



SYCIP  
SALAZAR  
& HERNANDEZ  
GATMAITAN



**A General Guide<sup>1</sup>**

# Doing Business in the Philippines

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<sup>1</sup> As of 12 June 2020.

## Doing Business in the Philippines: A General Guide

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By

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### Introduction

This guide, which focuses on how foreign corporations can set up a legal presence in the Philippines, was first published in 2015, when our firm celebrated its 70<sup>th</sup> anniversary, and this most recent update was prepared in connection with our 75<sup>th</sup> anniversary celebrations. We produced this publication as a way of expressing our gratitude to our clients. We hope that it will be instructive to businessmen and lawyers alike and will showcase the Philippines as an attractive venue for business ventures.

### About our Firm

SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) was founded in 1945. It is one of the largest law firms in the Philippines.

We offer a broad and integrated range of legal services, with departments in the following fields:

- Banking, finance and securities
- Corporate services
- Tax
- Employment law and immigration
- Special projects
- General business law
- Intellectual property
- Dispute resolution

Within this structure, we have specialists in key practice areas such as mergers and acquisitions, energy, power, infrastructure, natural resources, government contracts, real estate, insurance, international arbitration, mediation, media, business process outsourcing, and technology.

### Our Clients

We represent clients from almost every industry and enterprise, and the firm's client portfolio includes local and global business leaders. We also act for governmental agencies, international organizations, and non-profit institutions.

### Our Networks

We maintain links with established and leading firms based in other jurisdictions, including the United States, and countries in Europe and Asia. We are an active member of various international lawyers' associations, such as the Employment Law Alliance, First Law International, the Interlex Group, Multilaw, the Pacific Rim Advisory Council, the World Law Group, the Islamic Finance Network, and the World Services Group.

### Recognition and awards

Our firm's recent professional awards include:

- Ranked as Band 1 Firm, *Chambers Asia-Pacific Rankings 2020*
- Philippine Law Firm of the Year, *Chambers Asia-Pacific Awards 2020*
- Top Tier Firm, *Legal500 Asia-Pacific 2020*
- Top Tier Firm, *IFLR1000 2020*
- Ranked as Band 1 Firm, *Chambers Asia-Pacific Rankings 2019*
- Top Tier Firm, *IFLR1000 2019*
- Collaboration Award, TrustLaw 2019
- Firm of the Year 2019, In-House Community
- Awarded as Philippine Law Firm of the Year, *ABLJ Philippine Law Firm Awards 2019*
- Awarded as Best Overall Law Firm of the Year, *ABLJ Philippine Law Firm Awards 2019*

## I. Doing Business in the Philippines

The Revised Corporation Code of the Philippines (the “RCC”), which took effect on February 20, 2019, requires any foreign corporation doing business in the Philippines to obtain a license to do business from the Philippine Securities and Exchange Commission (“SEC”).

The term “doing business” is defined broadly under Section 3 (d) of the Foreign Investments Act of 1991, as amended (the “FIA”). It includes:

- (a) soliciting orders or service contracts;
- (b) opening offices (whether called “liaison” offices or branches);
- (c) appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more;
- (d) participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; or
- (e) any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.

A foreign corporation doing business in the Philippines without the required license will not be permitted to maintain or intervene in any judicial or administrative action in the Philippines; however, such foreign corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine law.

## II. Getting Started—Subsidiary or Branch Office

A subsidiary is a domestic corporation formed in accordance with the laws of the Philippines. It has a juridical personality separate from that of its shareholders.

A subsidiary is subject to Philippine law requirements as to corporate structure.

The RCC provides that any person, partnership, association or corporation, singly or jointly with others but not more than 15 in number, may organize a domestic corporation, provided only that each incorporator must be a subscriber to at least one share of capital stock. Further, the corporation may have any number of directors but in no case more than 15, who, likewise, must own at least one share in the corporation’s capital stock. The RCC removed the Philippine residency requirements for incorporators and directors. The board of directors needs to annually elect the officers of the corporation (*i.e.*, a President, a Treasurer, a Corporate Secretary, and other officers provided for under the subsidiary’s by-laws). The President must be a director and cannot simultaneously act as the Treasurer or the Corporate Secretary. The Corporate Secretary must be a resident Philippine citizen.

