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Doing Business in the Philippines

Abstract

[Excerpt] The Philippines which lies at the heart of Southeast Asia is a viable place for doing business. The country's economy continues to grow despite the unabated political noise. The Philippine Peso ended 2005 as the best performer in Asia, with a 6.01 percent gain for the year, boosted by hefty inflows of remittances from Filipinos working overseas and optimism about the government's fiscal reform program and lower yields at the regular treasury bill auction. The Philippine Stock Exchange, on the other hand, registered the second fastest growth rate in Southeast Asia in 2005. The Philippine Composite Index (Phisix) went up by 14.99 percent last year, trailing the Jakarta Composite Index of Indonesia which went up 16.24 percent. The Filipino workforce is another key advantage of the Philippines. The literacy rate in the country is among the highest in the region and around 350,000 highly trainable graduates add to the professional pool every year. On the political front, the Philippine government has been working on the proposal to change the present presidential system to a parliamentary-federal form of government through a charter change, in order to fast track the enactment of legislative measures and the delivery of public services to the provinces. The 1987 Constitution provides for a presidential system of government with a bicameral Congress.

Keywords

Philippines, foreign investment, trade, commerce, business, law, imports

Disciplines

International Business

Comments

Required Publisher Statement

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QUISUMBING TORRES
MEMBER FIRM OF BAKER & MCKENZIE INTERNATIONAL

Doing Business in the Philippines

2006

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This publication has been prepared for clients and professional associates of Quisumbing Torres. It is intended to provide only a summary of laws with regard to starting and running businesses in the Philippines. For this reason, the information contained in this publication should not form the basis of any decision as to a particular course of action; neither should it be relied upon as legal advice nor regarded as substitute for detailed advice in individual cases. The services of competent professional advisers should be obtained in each instance so that the applicability of the relevant legislation or other legal development to the particular fact can be verified.

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The law is stated as at January 2006.

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INTRODUCTION

The Philippines

The Philippines which lies at the heart of Southeast Asia is a viable place for doing business. The country's economy continues to grow despite the unabated political noise.

The Philippine Peso ended 2005 as the best performer in Asia, with a 6.01 percent gain for the year, boosted by hefty inflows of remittances from Filipinos working overseas and optimism about the government's fiscal reform program and lower yields at the regular treasury bill auction.

The Philippine Stock Exchange, on the other hand, registered the second fastest growth rate in Southeast Asia in 2005. The Philippine Composite Index (Phisix) went up by 14.99 percent last year, trailing the Jakarta Composite Index of Indonesia which went up 16.24 percent.

The Filipino workforce is another key advantage of the Philippines. The literacy rate in the country is among the highest in the region and around 350,000 highly trainable graduates add to the professional pool every year.

On the political front, the Philippine government has been working on the proposal to change the present presidential system to a parliamentary-federal form of government through a charter change, in order to fast track the enactment of legislative measures and the delivery of public services to the provinces. The 1987 Constitution provides for a presidential system of government with a bicameral Congress.

Major Industries

The country's major industries include: electronics and electrical machinery, food and beverages, chemicals, footwear, garments, and petrochemicals. The major exports include: electronic components, apparel and clothing accessories, coconut oil, and petroleum products. The major imports include: electronic components, office machines, mineral fuels, telecommunication equipment, and transport equipment.

The Philippines' top 10 export markets are the United States, Japan, Hong Kong, Netherlands, Singapore, Taiwan, Malaysia, China, South Korea and Germany.

Quisumbing Torres

Quisumbing Torres is Philippine law firm that is a member firm of Baker & McKenzie International. Quisumbing Torres was established in 1963 by Juan G. Collas, Jr. and later became known as Collas and Guerrero.

In 1974, its name was changed to Guerrero & Torres. It became Quisumbing Torres & Evangelista on 1 July 1988, when it merged with the law office of Norberto J. Quisumbing. It adopted its present name when Rafael E. Evangelista retired.

As of January 2006, Quisumbing Torres has a total of 50 lawyers to provide clients with a full range of legal services.

The practice groups of Quisumbing Torres include:

- Banking & Finance
- Corporate & Commercial
- Immigration
- Intellectual Property/Information Technology
- Labor
- Litigation
- Tax

For more than 40 years, Quisumbing Torres has helped foreign and domestic companies succeed in the Philippines. Our client base currently consists of Philippine, European, American and Asia Pacific clients. The firm represents clients doing business abroad and clients from Hong Kong, Singapore, Malaysia, Indonesia, Brunei, India, Taiwan, Japan, Korea, China, Canada, Australia, Germany, France, Switzerland, the United Kingdom, the United States and a host of other countries doing business in the Philippines.

Our lawyers know the relevant business, legal, social and political issues. Some of our lawyers have helped draft significant business laws and regulations, including those dealing with labor, media and communications, oil and gas, mining, hazardous waste, clean air, intellectual property and tax.

Our lawyers are all members of the Integrated Bar of the Philippines. Many are also admitted in other jurisdictions such as the States of New York, Virginia, Washington D.C. and California. A number of our lawyers have practiced or had legal exposure in other countries such as Australia, Singapore, Hong Kong, Japan, Indonesia, Thailand, the United Kingdom and the United States of America.

Presence of Baker & McKenzie in the Asia-Pacific Region

The member firms of Baker & McKenzie in the Asia Pacific Region provide a well-integrated regional service. Lawyers in Bangkok, Hanoi, Ho Chi Minh City, Hong Kong, Jakarta, Melbourne, Palo Alto, San Diego, San Francisco, Singapore, Sydney, Taipei and Tokyo are in regular contact with one another. There is extensive staff interchange among locations.

Quisumbing Torres in Manila provides a convenient coordination point for regional work.

I. FOREIGN INVESTMENTS IN THE PHILIPPINES

Foreigners may hold interests in corporations, partnerships and other entities in the Philippines, provided that such corporations, partnerships and other entities are not engaged in an activity that is reserved by law only to Philippine citizens or to entities that are wholly-owned by Philippine citizens. The maximum amount of foreign equity that is allowed in a company depends on the type of activity that the company is engaged in.

1. Level of Foreign Equity

The Negative List created under the Foreign Investments Act of 1991 is a list of economic activities where foreign equity is either prohibited or limited to a certain percentage. Except with respect to activities where the restrictions on foreign equity are imposed under the Philippine Constitution or statutes, the President of the Philippines may amend the Negative List not more often than once every two years. A new Negative List is prospective in application and will not affect foreign investment that is already existing on the date of its publication.

Some of the activities that are included in the Sixth Negative List (which took effect in January 2005) are as follows:

No Foreign Equity

- Mass Media, except recording
- Except in cases provided by law, the practice of professions, including engineering, architecture, customs brokerage, and agriculture
- Retail trade enterprises with paid-up capital of less than US\$ 2.5 million
- Small-scale mining

Up to 25 percent Foreign Equity

- Private recruitment companies, whether for local or overseas employment
- Contracts for the construction and repair of locally-funded public works except infrastructure/development projects covered in RA 7718, and projects that are foreign funded or assisted and required to undergo international competitive bidding
- Contracts for construction of defense-related structure

Up to 30 percent Equity

- Advertising

Up to 40 percent Foreign Equity

- Exploration, development and utilization of natural resources
- Ownership of private lands
- Operation and management of public utilities
- Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporations
- Acting as project proponent and facility operator of a build-operate-transfer project requiring a public utilities franchise

- Ownership of condominium units where the common areas in the condominium project are co-owned by the owners of the separate units or owned by a corporation
- All forms of gambling
- Domestic market enterprises (i.e. entities that do not export 60% or more of their output) with paid-in equity capital of less than the equivalent of US\$ 200,000

Up to 60 percent Foreign Equity

- Financing companies regulated by the Philippine Securities and Exchange Commission (“SEC”)
- Investment houses regulated by the SEC

The foregoing is a non-exhaustive enumeration of the sectors/activities that are subject to foreign equity limitations.

