condominium project is located on leased land (not owned by the condominium corporation), the condominium corporation may be wholly owned by foreign investors.

**EXAMPLE:** Same facts as above, but the land upon which the condominium development is located is leased (not owned) by the condominium corporation. In this situation, the transfer by the Philippine condominium owner/shareholder to the US condominium owner/shareholder would be permissible.

## **2. Land Ownership by Foreign Companies**

Under Philippine law, only corporations in which foreigners hold no more than 40% of the total outstanding shares may own land.

**EXAMPLE:** A Philippine registered corporation in which Korean shareholders hold 41% percent of the shares seeks to purchase land. This would not be legally permitted (see Chapter 39).

Note that under Philippine law, foreigners and locals who enter into an arrangement to circumvent the above rule are subject to prosecution and criminal penalties.

**EXAMPLE:** A US citizen seeks to buy land in the Philippines and makes an arrangement with a Philippine citizen whereby the US citizen will pay for and make use of the land, but the land will be registered in the name of the Philippine citizen as the US citizen's nominee. This arrangement is considered unlawful and may subject both the US investor and the Filipino nominee to prosecution and criminal penalties.

### 3. Title Search

The legal status of land title is accessible to the general public and may be verified with the Register of Deeds where the land is located. Any interested individual may conduct a title search to determine the status of the land title, the land area, and whether or not there are registered liens, leases, and other encumbrances.

### 4. Lease of Private Lands

While foreigners are not allowed to own land, foreigners are allowed to lease private (not government owned) land.

#### a. Lease for Commercial Purpose

Under Philippine law, a foreigner who makes certain kinds of equity investments in the Philippines may enter into a long-term lease of private land for a commercial purpose for a period not exceeding fifty years, which may be renewed once for a period not exceeding twenty-five years.

The lease should be in connection with the establishment of industrial estates, factories, assembly or processing plants, agro-industrial enterprises, land development for tourism, industrial or commercial use, and/or other similar purposes.

In this connection, “investment” means making an equity investment in the Philippines through actual remittance of foreign exchange or transfer of assets, whether in the form of capital goods, patents, formulae, or other technological rights or processes.

**EXAMPLE:** A Japanese individual forms a wholly owned corporation in the Philippines to establish a semi-conductor manufacturing facility, and thereafter, leases private land in the Philippines for the manufacturing facility. Using these facts, the maximum period the Japanese individual would be allowed to lease the land would be fifty years, and at the end of such term, the lease would be renewable for an additional period of twenty-five years.

If, however, the foreigner does not invest in the Philippines, the foreigner may still lease private land for an initial term of twenty-five years and renew it for a term of twenty-five years. The lease may be for a commercial, residential (see below), or any other purpose.

**EXAMPLE:** Same facts as above, but the Japanese individual makes no equity investment in the Philippines. In this situation, the maximum lease period legally permissible would be twenty-five years, and it would be renewable for an additional twenty-five year period.

#### **b. Lease for Residential Purpose**

Foreigners are allowed to lease private land for a residential purpose for a total term of twenty-five years, which is renewable once for an additional twenty-five year period.

**EXAMPLE:** A Japanese man wishes to rent land with a house outside Manila from the owner. He would be legally allowed to rent the land for twenty-five years and renew the lease for another twenty-five years.

**EXAMPLE:** A Swiss national leases a condominium owned by a Philippine national in a condominium development which already has the legal limit of foreign ownership at 40% (see Section 1 above). This would be permissible because he is leasing, not seeking ownership.