The RCC also introduced the concept of a One Person Corporation (OPC) where a single stockholder is the sole director as well as the president of the corporation. The single stockholder is only required to appoint a nominee and an alternate nominee who will take his place in the event of his death or incapacity. An OPC is less regulated than regular corporations but this corporate vehicle is only available to natural persons, trusts or estates and cannot be availed of by foreign corporations.

On the other hand, a branch office, being a mere extension of the head office, is not required to have directors or officers separate and distinct from those of the head office, the requirements and qualifications for whom are governed by the laws of the head office’s state of incorporation. A branch office is, however, required to appoint a resident agent on whom summons and other legal processes may be served in all actions or legal proceedings against the foreign corporation.

Given the above, a branch office provides more flexibility in operations. Generally, a branch office is bound by Philippine laws, rules and regulations applicable to domestic corporations, except with respect to the creation, formation, organization, and dissolution of corporations, and the relations or duties of stockholders or officers of the corporation to each other or to the corporation.

Aside from having a branch office, a foreign corporation may also establish presence in the Philippines through a representative office, regional headquarters, or regional operating headquarters. The types of activities of these offices are however limited compared to those of a branch office.

## A. Establishment of a Domestic Corporation

### 1. **Subscription Stage**

The process of incorporation commences with the making and acceptance of subscriptions to the shares of stock of the proposed corporation. Generally, corporations are not required to have minimum capital stock unless a minimum capital stock is required by special laws.

### 2. **Drafting of the Articles of Incorporation**

The Articles is the basic charter of a corporation. It should contain the following required information:

- Corporate name – The corporation must be designated by a name that is distinguishable from that already reserved or registered for the use of another corporation or from that protected by other laws, and the use of the name must not be contrary to existing laws, rules and regulations.

The corporate name must contain either the word corporation or incorporated, or the abbreviations “Corp.” or “Inc.” respectively. In the case of a One Person Corporation, the corporate name must contain the word “OPC” either below or at the end.

- Business purpose(s) – The purpose clauses confer as well as limit the powers which a corporation may exercise. The purpose(s) should not be patently unconstitutional, illegal, immoral or contrary to government rules and regulations.
- Place of business – The place must be within the Philippines, specifying the address which shall include, if feasible, the street number, street name, barangay, city or municipality where the principal office of the proposed corporation shall be located.
- Corporate term – Prior to the effectivity of the RCC, the maximum corporate term allowed by law was 50 years, subject to term renewals. Under the RCC, corporations are now allowed to have perpetual existence as the default term. If the corporation does not elect perpetual existence, the Articles should specify the term for which the corporation is to exist. The perpetual term also applies to corporations established before the effectivity of the RCC. These corporations shall continue to exist and shall have perpetual existence (even if their Articles specify 50 years or a shorter period), unless by majority vote of its stockholders, they elect to retain the specific term stated in their Articles.

- Incorporators – The names of incorporators, with their nationalities and specific residence address must be indicated. The incorporators can be natural persons or juridical persons, residents or non-residents and should not be more than 15 in number.

Each of them must own at least one share of capital stock. Incorporators who are natural persons must be of legal age.

- Directors – The names of directors, with their nationalities and specific residence address must be stated. Directors must be natural persons and they need not be Philippine residents. The number of directors must not exceed 15 and each director must own at least one share of capital stock.

- Capital structure – This refers to the authorized paid-up and subscribed capital, the amount of subscription per subscriber and the par value of shares.

- Treasurer – The name of the Treasurer-in-Trust, the individual who will execute the Treasurer’s Affidavit and Authorization to Verify Bank Accounts, should be stated.

- Undertaking to Change Name – The Articles must contain an undertaking by the incorporators to change the corporate name in the event that another person, firm, or entity has acquired a prior right to the use of the name designated in the incorporation papers, or if the corporate name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law, or contrary to public morals, good customs or public policy.