2. Forms of Investment Vehicle

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

For reasons relating to the exercise of management powers and the extent of liability, among others, among the various forms of business organizations, the corporation is generally the most preferred vehicle for investments in the Philippines.

3. Domestic corporation v. branch

Assuming that the proposed activity is not subject to any foreign equity limitation, the corporate vehicle may be set up in the Philippines either as a domestic corporation or a branch of a foreign corporation. These two types of corporate vehicle have their relative advantages and disadvantages relating to, among others, the extent of liability of the parent company/head office, taxation, and the administrative costs of maintaining the same.

If the proposed activity is subject to foreign equity limitations, the foreign investor and its Philippine joint venture partner will have to set up a domestic corporation.

Generally, corporations which are more than 40% foreign-owned as well as branches of foreign corporations that are considered domestic market enterprises must have a paid-in capital of at least US\$ 200,000. The paid-in capital requirement is reduced to US\$ 100,000 for domestic market enterprises whose activities involve advanced technology or which employ at least 50 direct employees.

Entities that qualify as export enterprises (enterprises that export 60% or more of their output) are not subject to any minimum paid-in capital requirement.

4. Other Types of Corporate Vehicle

4.1 Representative Office

A representative office may be established to perform the following activities in the Philippines: to deal directly with the clients of its parent company; and to undertake activities such as, but not limited to, information dissemination and promotion of the company’s products as well as quality control. A representative office cannot derive income in the Philippines and is fully subsidized by its head office.

A representative office must have an initial inward remittance of US\$ 30,000 to fund its operations.

4.2 Regional or Area Headquarters

A multinational company may establish a regional or area headquarters in the Philippines, to serve as a supervision, communications, or coordination center for its subsidiaries, branches or affiliates in the Asia Pacific region.

The regional or area headquarters must not earn or derive income from the Philippines. It cannot participate, in any manner, in managing any subsidiary or branch office it may have in the Philippines, nor can it solicit or market goods or services, whether on behalf of its parent company or its branches, affiliates, subsidiaries or any other company.

Its expenses must be financed by the head office or parent company from external sources in acceptable foreign currency. To fund its operations in the Philippines, its head office or parent company must initially remit into the Philippines at least US\$ 50,000 and thereafter, US\$ 50,000 annually.

The regional headquarters is not subject to income tax; value-added tax; and all local licenses, fees and charges, except real property tax on land improvements and equipment. It enjoys tax and duty-free importation of equipment and materials necessary for training and conferences.

4.3 Regional Operating Headquarters (“ROHQ”)

A multinational company may establish an ROHQ in the Philippines to service its own affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific region and other foreign markets

An ROHQ is allowed to derive income in the Philippines by performing any of the following qualifying services:

- a. General administration and planning
- b. Business planning and coordination
- c. Sourcing/procurement of raw materials and components
- d. Corporate finance advisory services
- e. Marketing control and sales promotion
- f. Training and personnel management
- g. Logistics services
- h. Research and development services and product development
- i. Technical support and maintenance
- j. Data processing and communication
- k. Business development

An ROHQ must initially remit into the Philippines at least US\$ 200,000.

4.4 Regional Warehouses

A multinational company engaged in international trade and which supplies spare parts, components, semi-finished products and raw materials to its distributors or markets in the Asia-Pacific region and other foreign areas, and which has established or will simultaneously establish a regional or area headquarters and/or ROHQ in the Philippines, may also establish a regional warehouse in the Philippines.

The activities of the regional warehouse are limited to the following:

- a. serving as a supply depot for the storage, deposit, and safekeeping of its spare parts, components, semi-finished products and raw materials including the packing, covering, putting up, marking, labeling and cutting or altering to customer’s specifications, mounting and/or packing into kits or marketable lots thereof;
- b. filling up transactions and sales made by its head office or parent company; and
- c. serving as a storage or warehouse of goods purchased locally by head office of the multinational for export abroad.

The regional warehouse cannot engage in trade or directly solicit business, promote any sale, or enter into any contract for the sale or disposition of goods in the Philippines. It cannot derive income from Philippine sources.

4.5 Offshore Banking Unit (“OBU”)

A foreign bank may operate an OBU in the Philippines. The OBU can be a branch, subsidiary or affiliate of a foreign banking corporation authorized by the Bangko Sentral ng Pilipinas (“BSP”) to conduct business with funds from external sources.

5. Post Registration Requirements

Upon incorporation/registration with the Philippine Securities and Exchange Commission, the newly-incorporated/registered entity must comply with certain post-registration requirements. The post-registration requirements include obtaining from certain government agencies and local government offices tax, employee welfare-related, and commencement-of-operations permits, licenses and registrations.

II. TAXATION

Philippine taxes are imposed by both the national government and the local government units.

1. Tax Treaties

The Philippines has tax treaties with the following countries:

Australia	Germany	Pakistan
Austria	Hungary	Romania
Bahrain	India	Russia
Bangladesh	Indonesia	Singapore
Belgium	Israel	Spain
Brazil	Italy	Sweden
Canada	Japan	Switzerland
China	Korea	Thailand
Czech	Malaysia	United Kingdom
Denmark	Netherlands	United States
Finland	New Zealand	Vietnam
France	Norway	

2. National Taxes

2.1 Corporate Income Tax

A domestic corporation such as a subsidiary, is taxed on its net income (gross income less allowable deductions) from all sources at the rate of 35 percent.

A resident foreign corporation such as a branch, is taxed only on its net income from Philippine sources at the same rate as a domestic corporation.

A non-resident foreign corporation is subject to a final withholding tax on its gross income (without the benefit of deductions) from Philippine sources at the rate of 35 percent.

A foreign corporation is considered a resident when it is engaged in trade or business in the Philippines and is licensed by the SEC to engage in trade or business in the Philippines.

The 35 percent corporate income tax rate will be lowered to 30 percent effective 1 January 2009 as provided in the recently enacted Republic Act No. 9337.

Income Subject to Different Tax Treatment

- Interest and Royalties Interest
- Dividends
- Branch Profits
- Gains from Sale of Real Property
- Capital Gains from Sale or Exchange of Stock
- Tax on Initial Public Offer of Shares of Stock

Income Taxation for Specific Industries

- Foreign International Carrier
- Non-Resident Cinematographic Film Owner/Lessor/Distributor
- Non-Resident Lessor of Aircraft or Machinery and other equipment
- Non-Resident owner of Chartered Vessel
- Foreign Currency Transactions of OBUs
- Minimum Corporate Income Tax
- Tax on improperly accumulated earnings

2.2 Individual Income Tax

A resident citizen is taxed on income from all sources at progressive rates ranging from 5 percent to 32 percent of net taxable income.

