Country Guide
Philippines

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A GUIDE TO
DOING BUSINESS AND INVESTING IN THE PHILIPPINES

FEBRUARY 2024

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TABLE OF CONTENTS

Chapter 1: Introduction ... 6

A. Commercial Opportunities ... 6

B. Structure of this Guide ... 7

Chapter 2: When is a foreign entity deemed to be doing business in the Philippines? ... 8

A. Relevance ... 8

B. Acts that Constitute Doing Business ... 8

C. Acts that Do Not Constitute Doing Business ... 8

D. Online Transactions ... 9

E. Further Analysis ... 9

Chapter 3: What businesses and investments can a foreign entity pursue in the Philippines? ... 10

A. The Foreign Investments Act ... 10

B. Foreign Investments Negative List ... 10

C. The Twelfth Negative List ... 10

1. Nationalized Industries (No Foreign Equity) ... 10

2. Partially Nationalized Industries (Limited Foreign Equity) ... 11

D. Export Enterprises v. Domestic Market Enterprises ... 12

E. Who is a Philippine National? ... 13

F. Control Test and Grandfather Rule ... 13

G. Anti-Dummy Law ... 14

H. Public Service Act ... 15

Chapter 4: What are the business forms or investment vehicles that are available to foreign entities? ... 16

A. Options for FDI – New Entity ... 17

1. Domestic Subsidiary ... 17

2. Branch Office ... 19

3. Representative Office ... 21

4. Regional Headquarters (“RHQ”) ... 22

5. Regional Operating Headquarters (“ROHQ”) ... 23

B. Options for FDI – Existing Entity ... 24

1. Joint Venture ... 24

2. Purchase of Shares ... 26

3. Merger or Consolidation ... 26

4. Technology Transfer Arrangement ... 28

5. Management Contract ... 29

6. One Person Corporation .... **Error! Bookmark not defined.**

Chapter 5: What incentives are available to foreign entities that do business or invest in the Philippines?29

1. 2022 SIPP 30

Chapter 6: What are the key regulations that foreign entities must consider? 32

A. Regulation of Foreign Currency Transactions 32

1. Registration of Foreign Investments 32

2. Foreign Currency as Consideration for Stocks 35

B. Taxation 36

C. Labor and Employment 38

1. State Policy Geared Towards the Protection of Labor 38

2. Employment Relationship 39

3. Minimum Labor Standards 40

4. Labor Relations 41

5. Security of Tenure; No At Will Employment 41

6. Contractualization .... **Error! Bookmark not defined.**

7. Non-Diminution Principle .... **Error! Bookmark not defined.**

D. Immigration 45

1. Entry Visa 45

2. Work Permits 45

3. Special Investor Resident Visa 45

4. Special Work Visas 46

E. Intellectual Property Protection 46

1. Beijing Treaty on Audiovisual Performances (2021); 47

2. Berne Convention for the Protection of Literary and Artistic Works (1951); 47

3. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol") (2012); 47

4. Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled ("Marrakesh VIP Treaty") (2019); 47

5. Paris Convention for the Protection of Industrial Property (1965); 47

6. Patent Cooperation Treaty (2001); 47

7. Phonograms Convention (signed 1972); 47

8. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1984); 47

9. WIPO Convention (1980); 47

10. WIPO Copyright Treaty (2002); and 47

11. WIPO Performances and Phonograms Treaty (2002) 47

In addition to these treaties, and by virtue of its membership in the World Trade Organization ("WTO"), the Philippines adheres to the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS"). 47

F. Environmental Regulation 47

G. Recognition and Enforcement of Foreign Judgements and Arbitration 47

H. Cross-Border Insolvency 49

I. Anti-Trust Regulation 49

J. Data Privacy Protection 51

Chapter 7: Firm Background 54

Disclaimer

This Guide to Doing Business and Investing in the Philippines ("Guide") is intended as a general reference only. This Guide does not cover the subject exhaustively and only contains a summary of the most relevant laws and regulations. This Guide should not be relied upon as legal advice. Users of this Guide should obtain professional advice when specific issues arise.

This Guide is updated to reflect laws and regulations in force as of December 31, 2023.

Chapter 1: Introduction

A. Commercial Opportunities

(taken from the Philippine Development Plan 2023-2028)

The National Economic an Development Authority ("NEDA") has assured the international community that the Philippine government is taking steps to fulfill its goals in the Philippine Development Plan 2023-2028 (hereinafter, "PDP" or the "Plan"). The PDP serves as the country's overall blueprint in development planning for the next six years. It reflects the government's policies, strategies, programs, and legislative priorities in support of and consistent with President Ferdinand R. Marcos, Jr.'s Socioeconomic Agenda.

The goals and targets under the plan for the next six years until 2028 are as follows:

- Maintain annual economic growth rate between 6.0 to 7.0 percent in 2023 and between 6.5 to 8.0 percent from 2024 to 2028.
- Create more, better, and more resilient jobs
- Keep food and overall prices low and stable
  Enforce fiscal discipline.
- Transform the production sectors through innovation.
- Reduce poverty incidence from 18 percent in 2021 to between 8 to 9 percent by 2028.