### 3. **Other Pre-Incorporation Arrangements**

Before commencing the incorporation process, the proposed corporation must --

- Open a Treasurer-in-Trust Bank Account: Even prior to incorporation, the capital for the proposed corporation must be deposited in a bank account in trust for the proposed corporation by the designated Treasurer-in-Trust.
- Reserve a Corporate Name at the SEC: The proposed corporation cannot file its incorporation requirements without presenting proof that it has an approved reservation of its proposed corporate name.

As a practical matter, it would be best to ensure that the SEC has no objection to the use of a particular corporate name by the proposed corporation and reserve the name prior to the filing of the incorporation requirements.

The SEC does not allow the use of certain corporate names when another person, firm, or entity has acquired a prior right to the use of the name designated in the incorporation papers by virtue of registration with other government agencies, or if the corporate name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law, or is patently deceptive, confusing or contrary to existing laws.

#### 4. Documentary Requirements

The following documents must also be submitted to the SEC:

- Articles of Incorporation, which should be (a) accompanied by a Certificate of Authentication signed by all incorporators in the form prescribed by the SEC, or (b) acknowledged before a notary public; and if executed abroad must be: (i) apostilled in accordance with the 1961 Apostille Convention; or (ii) notarized or authenticated by a Philippine Consul in the Philippine Embassy nearest the place of execution;
- By-Laws signed by all the incorporators (this may be filed even after incorporation, signed by stockholders representing at least a majority of the outstanding capital stock of the corporation, within a month from the issuance of the certificate of incorporation);
- Name Verification Slip (a certificate from the SEC that the proposed corporation has reserved an available corporate name for its use);
- Treasurer's Affidavit and Authorization to Verify Bank Accounts (with regard to subscriptions paid-in and deposited in a bank in trust for the proposed corporation); and
- SEC Form F-100 (the Application to do Business under the Foreign Investments Act) which contains:
  - (a) the same information as that set forth in the Articles,
  - (b) an undertaking to export at least 60% of its total output (for export enterprises), and undertaking to change its corporate name.

It is subscribed by the authorized representative of the corporation being incorporated and sworn to (notarized) before a notary public.

If executed abroad, the form must be: (i) apostilled in accordance with the 1961 Apostille Convention; or (ii) notarized or authenticated by a Philippine Consul in the Philippine Embassy nearest the place of execution.

- If a foreign corporation is made an incorporator, the application for registration must be accompanied by a copy of a document, authenticated by the Philippine Consulate or with an apostille (as applicable), authorizing the foreign corporation to invest in the corporation being formed and specifically naming the foreign corporation's designated signatory.

**Filing:** Any person may submit the incorporation documents to the SEC on behalf of the proposed corporation, along with the SEC filing fee.

**Fees and Taxes:** Only the SEC filing fee must be paid at the time of incorporation which consists of the following amounts:

- (a) for the Articles of Incorporation: 1/5 of 1% of the authorized capital stock of the proposed corporation but not less than PhP2,000 or the subscription price of the subscribed capital stock, whichever is higher;
- (b) for the by-laws: PhP1,000;
- (c) for SEC Form F-100: PhP3,000; and
- (d) a legal research fee equivalent to 1% of filing fee for the Articles but not less than PhP10.

After incorporation, the proposed corporation is required to pay documentary stamp tax ("DST") at the rate of 1% (PhP2 for every PhP200) of the par value of the subscribed and issued shares. DST is payable on or before the fifth (5<sup>th</sup>) day of the month following the issuance by the SEC of the certificate of incorporation.

#### 5. Endorsement for Regulatory Agencies

If the proposed corporation will engage in an industry that requires a license other than the general license to do business issued by the SEC (*e.g.*, license to act as a bank, insurer, etc.), the SEC requires the favorable endorsement of the incorporation documents by the relevant government agency. The endorsement, if applicable, shall form part of the incorporation documents.