A non-resident alien engaged in trade or business in the Philippines is generally subject to tax on net income from Philippine sources at the same progressive tax rates imposed on resident aliens and citizens. A non-resident alien is deemed engaged in trade or business if he stays in the Philippines for an aggregate period of more than 180 days during any calendar year.

A non-resident alien not engaged in trade or business in the Philippines is taxed on gross income from Philippine sources at the rate of 25 percent, withheld at source.

2.3 Withholding of Taxes

The taxes due on the income of a non-resident alien and a non-resident foreign corporation are withheld at source.

The salary as well as certain other income receipts of residents, such as interest and rental income, are also subject to withholding tax.

2.4 Fringe Benefits Tax

A final tax of 32 percent is imposed on the grossed-up monetary value of fringe benefits furnished or granted to the employee (except rank-and-file) by the employer.

The fringe benefits tax is not imposed if the fringe benefit is required by the nature of, or necessary, to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer.

2.5 Business Taxes

a. Value-Added Tax (“VAT”)

VAT is a tax on consumption levied on the sale, barter, exchange or lease of goods or properties and services in the Philippines and on importation of goods into the Philippines.

A person becomes subject to the 12 percent VAT when his gross sales or receipts for the past 12 months exceed PhP 1.5 million.

A VAT taxpayer is allowed input VAT credits against his output VAT liability, subject to certain limitations.

b. Excise Taxes

In addition to VAT, excise taxes apply to goods produced in the Philippines for domestic sale or consumption or for any other disposition, and to things imported.

Excise taxes which are based on the weight or volume capacity or any other physical unit of measurement of the goods are called specific taxes.

Excise taxes which are imposed and based on the selling price or other specified value of the goods are referred to as ad valorem taxes.

The following are subject to excise taxes:

<ul style="list-style-type: none"> • distilled spirits, wines, fermented liquor • tobacco products, cigars and cigarettes • manufactured oils and other fuels • fireworks • cinematographic films 	<ul style="list-style-type: none"> • saccharine • automobiles • non-essential goods (such as jewelry, perfumes and toilet water) • yachts and other vessels intended for pleasure or sports, mineral products and quarry resources
--	--

Excise taxes paid on locally produced goods which are exported without return to the Philippines, whether in their original state or as ingredients or parts of any manufactured goods or products, are credited or refunded upon submission of proof of actual exportation and receipt of the corresponding foreign exchange payment.

c. Percentage Taxes

Certain persons are subject to percentage taxes at rates ranging from 1 percent to 30 percent. Percentage taxes are normally imposed on gross receipts.

Among those subject to percentage taxes are the following:

- keepers of garages and common carriers by land, air, or water for the transport of passengers
- entities engaged in the life insurance business
- overseas dispatches, messages or conversations transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services
- banks and non-bank financial intermediaries

Business establishments whose gross annual sales or receipts do not exceed PhP 1.5 million are exempt from VAT, but are subject to percentage tax of 3 percent, unless they elect to pay the 12 percent VAT.

d. Documentary Stamp Taxes

Documentary stamp taxes must be affixed on certain documents, instruments and papers evidencing business transactions, such as:

- | | |
|--|--|
| • bonds | • annuity policies |
| • debentures | • indemnity bonds |
| • certificates of indebtedness | • certificates issued by certain officers |
| • certificates of stock | • warehousing receipts |
| • certificates of profits or of interests in property or accumulations | • Jai-alai and horse race tickets |
| • bank checks | • bills of lading |
| • drafts | • proxies |
| • certificates of deposit | • powers of attorney |
| • promissory notes | • leases of real property |
| • bills of exchange | • mortgages |
| • letters of credit | • pledges |
| • insurance policies | • deeds of sale of real property and charter parties |
| • fidelity bonds | |

2.6 Other Imposts of the National Government

In addition to the 12 percent VAT and any applicable excise tax, importations are generally subject to customs duties.

The Tariff and Customs Code provides for the imposition of anti-dumping duty, countervailing duty, marking duty and discriminating duty under special circumstances.

3. Local and Real Property Taxes

Local government units such as provinces, cities, municipalities and barangays may levy taxes and impose local license fees pursuant to the Local Government Code.

Furthermore, real property tax applied solely to the lands, buildings and other improvements thereon is levied on the assessed value of the real property.

III. FOREIGN EXCHANGE REGULATIONS

1. Purchase and Sale of Foreign Exchange

Generally, foreign exchange may be freely bought and sold in the Philippines.

By way of exception, the Bangko Sentral ng Pilipinas regulates the purchase and sale of foreign exchange by authorized agent banks, non-bank BSP-supervised entities, their subsidiary/affiliate foreign exchange corporations and independent foreign exchange dealers and money changers (collectively “BSP Regulated Entities”). The BSP, with the approval of the President of the Philippines, may exercise its general emergency powers and temporarily suspend or restrict the purchase and sale of foreign exchange.

2. Foreign Trade Transactions

Foreign trade includes import and export trade transactions.

As a rule, a wide variety of merchandise may be imported into and exported from the Philippines. However, the importation or exportation of certain commodities is regulated or prohibited for reasons of public health and safety, national security, international commitments, and the development and rationalization of local industry.

Without prior BSP approval, but subject to reporting requirements and other conditions, universal and commercial banks may sell foreign exchange to service payments for imports under the arrangements prescribed by the BSP. The requirements include letters of credit, documents against payment, documents against acceptance, open account arrangements, and direct remittance.

Payments for exports may be made without prior BSP approval under the arrangements prescribed by the BSP, such as letters of credit, documents against payment/cash against documents, documents against acceptance, open account arrangement, inter-company open account offset arrangements with the parent company or affiliates abroad, consignment and export advances.

3. Non-Trade Transactions

Non-trade transactions refer to all other foreign exchange transactions that are not import or export trade transactions. These transactions include foreign inward and outward investments, and foreign currency denominated loans and guarantees.

Generally, all BSP Regulated Entities may sell foreign exchange to Philippine residents to fund payments of non-trade transactions without having to obtain prior BSP approval. However, if the sale of foreign exchange exceeds US\$ 5,000 or its equivalent in other foreign currency, the BSP Regulated Entity selling the foreign exchange must require the purchaser to present the documentary requirements prescribed by the BSP. These requirements may include documents showing that the purchaser has obtained prior BSP approval or registration of the transaction.

3.1 Foreign Inward Investments

Foreign investments must be registered with the BSP or, in certain instances, with a custodian bank, so that foreign exchange may be sourced from a BSP Regulated Entity to fund the repatriation of the investment and the remittance of profits and dividends. If a foreign investment is not registered with the BSP, a BSP Regulated Entity is not allowed to sell foreign exchange to fund the repatriation of such investment and the remittance of profits and dividends relating to such investment.

3.2 Outward Investments

Prior BSP approval and registration is required for outward investments, if foreign exchange exceeding US\$ 6,000,000 per investor per year will be sourced from BSP Regulated Entities.

3.3 Foreign Loans and Guarantees

Foreign currency denominated loans and guarantees must be registered with the BSP, so that foreign exchange may be purchased from a BSP Regulated Entity to service payments. If a foreign loan or guarantee is not registered with the BSP, a BSP Regulated Entity is not allowed to sell foreign exchange to fund payments of such foreign loan or guarantee.