The Key Strategies to achieve these targets are summarized as follows:

- *Digitalization.* Digital transformation of government will result in more efficient and faster service delivery, more transparency, and fewer opportunities for corruption at various levels.
- *Public-Private Partnerships*. Reconfiguring public - private partnerships (PPP) to address cross-cutting issues of a weak competition environment and the digital divide, as well as boost the country's campaign to attract foreign investments. Foreign direct investments will be harnessed as drivers of export growth, sources of vital technology, and critical enablers of the country's long-term climate action.
- *Servicification*. The government will pursue policies building ecosystems around manufacturing clusters identified as potential sources of high growth. Priority servicification can also be targeted towards the industries of information and communications technology, creatives, tourism, and logistics to move up the global value chain.
- *Dynamic innovation ecosystem*. Technology and innovation-based strategies for the agriculture, industry, and services sectors lay out a whole-of-government approach to establishing and strengthening the innovation ecosystem.
- *Enhanced connectivity*. Connectivity will be ramped up within the country and to the rest of the world to revitalize tourism, facilitate trade, and attract more investments.
- *Greater collaboration between local and national government*. The PDP seeks to bring local governments in as equal partners in the development agenda of the country. The Plan aims to optimize the sharing of responsibility between local and national

government to raise each LGU's capacity for delivering public services and raising local revenues.

The Philippine government will strengthen and facilitate PPPs, trade and investments, research and development, and technology transfer, while encouraging robust competition. PPPs are expected to upgrade the country's energy, logistics, transportation, telecommunications, and water infrastructure.

The government will build on game-changing reforms to the investment environment such as the amendments to the Foreign Investment Act, Retail Trade Liberalization Act, and Public Service Act, as well as the passage of the Corporate Recovery and Tax Incentives for Enterprises Law. Policies enabling open and competitive markets will complement these reforms.

The goal is to make it easier for companies to compete and innovate while upholding consumer protection. Businesses will be assured of lower transactions costs, a healthy regulatory environment, and protection from anti-competitive practices. Through the strategies identified in the Plan, the Philippines will be open for business as it seeks to regain its position among the most dynamic economies in Asia and the world.

B. Structure of this Guide

This Guide is structured to answer questions that a decision maker would generally consider in deciding whether to do business or to invest in the Philippines. These questions are addressed in the following Chapters:

Question	Chapter
When is a foreign entity deemed to be doing business in the Philippines?	Chapter 2
What businesses and investments can a foreign entity pursue in the Philippines?	Chapter 3
What are the business forms or investment vehicles that are available to foreign entities?	Chapter 4
What incentives are available to foreign entities that do business or invest in the Philippines?	Chapter 5
What are the key regulations that foreign entities must consider in doing business or investing the Philippines?	Chapter 6

Chapter 2: When is a foreign entity deemed to be doing business in the Philippines?

A. Relevance

Determining whether a foreign entity's activity constitutes "doing business in the Philippines" is important since:

- *License Requirement.* Foreign entities doing business in the Philippines are required to register and obtain a license to do business in the Philippines.

- *Right to Sue.* Foreign entities that do not obtain a license to do business in the Philippines do not have the right to sue in Philippine courts, although they are subject to suit in such courts [*Avon Insurance PLC v. Court of Appeals*, 278 SCRA 312 (1997)].

B. Acts that Constitute Doing Business

Under Republic Act No. 7042 or the Foreign Investments Act ("FIA"), the following activities constitute "doing business":

- soliciting orders;
- entering into service contracts;
- opening offices, whether called liaison offices or branches;
- appointing representatives or distributors domiciled in the Philippines who in any calendar year stay in the country for a period of at least 180 days;
- participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and
- any act that imply a continuity of commercial dealing or arrangements, and contemplate to that extent the acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain, or the purpose and object of the business organization.

C. Acts that Do Not Constitute Doing Business

Under the FIA and its Implementing Rules and Regulations ("IRR"), the following *do not* constitute "doing business":

- mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business and/or the exercise of rights as such investor;
- having a nominee director or officer to represent a foreign entity's interest in domestic corporations;
- appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account;
- publication of a general advertisement through any print or broadcast media;
- maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;
- consignment by a foreign entity of equipment with a domestic entity to be used in the processing of products for export;

- collecting information in the Philippines; and
- performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery that the foreign entity has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services.

According to case law, activities that do not create earnings or profits to the foreign entity do not constitute doing business in the Philippines [*Cargill, Inc. v. Intra Strata Assurance Corporation*, 615 SCRA 304 (2010)].