## 6. Issuance of Certificate of Incorporation

If the SEC is satisfied that all legal requirements have been complied with, it will issue a certificate of incorporation. It is only from that time that the corporation commences its corporate existence and acquires juridical personality.

### B. Branch of a Foreign Corporation

#### 1. Documentary Requirements

The following are the basic requirements:

- name verification slip;
- SEC Form F-103 (the Application to Establish a Branch Office in the Philippines);
- authenticated copy of the Board Resolution:
  - (a) authorizing the establishment of the branch/representative office in the Philippines;
  - (b) designating the resident agent to whom summons and other legal processes may be served in behalf of the foreign corporation;
  - (c) stipulating that in the absence of such agent or upon cessation of its business in the Philippines, any summons or legal processes may be served to SEC as if the same is made upon the corporation at its home office;
- authenticated copy of the articles of incorporation/partnership with an English translation if in foreign language other than English;
- financial statements for the immediately preceding year at the time of filing of the application which must be audited by an independent certified public accountant of the home country;
- compliance with financial ratios;
- notarized proof of inward remittance such as bank certificate of inward remittance or credit ~~advices~~ <sup>advice</sup>;
- affidavit of undertaking to change corporate name; and
- resident agent's acceptance of appointment.

Documents executed abroad should be authenticated by a Philippine Consul in the Philippine Embassy nearest the place of execution or apostilled by the relevant foreign affairs office of the country where it is executed (as applicable).

**Filing:** Any person may submit the incorporation documents to the SEC on behalf of the proposed corporation, along with the SEC filing fee.

**Fees and Taxes:** Only the SEC filing fee must be paid at the time of filing of the documents for the setting up of the branch with the SEC. It consists of the following amounts:

- (a) 1% of the actual inward remittance of the foreign corporation converted into Philippine currency but not less than PhP3,000; and
- (b) legal research fee equivalent to 1% of the filing fee.

#### 2. Resident Agent

Unlike a subsidiary which requires incorporators and directors to be established, a branch office has to have a resident agent.

Before granting a foreign corporation license to do business in the Philippines, the law requires it to designate a resident agent on whom any summons and other legal processes may be served in all actions or other legal proceedings against such corporation.

The resident agent must be either an individual residing in the Philippines or a domestic corporation lawfully transacting business in the Philippines. In case the resident agent is an individual, he must be of good moral character and of sound financial standing. On the other hand, if the resident agent is a domestic corporation, it must be of sound financial standing and must show proof that it is in good standing as certified by the SEC.

Should the foreign corporation licensed to do business in the Philippines change its resident agent, it must submit with the SEC a duly authenticated copy of the board resolution or certification from the duly authorized officer of the corporation formally revoking the appointment as resident agent, together with a duly authenticated written power of attorney designating a new person as resident agent.

In case of a change of address, it is the duty of the resident agent to immediately notify the SEC in writing of the new address.

A foreign corporation must also execute and file with the SEC an agreement or stipulation, executed by the proper authorities of said corporation, in form and substance as follows:

“the [name of the foreign corporation] hereby stipulates and agrees, in consideration of its being granted a license to transact business in the Philippines, that if the corporation shall cease to transact business in the Philippines, or shall be without any resident agent in the Philippines on whom any summons or other legal processes may be served, then service of any summons or other legal process may be made upon the SEC in any action or proceeding arising out of any business or transaction which occurred in the Philippines and such service shall have the same force and effect as if made upon the duly authorized officers of the corporation officers at its home office.”

### 3. Endorsement of Regulatory Agency

If the proposed branch will engage in a business that requires a license other than the general license to do business issued by the SEC (*e.g.*, license to act as a bank, insurer, etc.), the SEC requires the favorable endorsement of the registration documents by the relevant government agency. The endorsement, if applicable, shall form part of the registration documents.

### 4. Issuance of License to do Business

If the SEC is satisfied that all legal requirements have been complied with, it will issue a license to do business in favor of the branch office. Upon the issuance of the license, such foreign corporation may commence to transact business in the Philippines and continue to do so for as long as it retains its authority to act as a corporation under the laws of the country or State of its incorporation.