3.4 Other Financing Schemes/Arrangements

Financing schemes or arrangements, which involve an option to purchase or a transfer of ownership after a certain period of time, as in the case of a Build-Operate-Transfer arrangement, must be registered with the BSP to be eligible for servicing using foreign exchange that will be purchased from BSP Regulated Entities.

IV. INCENTIVES UNDER SPECIAL REGISTRATIONS

Qualified enterprises may register with the Board of Investments (“BOI”) under the Omnibus Investments Code or with the Philippine Economic Zone Authority (“PEZA”) to avail of incentives. Investment opportunities in the Philippines have also been created by the Philippine Government’s conversion plan covering the Clark Air Base, Subic Naval Base, Camp John Hay in Baguio City and other former US military reservations and their extensions into special economic zones.

1. Enterprises Registered Under the Omnibus Investments Code (“OIC”)

The OIC, through tax exemption and other benefits, encourages investments in preferred areas of economic activity specified by the BOI in the Investment Priorities Plan (“IPP”).

Although the incentives under the OIC are generally available only to citizens of the Philippines or to domestic corporations owned and controlled by Philippine nationals, the nationality requirement is waived if the applicant will either export at least 70 percent of its total production or engage in a pioneer project.

A pioneer enterprise either manufactures goods that have not been produced in the Philippines on a commercial scale, or employs a formula, process or production scheme which has not yet been tried in the Philippines.

Agricultural activities or services (especially food processing) contributing to national self-sufficiency, the production of non-conventional fuels, or manufacturing of equipment which utilizes non-conventional sources of energy are similarly classified as pioneer projects. The final product or process should involve substantial use of domestic raw materials, whenever possible.

When the BOI waives the nationality requirement, the applicant should attain the status of a Philippine national within 30 years from the date of its registration or such longer periods as may be determined by the BOI. However, a registered enterprise exporting 100 percent of its production need not comply with this divestment requirement.

A foreign investor is guaranteed repatriation of investments, remittance of profits, freedom from expropriation and requisition of investment, protection of patents, and other proprietary rights.

An enterprise registered with the BOI enjoys the following tax and non-tax special incentives:

1.1 Tax Incentives

- a. Income tax holiday consisting of income tax exemption for six years from commercial operations for pioneer firms, and for four years for non-pioneer firms. This incentive may be extended in certain instances and upon approval by the BOI;

Expanding firms are entitled to an exemption from income taxes proportionate to their expansion for a period of three years from commercial operations. However, they are not entitled to additional deductions for incremental labor expenses during the period they avail of this incentive. A pioneer firm cannot avail of the income tax holiday for more than eight years.

- b. Exemption from taxes and duties on imported spare parts and consumable supplies for export produces with Customs Bonded Manufacturing Warehouse exporting at least 70 percent of its production;
- c. For the first five years from registration, an additional deduction from taxable income of 50 percent of the wages of additional skilled and unskilled workers in the direct labor force. This incentive is granted only if the registered enterprise meets a prescribed capital to labor ratio;
- d. Exemptions from taxes and duties on the importation of breeding stocks and genetic materials within 10 years from the date of registration or commercial operation;
- e. Tax credit for taxes and duties on raw materials, supplies and semi-manufactured products used in the manufacture of export products and forming part thereof;
- f. For registered enterprises with bonded manufacturing warehouse, exemption from taxes and duties on imported supplies and spare parts for consigned equipment;
- g. Exemption from the wharfage duties and any export tax, duty, impost and fees on exports by a registered enterprise of its non-traditional export products;
- h. Exemption from local taxes for six years from date of registration for pioneer enterprises and for four years from registration for non pioneer enterprises.

Applications covering new and expansion projects that will locate in Metro Manila are no longer entitled to income tax holiday, except in the following cases:

- a. Projects locating in governmental industrial estates, resettlement areas or National Housing Authority sites;
- b. Service-type projects and trading projects with no manufacturing facilities.

The BOI may completely or partially deny incentives to enterprises dealing in traditional export products.

1.2 Non-tax incentives

- a. Simplified customs procedures for the importation of equipment, spare parts, raw materials and supplies and the export of processed products;
- b. No restriction for the use of consigned equipment. A re-export bond is required;
- c. Employment of foreign nationals in supervisory, technical or advisory positions for five years from registration, extendible for limited periods. The president, general manager and treasurer (or their equivalent) of foreign-owned registered firms are not subject to the foregoing limitations;
- d. The privilege to operate bonded manufacturing/trading warehouses, subject to customs rules and regulations.

1.3 Additional Incentives

The following additional incentives are available to projects (excluding mining, forestry and processing of minerals and forest products) located in less developed areas:

- a. Deduction from taxable income of 50 percent of the wages corresponding to the increment in the number of direct labor is doubled.
- b. Deduction of the cost of necessary and major infrastructure works constructed.

2. Enterprises Registered with the Philippine Economic Zone Authority (“PEZA”)

To disperse industry and generate employment in non-urban areas, the government has established several special economic zones (Ecozones).

Enterprises may establish their businesses within an Ecozone and register with the PEZA as any of the following:

- ECOZONE Export Enterprise
- ECOZONE Domestic Market Enterprise
- ECOZONE Pioneer Enterprise
- ECOZONE Free Trade Enterprise
- ECOZONE Utilities Enterprise
- ECOZONE Facilities Enterprise
- ECOZONE Developer/Operator
- ECOZONE Service Enterprise
- ECOZONE Tourism Enterprise
- ECOZONE IT Enterprise

An ECOZONE Export Enterprise is an entity engaged in a manufacturing, assembling or processing activity and which exports 100 percent of its production, unless a lower percentage of its production for export is prescribed by the PEZA.

An ECOZONE Free Trade Enterprise is one engaged in the importation of goods or merchandise within the restricted or free trade area in the ECOZONE tax- and duty-free for immediate transshipment or for storage, repacking, sorting, mixing or manipulation and subsequent exportation.

An ECOZONE IT Enterprise is a company operating or offering IT services, which are defined as activities which involve the use of any information technology software or system for value addition. An IT Enterprise is also considered an export enterprise.

2.1 Tax and other Incentives

As a general rule, an ECOZONE Enterprise is entitled to the income tax holiday which may be for a duration of four years for new registered non-pioneer firms or six years for new registered pioneer firms. Expanding firms may be entitled to an income tax holiday of three years from the start of commercial operation of the expansion.

Upon the expiry of the income tax holiday, an ECOZONE Enterprise is subject to a preferential rate of 5 percent of gross income. This is in lieu of all national and local taxes.

ECOZONE Export and Free Trade Enterprises are further entitled to the following incentives:

- a. Zero-rate VAT on sales;
- b. Exemption from duties and taxes on importation of merchandise, raw materials, supplies of equipment and machineries, including importation of capital equipment, construction materials, specialized office equipment and furniture, specialized vehicles and other transportation equipment, professional instruments and household effects;
- c. Tax credit for import substitution;
- d. Exemption from wharfage dues, export tax, impost or fee;
- e. Additional deduction for training expenses;
- f. Tax credit on domestic capital equipment, breeding stocks and genetic materials;
- g. Additional deduction for labor expense;
- h. Unrestricted use of consigned equipment; and
- i. Employment of foreign nationals in executive, supervisory, technical and advisory positions, provided, the total number of foreign nationals employed by an ECOZONE Enterprise shall not at any time exceed 5 percent of its work force.