### C. Other Substantive Requirements Applicable to a Domestic Corporation or a Branch Office of a Foreign Corporation

The Constitution of the Philippines and special laws impose nationality and minimum capitalization requirements which depend on the type of business of the domestic corporation or the branch office.

A domestic corporation that will operate as a domestic market enterprise (*i.e.*, will primarily sell goods or services within the Philippines) generally has to have a minimum paid-up capital of US\$200,000 if it will have foreign equity of more than 40%. A branch office of a foreign corporation that will engage in business as a domestic market enterprise has to have an assigned capital of at least US\$200,000.

Examples of industries where foreign ownership is limited are landholding, the utilization of natural resources, and advertising.

### D. Merger with or Acquisition of an Existing Corporation in the Philippines

Mergers and acquisitions of corporations in the Philippines are governed by the Republic Act No. 10667, otherwise known as the Philippine Competition Act (“PCA”), its implementing rules and regulations (the “PCA Rules”), and the PCC Rules on Merger Procedure (“Merger Rules”). The PCA prohibits anti-competitive practices that aim to eliminate competitive forces in the Philippine market, such as anti-competitive agreements, abuse of dominant position and anti-competitive mergers and acquisitions.

The PCA Rules define merger as the joining to two or more entities into an existing entity or to form a new entity including joint ventures; while acquisition is defined as the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control by –

- (a) one entity of the whole or part of another;
- (b) two or more entities over another; or
- (c) one or more entities over one or more entities.

Foreign corporations may be parties to, or be affected by, mergers and acquisitions inside and outside the Philippines.

Where the value of a merger or acquisition transaction reaches the thresholds set by the PCA Rules, the parties are required by the Merger Rules to notify the Philippine Competition Commission (“PCC”) within thirty days from the execution of the definitive agreements relating to the transaction but before any consummation of such agreements.

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When the PCC deems it necessary, it may likewise investigate mergers or acquisitions on its own initiative.

Once the PCC is notified of the transaction, it will conduct a sufficiency determination within 15 days in order to determine the completeness of the submissions of the parties. During this stage the PCC may request additional information which tolls the 15-day period.

Once the PCC finds that the parties' submissions are complete, it will issue an order of payment for the Phase 1 filing fees. Phase 1 review commences upon payment of the Phase 1 filing fees.

Phase 1 Review lasts for 30 days from the issuance of the order of payment during which the PCC will review the competitive impact of the transaction. During this period, the PCC may ask the parties for additional information; ask for meetings with, or interview the, parties; or conduct site visits to understand in greater detail the transaction, the relevant markets, and the parties' operations.

At the end of Phase 1 Review, the PCC may issue a decision stating that it has decided to take no further action, or issue no decision on the transaction and the waiting period will automatically expire. If the PCC still has unresolved concerns regarding the competitive effect of the transaction at the end of Phase 1, it will declare that a more comprehensive review of the transaction is required, and the review will proceed to

Phase 2.

Phase 2 filing fees are payable within 10 days from the date of the invoice which the PCC shall send to the parties upon announcement of the decision to proceed to a Phase 2 review.

Phase 2 review lasts for 60 days, during which the PCC conducts a more detailed and in-depth assessment of the merger. The PCC will publish an abstract description of the transaction and its Phase 1 decision on its website, and solicit comments from the public. During this phase of review, if the Merger and Acquisitions Office of the PCC finds that the merger may result in significant lessening of competition in the Philippine market, it may file a "statement of concerns" and upon comment by the parties, the PCC shall conduct hearings in order to discuss the issues raised in the statement of concerns.

At the end of Phase 2 review, the PCC may approve the transaction in full, approve the transaction with certain conditions, or reject the transaction.

Violations of the PCA, the PCA Rules and the Merger Rules expose the parties to a fine and may result in the voiding of the merger or acquisition transaction.

## III. Post-Registration Requirements

The original issuance of shares of stock by the subsidiary to its shareholders is subject to the payment of a DST. The tax is due not later than five days after the close of the month after the SEC certificate of registration is issued.

Within 30 days from the date of receipt of the SEC certificate of incorporation, stock corporations are required to purchase and register with the SEC a book known as the "stock and transfer book," in which must be kept a record of:

- (a) all stock in the names of the stockholders;
- (b) the installment paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment;
- (c) a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and
- (d) such other entries as the by-laws may prescribe.

The stock and transfer book must be kept in the principal office of the corporation or in the office of its stock transfer agent and must be open for inspection to any director or stockholder of the corporation at reasonable hours on business days.

With respect to a branch office, after the issuance of the license, the foreign corporation must deposit with the SEC securities according to the following schedule:

- (a) within 60 days after the issuance of its license, securities with an actual market value of at least PhP500,000 must be deposited;
- (b) within six months after the end of the corporation's fiscal year, as indicated in its financial statements, additional securities must be deposited under the following circumstances:
  - i. if the foreign corporation's gross income within the Philippines for that fiscal year exceeds PhP10,000,000, additional securities with an actual market value equivalent to 2% of the increase must be deposited; and
  - ii. if the actual market value of the securities deposited has decreased by at least 10% from the time it was deposited, additional securities with an actual market value that would cover the decrease must be deposited.

The subsidiary or branch office also has to obtain a mayor's permit from the city or municipality where its office is located and where it will conduct business.

The creation of both a subsidiary and branch office will involve annual maintenance filings, particularly those relating to obtaining annual business permits, filing of General Information Sheet with the SEC, tax filings with the Philippine Bureau of Internal Revenue ("BIR") and the preparation of audited financial statements.

## IV. Taxes

### A. Registration with the Bureau of Internal Revenue

For tax identification purposes, any person required to make, render, or file a return, or a document, will be supplied with or assigned a taxpayer identification number ("TIN") which must be indicated on such return statement or document.

A corporation must register with the appropriate revenue district office of the BIR (i.e., the office which has jurisdiction over the domestic corporation's principal office, or the office of the branch of a foreign corporation) within thirty (30) calendar days from the issuance of its mayor's permit, the issuance of the certificate of incorporation or license to do business by the SEC, or the date of first sales transaction prior to its registration, whichever comes earlier.

The BIR generally requires the submission of the following documents for the registration of a new domestic corporation or a newly-registered branch of a foreign corporation:

- application form for registration (BIR Form No. 1903);
- SEC registration documents (certificate of incorporation or license to do business);
- contract of lease;
- sketch of location; and
- copy of mayor's permit or duly received application for mayor's permit, if the former is still being processed by the local government unit.

The fees payable include:

- registration fee of PhP500;
- documentary stamp tax of 1% (PhP2 for every PhP200) of the par value of the subscribed and issued shares (to be paid on or before the fifth day of the month following the issuance by the SEC of the certificate of incorporation); and
- certification fee with documentary stamp tax of PhP30.

The process of registration with the BIR includes the registration of the subsidiary's or branch office's books of account, sales invoices and official receipts.

The major taxes generally applicable to domestic and resident foreign corporations to the extent there are differences in their treatment are set out below.

### B. Domestic Corporation

#### 1. **General Corporate Income Tax**

A domestic corporation is taxable on all income derived from sources within and without the Philippines at the corporate income tax rate of 30% of its taxable net income or the minimum corporate income tax, whichever is higher.

For purposes of taxation, the parent company (*i.e.*, the foreign corporate stockholder) of a subsidiary cannot pass on to its subsidiary any portion of its expenses since the subsidiary is a separate and distinct entity from the parent company.

#### 2. **Dividends**

Dividends remitted by a Philippine subsidiary to its foreign parent company are generally taxed at 30% on the gross amount of dividends remitted, which tax is required to be withheld by the Philippine subsidiary. The final withholding tax rate imposed on the amount of cash dividends may be reduced to 15% if the country where the parent company is domiciled either:

- (a) allows a credit equivalent to 15% against the tax due from the parent company taxes deemed to have been paid in the Philippines, or
- (b) does not impose any income tax on such dividends received.