3. Enterprises Registered with the Subic Bay Metropolitan Authority (“SBMA”)

The Subic Special Economic and Free Port Zone (“Subic Bay Freeport” or “SBF”) was established by the Philippine Government with the aim of developing the area into a self-sustaining industrial, commercial, financial and investment center in the Philippines.

The territory of the SBF includes the City of Olongapo and the Municipality of Subic, the former US Naval Base at Subic Bay and its extensions located in the municipalities of Hermosa and Morong in the Bataan province.

A business enterprise may register as an SBF Enterprise, and a natural person as an SBF Resident, with the SBMA.

3.1 SBF Enterprises

An SBF Enterprise is any business entity or concern within the SBF, duly registered with and/or licensed by the SBMA to operate any lawful economic activity within the SBF.

Registration as an SBF Enterprise is open to any business enterprise in any area of economic activity, subject only to limitations in the Philippine Constitution.

The incentives offered to an SBF Enterprises include:

- a. Right to freely engage in any business, trade, manufacturing, financial or service activity, and to import and export freely all types of goods into and out of the SBF, subject to certain laws and regulations;
- b. Right to employ foreign nationals subject to evidence of unavailability of comparably skilled Filipinos within the Philippines; and
- c. Exemption from all national and local taxes, in lieu of which a final tax of 5 percent of gross income must be paid.

An SBF Enterprise which operates facilities or services within the SBF (SBF Facilities Operator) is entitled to additional incentives, including:

- a. Right to manage facilities on real property it owns, has acquired, or has leased within the SBF;
- b. Right to lease out real property it owns or has leased within the SBF, and to acquire and lease land and sell or lease out facilities to SBF Enterprises, subject to certain guidelines; and
- c. Right to make improvements on buildings and other facilities, and develop infrastructure necessary to enhance the SBF's efficient operation, or grant contracts or concessions to other private or public parties for the construction or provision of any of the said facilities, subject to certain guidelines.

3.2 SBF Residents

Generally, registration as an SBF Resident is available to:

- a. Any Filipino actually residing within the SBF who is an employee or owner of an SBF Enterprise, and the immediate members of his family, or any Filipino who has leased or has secured living premises in the SBF;
- b. A foreign national who is a permanent resident of the Philippines and who is employed or has invested in the SBF; and
- c. A foreign national without prior permanent residency status in the Philippines, subject to certain immigration regulations.

The incentives offered to SBF residents include the following:

- a. Right to import directly, free of customs duties and control, foreign articles in non-commercial quantities, subject to certain regulations; and
- b. Right to purchase, lease or otherwise acquire articles from other SBF residents or Enterprises, and maintain, utilize or otherwise consume such goods within the SBF free of national internal revenue taxes and customs duties.

4. Enterprises registered with the Clark Development Corporation (“CDC”)

Prior to the Philippine Supreme Court’s ruling in *Coconut Oil Refiners, Inc., et. al. vs. Torres, et. al.*, G.R. No. 132527 dated 29 July 2005, enterprises located within the Clark Special Economic Zone (“CSEZ”) and registered with the CDC enjoy the incentives entitled to Subic Special Economic Zone (“SSEZ”) Enterprises pursuant to Section 5 of Executive Order No. 80 (“E.O. No. 80”). E.O. 80 is a presidential order which granted tax and duty free incentives to enterprises located at CSEZ and registered with the CDC. Section 5 of E.O. 80 states that CSEZ shall have all the applicable incentives which were granted to enterprises located at and registered with the SSEZ pursuant to Republic Act No. 7227 (“R.A. 7227”).

However, on 13 December 2005, the Supreme Court decided the *Coconut Oil Refiners* case with finality and declared Section 5 of E.O. No. 80 to be unconstitutional and void. The Supreme Court held that while R.A. 7227 expressly provides for the grant of incentives to enterprises registered with SSEZ, it fails to make a similar grant of incentives to enterprises registered with other economic zones, including the CSEZ.

To address the uncertainty on the tax incentives currently being enjoyed by enterprises located at the CSEZ, several bills are currently pending before Congress. These bills aim to confirm the legislative intent of RA 7227 to grant tax and duty free incentives not only to SSEZ registered enterprises but also to enterprises registered with the CSEZ and other special economic zones created under said law.

As a more immediate measure to protect investors located at CSEZ, President Gloria Macapagal-Arroyo issued Presidential Proclamation No. 1035 (“PP 1035”) on 10 March 2006 which declared as a PEZA zone, all land areas that were previously declared as part of CSEZ under relevant presidential proclamations issued pursuant to RA 7227. The President’s power to declare certain areas as special economic zones is found in Republic Act No. 7916, otherwise known as the Special Economic Zone Act of 1995 (“RA 7916”) and its implementing rules and regulations (“IRR”) (hereinafter collectively referred to as the “PEZA Law”).

In light of the recent declaration of CSEZ as a PEZA zone under PP 1035, the PEZA is currently drafting such guidelines that specifically deal with the registration of CSEZ enterprises and the specific incentives to which they may be entitled under the PEZA law.

V. INTELLECTUAL PROPERTY PROTECTION

The Philippines is a member of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.

The Intellectual Property Office (“IPO”) processes applications for patents, trademarks, service marks and trade names, and issues the corresponding certificates of registration.

Trademarks, trade names, and service marks owned by persons, corporations, partnerships, or associations domiciled in the Philippines or in any foreign country may be registered with the IPO.

The rights to a mark are acquired by the registration. Priority is given to whoever first applies for registration. There is a single procedure for both foreign and local applicants for the registration of marks. An applicant should file a declaration of use within three years from the date of application.

Trademark registration is valid for 10 years, provided the registrant files with the IPO an affidavit of use/justifiable non-use within one year following the fifth anniversary of the effective date of the registration or renewable registration. The registration is renewable at the end of each 10th year so long as the mark is still in commercial use.

Inventions, utility models and industrial designs may be patented. A patent is granted to the inventor who filed his patent application earlier than others, thus simplifying the determination of who is entitled to own the patent.

A patent registration for an invention is valid for 20 years from the date of filing the application. A patent for a utility model is valid for seven years from the date of filing the application and automatically expires at the end of the period. The term of registration of an industrial design is five years from the date of filing and may be renewed for two consecutive periods of five years each.

Literary, scholarly, scientific and artistic works, whether published or unpublished, may be copyrighted. Copyright protection extends to computer programs, multimedia works and data bases that are original by reason of the selection, coordination or arrangement of their contents.

Copyrights endure for the lifetime of the creator and for 50 years after his death.

VI. BORDER CONTROL MEASURES

The Bureau of Customs (“BOC”) recently revised its rules on border control measures to prevent the entry in the Philippines of infringing merchandises, and to ensure expedited procedures for the handling and disposition of goods suspected to be imported in violation of the Philippines Intellectual Property Code.

Intellectual Property (“IP”) holders may register their products covered by patents, trademarks, copyrights and other similarly protected IP rights with the BOC.