If the parent company's country of incorporation has an income tax treaty with the Philippines, the parent company may also avail of the preferential tax rates under the applicable tax treaty on its dividend income from subsidiary, subject to compliance with BIR regulations on the filing of tax treaty relief applications.

## C. Branch Office

### 1. **General Corporate Income Tax**

As a general rule, a resident foreign corporation is subject to income tax at the rate of 30% on its taxable income derived from all sources within the Philippines.

For purposes of taxation of the income of the branch office, the parent foreign corporation can allocate to its branch a proportional part of its expenses, losses, interest payments and similar expenses relating to the conduct of business in the Philippines.

### 2. **Branch Profits Remittance**

Branch profits connected with the branch office's conduct of trade or business in the Philippines which are remitted to the head office are generally subject to the branch profit remittance tax at the rate of 15% of the total profits applied or earmarked for remittance without any deduction for the tax component thereof. The 15% tax will be withheld by the branch and paid to the BIR.

## D. Employer's Withholding Tax Obligation

A subsidiary or branch is required to deduct and withhold the withholding tax on the income of its employees. The employer company is constituted as the withholding agent by the BIR for the withholding tax on the income of its employees.

## E. Tax Incentives<sup>2</sup>

Special laws provide tax incentives to certain corporations depending on their business activities and subject to registration with the appropriate government agency.

For example, export enterprises may register with the Board of Investments ("BOI") or the Philippine Export Zone Authority ("PEZA") and avail of incentives respectively offered under Executive Order No. 226, series of 1987, otherwise known as the Omnibus Investments Code (the "Omnibus Investments Code") or Republic Act No. 7916, otherwise known as Special Economic Zone Act of 1995 (the "PEZA Law").

### 1. **Omnibus Investments Code**

The Omnibus Investments Code provides incentives through registration with the BOI.

"Pioneer enterprises" are entitled to an income tax holiday, which is exemption from corporate income tax, for six years from commercial operations. The income tax holiday for non-pioneer enterprises is for four years from commercial operations.

A pioneer enterprise is a registered enterprise which –

- is engaged in the manufacture, processing or production and not merely in the assembly or packaging of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale;
- uses a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw materials into another raw material or finished goods which is new and untried in the Philippines;
- is engaged in the pursuit of agricultural, forestry and mining activities and/or services including the industrial aspects of food processing whenever appropriate, pre-determined by the Board, in consultation with the appropriate department, to be feasible and highly essential to the attainment of the national goal, in relation to a declared specific national food and agricultural program for self-sufficiency and other social benefits of the project; or
- produces non-conventional fuels or manufactures equipment which utilize 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.

Other incentives that may be granted to a BOI-registered enterprise include:

- exemption from taxes and duties on imported spare parts;

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<sup>2</sup> There are pending bills for the amendment of the Tax Code and these bills may affect the tax incentives under special laws.

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- exemption from wharfage dues (that is, charges assessed against the cargo of a vessel engaged in foreign or domestic trade based on quantity, weight, or measure received and/or discharged by vessel) and export tax, duty, impost and fees; and
- tax exemption on breeding stocks and genetic materials.

There are also other laws which grant incentives, and which require registration with BOI. One such example is the Renewable Energy Act of 2008 (*Republic Act No. 9513*), which provides a seven-year income tax holiday from commercial operations to duly registered renewable energy developers.

### 2. PEZA Law

The PEZA Law authorizes the establishment of special economic zones in suitable and strategic locations to attract legitimate and productive investments, whether local or foreign. PEZA was designated as the body corporate to register, regulate and supervise enterprises in the ecozone.

Business establishments operating within the ecozones are entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under the Omnibus Investments Code.