The application for registration serves as the consent of the IP owner for the BOC to conduct physical inspection of imports suspected to be infringing.

The registration will be the basis of the BOC to monitor, on its own initiative, suspected imports to determine whether they are liable to seizure and forfeiture.

VII. TECHNOLOGY TRANSFER ARRANGEMENTS

A technology transfer arrangement (“TTA”) refers to a contract or agreement involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or the rendering of a service including management contracts.

A TTA also refers to the transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software except computer software developed for mass market.

There are no restrictions regarding the amount or rate of royalty that may be charged. The parties are free to negotiate the amount or the rate of royalties to be paid under the TTA. However, the IPO has a quasi-judicial jurisdiction to settle disputes regarding technology transfer payments, including the fixing of the appropriate amount or rate of royalty.

TTAs should not contain certain prohibited clauses and should contain certain mandatory provisions. But there may be exceptional cases where exemptions from the prohibitory and/or mandatory clauses may be allowed. A TTA that conforms with the prohibited and mandatory clauses need not be registered with the IPO. Nonconformance with the prohibited and mandatory clauses will automatically render the TTA unenforceable, unless the TTA is approved and registered with the IPO.

VIII. LABOR LAW

Philippine labor law recognizes the rights of both workers and management. Thus, labor law recognizes the workers’ right to a just share in the fruits of production and management’s right to a reasonable return on investments.

1. Labor Standards

The Labor Code of the Philippines (the “Labor Code”) lays down the minimum terms, conditions, and benefits of employment that employers must provide or comply with and to which the employees are entitled to as a matter of right.

1.1 Work Hours

- **Normal Hours of Work.** The normal hours of work should not exceed eight hours in a work day. Employees are entitled to at least 60 minutes time off from work for their regular meals.
- **Overtime Work.** Any work done in excess of eight hours in a work day must be paid overtime rate based on the applicable basic rate. The Labor Code enumerates the specific instances when an employee may be required to render overtime work and the corresponding overtime pay rate. These overtime pay rates may vary depending on whether the overtime work is rendered on a regular work day, holiday or rest day.
- **Night Shift Differential.** An employee must be paid a night shift differential equivalent to a certain rate of his regular wage for work done between 10 p.m. and 6 a.m.
- **Premium Pay for Rest Day or Holiday Work.** All employees are generally entitled to a rest period of not less than 24 consecutive hours for every six consecutive normal working days.

For work done on rest days and special holidays, the Labor Code requires the employer to pay a certain amount as additional compensation based on the regular wage of the employee.

The rules on work hours are not applicable to managerial employees, among others.

1.2 Wages

Under the minimum wage law in the Philippines, minimum wages vary according to the location of the business.

The minimum wage rate in each region of the country varies and is prescribed by the Regional Tripartite Wages and Productivity Boards.

Wages are generally paid in cash at least twice a month (usually on the 15th and the last day of every month).

1.3 Other Compulsory Benefits

<ul style="list-style-type: none"> • Holiday Pay • Service Incentive Leave • Thirteenth Month Pay • Retirement Benefits • Sick Leave 	<ul style="list-style-type: none"> • Maternity Leave • Paternity Leave • Parental Leave • Leave Due to Violence
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1.4 Rule on Non-Diminution of Employment Benefits

If an employee benefit has been granted by reason of employer practice or policy, the benefit becomes part of the terms and conditions of employment and cannot be unilaterally withdrawn or discontinued by the employer, despite the absence of a legal or contractual requirement to grant the said benefit.

The following criteria may be used to ascertain the existence of a binding and enforceable employer practice or policy under Philippine law:

- a. The act of the employer was done for a long period of time or was consistently repeated;
- b. The act was done deliberately, knowingly, and consistently; and
- c. The act was not a product of erroneous interpretation or construction of a doubtful or difficult question of law.

2. Labor Relations

As a general rule, employees have the right to form and join unions and to engage in concerted activities for their collective protection. Employees, through their union representatives, may negotiate and enter into collective bargaining agreements (“CBA”) with their employers. The employees negotiate the terms and conditions of their employment in CBAs.

Employees, under specified circumstances, have the right to strike in accordance with law. Corollarily, the employer, under specified circumstances, also has the right to lock-out employees.

Aside from labor unions, employees may also form and join workers’ associations and other mutual aid and benefit associations for legitimate purposes, other than collective bargaining.

3. Welfare Legislation

- a. Employee’s Compensation and State Insurance Fund (“ECSIF”). This provides for the benefits in case of work-related illness or injury;
- b. National Health Insurance Act (“NHIA”). This provides for the benefits for non-work related illness;
- c. Social Security Law. This provides employees in the private sector a more comprehensive benefits program which includes sickness, disability, retirement and funeral benefits; and
- d. Pag-IBIG Fund. This provides housing loans to employees in the private sector.

Under the foregoing welfare legislations, the employer is required to register itself and its employees with the Social Security System (“SSS”) (the SSS also administers the ECSIF), the Philippine Health Insurance Corporation (“PhilHealth”) (PhilHealth administers the NHIA) and the Pag-IBIG Fund.

The employer and the employee both contribute to the common fund from which the benefits are sourced. The employer is required to deduct the employee’s contribution and remit the same to the SSS, PhilHealth and Pag-IBIG Fund, together with the employer’s contribution. The contributions are based on the salary of the employee.

Contributions for the ECSIF are shouldered by the employer alone.

There are other special laws in the Philippines that govern specific sectors of Philippine labor such as the Migrant Workers’ and Overseas Filipinos Act of 1995.

4. Classification of Employment

The Labor Code and jurisprudence classify employment status into regular, project, seasonal, casual, probationary and fixed-term.

The employment status of an employee is not determined by the specific designation given to it in the employment contract but by the nature of the work being performed by the employee.

An employment is presumed to be regular or permanent in nature, unless the legal requirements for the other types of employment are strictly observed. For instance, a probationary employee must be provided with written standards for regular employment at the time he is first engaged. Otherwise, he shall be deemed a regular employee from the start of his employment.

The classification of an employee is important because under Philippine law, the causes for terminating an employer-employee relationship would depend upon the classification of the employee.

5. Termination of Employment

Corollary to the employer’s right to hire, terminate and discipline employees is the employees’ right to security of tenure.

The employees’ right to security of tenure demands that they be removed only for any of the just or authorized causes defined under the Code (called “substantive due process”) and only after the employer observes procedural due process.

In the Philippines, a dismissed employee has the right to question the validity of his dismissal. Once questioned before the proper labor authorities, the employer must establish the validity of the dismissal by proving that the termination was due to a just and/or authorized cause and that the termination was done after complying with due process.

An employee who is unjustly dismissed from work without a legally defined cause is entitled to the following:

- a. reinstatement without loss of seniority rights and other privileges;
- b. payment of full backwages, including allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Even if there may have been a just or authorized cause for termination, an employee who is dismissed without procedural due process is entitled to nominal damages, the amount of which is subject to the discretion of the court. For this purpose, the court will take into consideration the relevant circumstances of each case, particularly the gravity of the employer's failure to follow due process requirements. The nominal damages serve as a penalty on the employer for its failure to comply with the requirements of procedural due process for terminating employment.

6. Contract of Employment

Although not required, it is best to put the employment contract between the employer and the employee in writing. This will protect the employer in the event of a future disagreement as to the terms and conditions of employment.