The tax incentives that may be granted to PEZA-registered enterprises are listed below:

- Income Tax Holiday (“ITH”), which provides 100% exemption from corporate income tax for four years in case of non-pioneer project, or six years for pioneer project, or three years for expansion project. The ITH may be extended for another year provided that no registered pioneer firm may avail of this incentive for a period exceeding eight years;
- five percent (5%) special tax on gross income in lieu of all national and local taxes upon expiry of the ITH;
- tax- and duty-free importation of equipment and parts;
- exemption from wharfage dues on import shipments of equipment;

- zero-rating of value-added tax on local purchases of goods and services (including land-based telecommunications, electrical power, water bills, and lease on the building, subject to compliance with BIR and PEZA requirements);
- exemption from payment of any and all local government imposts, fees, licenses or taxes, except real estate tax for the duration of the ITH; and
- exemption from expanded withholding tax.

The National Internal Revenue Code of 1997, as amended, also provides that branch profits earned from activities which are registered with PEZA that are remitted by the branch to its head office are exempt from the branch profits remittance tax.

## V. Labor

### A. Registration with Government Agencies

Philippine social security laws (specifically, the Social Security System Law, National Health Insurance Act and the Home Development Mutual Fund Law) require mandatory coverage of employees and registration of employees and employers in their respective systems or programs.

The Social Security System (“SSS”) is compulsory upon all employees not over 60 years of age and their employers. All private sector employees are compulsory members of the National Health Insurance Program. The National Health Insurance Program is administered by the Philippine Health Insurance Corporation (“PhilHealth”).

Private sector employers are required to register with PhilHealth and a permanent PhilHealth Employment Number will be issued for each employer.

Coverage in the Home Development Mutual Fund Law Fund (the “Pag-ibig Fund”) is also mandatory upon all employees covered by the SSS and their respective employers.

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The employer is required to deduct and withhold the employee's contribution from the employee's compensation and to remit the same to the SSS, PhilHealth or Pag-ibig Fund. The employer is also required to pay the employer's contribution to the said agencies.

Failure to remit the contributions will subject the employer to penalties such as fines or imprisonment.

### B. Employment of Expatriate Employees

Before a foreign national can commence work for an entity doing business in the Philippines (for instance, in a branch office or subsidiary), he/she must first procure the appropriate employment permit and work visa from the relevant government agency.

In general, work visa applications are handled by the Philippine Bureau of Immigration ("BI"). Admission to the country is governed by the Philippine Immigration Act of 1940 (Commonwealth Act No. 613, as amended). The most common work visa for expatriates is the Pre-arranged Employment Visa (under Section 9(g)). The 9(g) visa is generally valid for a period co-terminus with the term of the alien's alien employment permit.

Other types of work visas that are typically obtained for non-Philippine nationals intending to work in the Philippines are the following:

- (a) Special Working Permit ("SWP") - An SWP is usually applied for where the foreign national will be employed in the Philippines for short-term engagements not exceeding six months. SWP applications are also processed by the BI.
- (b) 47(A)(2) visa - This is a special non-immigrant visa for expatriates who will work -
  - i. for Philippine companies that are registered either with the PEZA or the BOI, or
  - ii. for foreign companies with subsisting contracts with the Philippine government or its agencies. The visa is approved by the Philippine Department of Justice and implemented by the BI.

In addition to the work visa, expatriates applying for a 9(g) visa or 47(a)(2) visa are also required to obtain an alien employment permit ("AEP") from the Department of Labor and Employment ("DOLE") unless the expatriate is exempt or are excluded from securing an AEP (*e.g.*, directors with voting rights only, foreigners who will work for a regional operating headquarters in the Philippines, or officers or staff of international organizations).

An AEP may be issued by the DOLE after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired. Subject to renewal, the alien employment permit is usually issued for a minimum period of one year to a maximum of three years.

The procedure to obtain a work visa, in general, will involve the following:

- (a) first, securing an AEP from DOLE;
- (b) after the release of the AEP, filing the work visa application with the BI (or the relevant government agency);
- (c) attending a hearing before an immigration officer, if required;
- (d) releasing of the immigration order granting the work visa; and
- (e) stamping of the visa on the employee's passport.

The requirements to secure a work visa will vary depending on the type of work visa applicable to a foreign national.

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