It is also advisable for the employer to have an employment handbook which contains the rules and regulations that will govern the employment relation.

IX. IMMIGRATION

1. Work / Employment Requirements

A foreigner who comes to the Philippines to work must obtain a work visa from the relevant government agency such as the Bureau of Immigration ("BI") and Department of Justice ("DoJ"), as well as an alien employment permit ("AEP") from the Department of Labor and Employment ("DoLE").

The visa and AEP applications must be filed by a local petitioning company in behalf of the foreigner.

If the foreigner wants to work during the pendency of the visa application, the local petitioning company may file an application for a provisional permit to work ("PPW") with the BI. The PPW, together with the AEP, will allow the foreigner to work during the pendency of the visa application.

In cases of short-term employment (i.e., less than six months) for positions that are temporary in nature (i.e., consultancy), a foreigner will only be required to apply for a special work permit with the BI.

Generally, the work visa and AEP applications are filed after the foreigner has arrived in the country and has been admitted on a tourist or 9(a) visa. Except for certain restricted nationals, a foreigner may enter the country without a pre-approved tourist or 9(a) visa and he will be provided either a 21-day or 7-day visa, depending on his nationality, provided that he has an outbound ticket with him. In such a case, the application that will be filed is for the conversion of the tourist or 9(a) visa into the appropriate work visa.

The following are the more common types of work visas:

1.1 Multiple Entry Special Visa

This visa is available to:

- foreign personnel of offshore banking units of foreign banks duly licensed by the Central Bank of the Philippines to operate as such; and
- foreign personnel of regional or area headquarters of multinational companies which are officially recognized by the Philippine Government.

The expatriate, his spouse, and unmarried minor children under 21 years of age, if accompanying or joining him after his admission into the country as a non immigrant, may be issued multiple entry special visas valid for one-year, which may be extended from year to year upon legal and meritorious grounds.

1.2 Special Non-Immigrant or 47(a)(2) Visa

This visa is granted under Section 47(a)(2) of the Philippine Immigration Act that allows the President to issue such visas when public interest so warrants, subject to such conditions as he may prescribe.

The President, acting through the appropriate government agencies, has exercised this authority by allowing the entry of foreign personnel employed in supervisory, technical or advisory positions in Export Processing Zone Enterprises, Board of Investments registered enterprises, and Special Government Projects (e.g. MRT, Skyway).

This visa is generally valid for an initial period of one year and is renewable from year to year.

1.3 Pre-Arranged Employment or 9(g) Visa

This visa is available to a foreigner who will be occupying an executive, technical, managerial or highly confidential position in a Philippine company and who is proceeding to the Philippines to engage in any lawful occupation, whether for wage or salary or for other forms of compensation, where a bona fide employer-employee relationship exists.

The pre-arranged employment visa is granted for a period co-terminous with the AEP, which in turn, is granted for a period discretionary to the DOLE, usually based on the duration of the election or appointment of the foreigner.

1.4 Treaty Trader's or Investor's Visa

A foreigner is entitled to enter the Philippines as a treaty trader or investor only if he is a national of the US, Germany or Japan, countries with which the Philippines has concluded a reciprocal agreement for the admission of treaty traders or investors. The local petitioning company must be majority-owned by US, German or Japanese interests. The nationality of the foreigner and the majority of the shareholders of the employer company must be the same.

The foreigner must be employed in a supervisory or executive capacity.

When granted, the visa may be extended to the foreigner's spouse and unmarried children below 21 years of age. The visa is generally valid for a one-year period subject to extension upon application.

1.5 Subic Bay Freeport Work Visa

A foreign national who possesses executive or highly technical skills, which no Filipino citizen within the Subic Bay Freeport possesses, as certified by the DOLE, may apply for this visa with the Subic Bay Metropolitan Authority.

This visa is valid for, and renewable every, two years.

2. Special Resident Visas

In addition to work visas, a foreigner may also apply for special resident visas. These visas allow a foreigner to work in the Philippines, subject to other requirements or limitations imposed by law.

The following are the different types of special resident visas:

2.1 Special Resident Retiree's Visa ("SRRV")

The SRRV program is available to foreigners and former Filipinos at least 35 years of age (may be waived in exceptional cases), who deposit the minimum amount required by law with a bank accredited by the Philippine Leisure and Retirement Authority.

The holder of an SRRV may stay in the Philippines indefinitely or visit the country at any time.

The holder may also invest in or establish a business in the Philippines.

2.2 Special Investor's Resident Visa ("SIRV")

Any foreigner, at least 21 years of age, willing and able to invest at least US\$ 75,000 in the Philippines, may apply for this visa.

The applicant's spouse and unmarried children who are less than 21 years of age, accompanying the applicant, may be included in the visa application. Unlike the SRRV, there is no limit to the number of unmarried children that can be included in the application.

2.3 SIRV for Investors in Tourist-Related Projects and Tourist Establishments

A foreigner who invests the amount of at least US\$ 50,000 in a qualified tourist-related project or tourism establishment, as determined by a governmental committee, shall be entitled to an SIRV.

2.4 Subic Bay Freeport Residency Visas

Any investor who has made, and continues to maintain, an investment of not less than US\$ 250,000 within the Subic Bay Freeport may apply for this visa. Such visa shall be valid for as long as the visa holder maintains the investment.

2.5 Subic Bay Freeport Residency Visas for Retirees

This visa requires the applicant to be over 60 years old, of good moral character, with no previous conviction of a crime involving moral turpitude, no longer employed or not self-employed, and receiving a pension or passive income which is payable in the Subic Bay Freeport in an amount exceeding US\$ 50,000 per year.

X. LEASE OF PRIVATE LAND

Foreign investors may lease private lands which will be used exclusively for investments for a period of up to 50 years, renewable once for a period of 25 years. The lease must be registered with the Philippine Board of Investments under the Investors' Lease Act. The long-term lease will be subject to the following conditions, among others:

- (a) the leased area shall be used solely for the purpose of the investment upon the mutual agreement of the parties; (b) the leased premises shall comprise such area as may reasonably be required for the purpose of the investment, subject however to the Comprehensive Agrarian Reform Law and the Local Government Code; and
- (c) the lease agreement must incorporate certain mandatory conditions.

Foreigners investing at least US\$ 5 million in tourism projects may lease private lands for the project for the same period.

With respect to land which the foreign investor will not use exclusively for the purpose of the investment, or land for tourism projects with investments of less than US\$ 5 million the lease contract may be for a maximum period of 25 years, renewable for another 25 years.

XI. ENVIRONMENTAL REGULATION

The Philippines adheres to a policy of protecting and advancing the right of its people to a balanced and healthful ecology.

Philippine environmental law consists of a series of legislative enactments, executive decrees and administrative regulations, each addressing a specific area of concern relating to the environment.

Therefore, the environmental law applicable to a particular business concern depends largely on the activities of that business concern.

The Department of Environment and Natural Resources (“DENR”) is the lead agency in environmental protection and administration.

The DENR is assisted in the formulation and implementation of environmental policies by the Environmental Management Bureau (“EMB”), local government units and other governmental agencies and departments.

Presidential Decree No. 1586 established the Philippine Environmental Impact Statement (“EIS”) System. Environmental impact assessment (“EIA”) is part of project planning and is conducted to identify and evaluate important environmental consequences including social factors that may occur if a project will be undertaken. Measures to eliminate or minimize these impacts are incorporated into project design and operations.

PD 1586 requires proponents of environmentally critical projects (“ECP”) and projects within environmentally critical areas (“ECA”) to obtain an environmental compliance certificate (“ECC”) prior to the commencement of the project.

The ECC is a document certifying that based on the representations of the proponent, the proposed project or undertaking will not cause significant negative environmental impact. The ECC also certifies that the proponent has complied with all the requirements of the EIS System and has committed to implement its approved Environmental Management Plan. The ECC contains specific measures and conditions that the project proponent has to undertake.

An ECA is an area delineated as environmentally sensitive such that significant environmental impacts are expected if certain types of proposed projects or programs are located, developed or implemented in it. An ECP is a project or program that has high potential for significant negative environmental impact.

The EMB of the DENR, together with the EIA Review Committee, is the government agency that implements the EIS System.

Specific Areas of Regulation

Presidential Decree No. 984, otherwise known as the National Pollution Control Decree of 1976, is the general legislation on pollution prevention and control that is being enforced by the government.

Republic Act (RA) No. 9003, or the Ecological Solid Waste Management Act of 2000 calls for the institutionalization of a national program that will manage the control, transfer, transport, processing and disposal of solid waste in the country.

RA 6969 or the Toxic Substances and Hazardous and Nuclear Wastes Control Act provides the legal framework for the country's program to control and manage the importation, manufacture, processing, distribution, use, transport, treatment, and disposal of toxic substances and hazardous and nuclear wastes.

RA 8749 or the Philippine Clean Air Act of 1999 provides the framework to prevent, manage, control and reverse air pollution from city to countryside.

The Philippine Clean Water Act of 2004 requires the DENR to implement a comprehensive water quality management program to guarantee effective water utilization and conservation. The Clean Water Act applies to water quality management in all water bodies. However, it primarily applies to the abatement and control of pollution from land based sources.

XII. FINANCE-RELATED REGULATIONS

1. Banking

A foreign bank may operate in the Philippines through any of the following modes of entry subject to prior approval of the Monetary Board of the BSP:

- a. On or before 12 June 2007, by owning up to 100% of the voting stock of an existing domestic bank;
- b. After 12 June 2007, by owning up to 60% of the voting stock of an existing domestic bank.

At present, the BSP has imposed an indefinite moratorium on the establishment of new banks except in cities and municipalities where there are no existing banking offices. Thus, a foreign bank cannot invest in the voting stock of a new banking subsidiary. Until such moratorium is lifted, the only mode for foreign banks to enter the Philippine banking industry will be to invest into existing domestic banks.

If the moratorium is lifted, in addition to the foregoing, a foreign bank may also operate in the Philippines through any of the following additional modes of entry, subject to prior approval of the Monetary Board of the BSP:

- a. On or before 12 June 2007, by investing in up to 100% of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines;
- b. After 12 June 2007, by investing in up to 60% of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines.

2. Financing Companies

Financing companies are corporations that are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial or agricultural enterprises by:

- direct lending;
- discounting or factoring commercial papers or accounts receivables;
- buying and selling contracts, leases, chattel mortgages or other evidences of indebtedness; or
- financial leasing of movable as well as immovable property.

The term “financing companies” excludes banks, investment houses, savings and loan associations, insurance companies, cooperatives and other financial institutions organized or operating under other special laws.

A financing company must be organized as a stock corporation, at least 40% of the voting stock of which is owned by citizens of the Philippines. A foreign national may own stock in any financing company if the country of which he is a national accords the same reciprocal rights to Filipinos.

A financing company must have a paid-up capital ranging from at least PhP 2.5 million to PhP 10 million depending on where the financing company will set-up its office in the Philippines.

Financing companies providing financial leases in connection with any purchase, importation, acquisition or other transaction are entitled to the same incentives, exemptions, benefits or privileges that are available to lenders, importers, purchasers or other eligible person in such transactions. In addition, financing companies that provide medium and long-term credit to small and medium enterprises are entitled to the same rights, powers, benefits and privileges that are granted to other non-bank financial institutions providing similar credit.

3. Securitization Act of 2004

The Securitization Act took effect on 10 April 2004. The Act establishes the legal and regulatory framework for asset securitization and grants tax exemptions and other incentives in favor of securitization transactions.

In order to promote the development of the Philippine capital market, the Act seeks to create a favorable environment for the establishment of Special Purpose Entities (“SPE”) and the issuance by such entities of a wide range of asset-backed securities. The Act also prescribes the rules for the creation and operation of Secondary Mortgage Institutions to develop a secondary market for the asset-backed securities, particularly for residential mortgage-backed securities and other housing-related financial instruments.

In securitization, loans, receivables or similar financial assets with an expected cash payment stream (“Assets”) are sold, on a “without recourse” basis, by a seller to a special purpose entity. The SPE then issues to investors asset-backed securities (“ABS”) that depend for their payment on the cash flow from the Assets. The issuance of the ABS must be in accordance with the securitization plan approved by the SEC.

Prior endorsement of the BSP must be obtained in the following cases:

- a. if the original obligee of the Assets is a bank, or any other entity subject to the supervision of the BSP, or is controlled by such bank or entity; or,
- b. if the SPE is constituted in the form of a special purpose trust.

Subject to certain conditions, the Securitization Act grants various tax and fiscal incentives.

4. Special Purpose Vehicle Act of 2002

The Special Purpose Vehicle Act of 2002 (“SPV Act”) provides the framework for the creation and regulation of Special Purpose Vehicles (“SPVs”) that acquire or invest in non-performing assets (“NPA”) of financial institutions (“FI”). The SPV Act granted tax and fiscal incentives and exemption privileges to transactions involving the transfer of NPAs from an FI to an SPV and, subject to certain conditions, from an SPV to a third party.

The SPV Act prescribed a period within which the application to organize and register an SPV must be filed with the SEC. This period expired on 18 September 2004.

There appears to be a growing clamor from the banking sectors to allow additional time within which interested parties may register an SPV, thus paving the way for the filing of Senate Bill 1830, which seeks to allow registration of SPVs for another five years. The bill is currently pending in the Philippine Senate.

XIII. INSURANCE-RELATED REGULATIONS

Entry of Foreign Insurance Companies

Subject to the approval of the Insurance Commission, a foreign insurance company may be allowed to do business in the Philippines under any one of the following modes of entry:

- a. ownership of the voting stock of an existing domestic insurance company;
- b. investment in a new insurance company incorporated in the Philippines (i.e., a subsidiary); or,
- c. establishment of a branch.

To be allowed entry, the foreign insurance company must be among:

- a. the top 200 foreign insurance corporations globally; or,
- b. the top 10 in their country of origin; and,
- c. has been doing business for the last 10 years as of the date of the application.

To qualify as a branch or a new company incorporated in the Philippines, the applicant must be:

- a. widely-owned and/or publicly-listed in its country of origin; or,
- b. majority-owned by the government of the country of origin.

Depending on the extent of foreign equity, an applicant foreign insurance corporation must comply with certain capitalization requirements pertaining to minimum paid-up capital and contributed surplus fund.

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