D. Online Transactions

While the FIA itself does not contemplate online transactions or websites, the Securities and Exchange Commission (the "SEC") recently issued an opinion regarding the treatment of online gaming websites vis-à-vis the concept of "doing business" (the "Opinion"). In the Opinion, the SEC held that the offering and selling of services, maintaining an e-wallet, accepting online payments in Philippine Pesos, and hiring independent contractors to market, advertise and sell its pre-paid cards evince an intention to continue commercial dealings in the Philippines. In ruling that the foreign corporation was "doing business" in the Philippines, the SEC stated that all of these activities are consummated in the Philippines, essentially because the customers who receive and pay for the gaming services are located in the Philippines. Further, the Opinion states that "active websites which generate sufficient business over the internet" are sufficient to establish personal jurisdiction.

E. Further Analysis

If a foreign entity is deemed to be doing business in the Philippines, the next analysis is whether the foreign entity can legally engage in such business (*i.e.* that the business is neither nationalized nor partially nationalized). This is discussed in Chapter 3. Assuming that the foreign entity can legally engage in its business in the Philippines, the next analysis concerns the business form or the investment vehicle to be used. This is discussed in Chapter 4.

Chapter 3: What businesses and investments can a foreign entity pursue in the Philippines?

A. The Foreign Investments Act

The FIA liberalized the Philippine economy by generally opening industries to foreign investment, while maintaining constitutional and statutory foreign ownership restrictions in certain industries.

Under the FIA, industry sectors may be classified into:

- *Nationalized Industries*, where no foreign ownership is allowed (*i.e.* ownership is limited to Philippine nationals);

- *Partially Nationalized Industries*, where foreign ownership is subject to prescribed ceilings (*i.e.* minimum ownership by Philippine nationals is required); and

- *Liberalized Industries*, where 100% foreign ownership is allowed (*i.e.* no ownership by Philippine nationals is required).

B. Foreign Investments Negative List

Nationalized Industries and Partially Nationalized Industries are listed in a Foreign Investments Negative List ("Negative List"). The Negative List consists of List A and List B.

List A lists industries where foreign equity is limited by mandate of the Constitution or by law. List B lists industries where foreign equity is limited to safeguard the following national interests: security, defense, health, morals, and protection of small- and medium-scale enterprises.

List A may be amended anytime to reflect changes in law. List B may be amended no more than once every two years. A new Negative List is prospective in application and should not affect foreign investments existing on the date of its publication.

Industries not listed in the Negative List may be deemed as Liberalized Industries, *i.e.* 100% foreign ownership is allowed.

C. The Twelfth Negative List

The Twelfth Negative List was signed into law in June 2022.

The following are some of the industries where foreign ownership is restricted (*i.e.* Nationalized Industries and Partially Nationalized Industries):

List A

1. **Nationalized Industries (No Foreign Equity)**

   - Mass media, except recording;
   - Practice of professions (*e.g.* engineering, medicine, accountancy, architecture, law, real estate service, respiratory therapy, psychology) (unless their country allows Filipinos to be admitted to the practice of these professions
   - Retail trade where paid-up capital is less than ₱25 Million;
   - Cooperatives;
   - Private security agencies;
   - Small-scale mining;
   - Utilization of marine resources;

- Ownership, operation, and management of cockpits;
- Manufacture, repair, stockpiling and/or distribution of biological, chemical, radiological, and nuclear weapons, and anti-personnel mines; and
- Manufacture of pyrotechnic devices.

2. Partially Nationalized Industries (Limited Foreign Equity)

Up to 25% Foreign Equity

- Private recruitment, whether for local or overseas employment; and
- Contracts for construction of defense-related structures

Up to 30% Foreign Equity

- Advertising.

Up to 40% Foreign Equity

- Procurement of infrastructure projects in accordance with Section 23.4.2.1(b), (c), and (e) of the Implementing Rules and Regulations (IRR) of RA. 9184;
- Exploration, development, and utilization of natural resources;
- Ownership of private lands;
- Operation and management of public utilities;
- Educational institutions (other than those established by religious groups and mission boards);
- Culture, production, milling, processing, trading except retailing, of rice and corn and acquiring rice corn and their by-products;
- Contracts for the supply of materials, goods, and commodities to state-owned and municipal corporations;
- Facility operator of an infrastructure or development facility requiring a public utility franchise;
- Operation of deep sea commercial fishing vessels;
- Adjustment companies
- Ownership of condominium units; and
- Private radio communication networks

List B

Up to forty percent (40%) foreign equity

- Manufacture, repair, storage, and /or distribution of products and /or ingredients requiring Philippine National Police (PNP) clearance:
  - i. Firearms (handguns to shotguns), parts of firearms and ammunition therefore, instruments or implements used or intended to be used in the manufacture of firearms;
  - ii. Gunpowder;
  - iii. Dynamite;
  - iv. Blasting supplies;
  - v. Ingredients used in making explosives:
    1. Chlorates of potassium and sodium;
    2. Nitrates of ammonium, potassium, sodium barium, copper (11), lead (11), calcium, and cuprite;
    3. Nitric acid;
    4. Nitrocellulose;

5. Perchlorates of ammonium, potassium and sodium;
6. Dinitrocellulose;
7. Glycerol;
8. Amorphousphosphorus;
9. Hydrogen peroxide;
10. Strontium nitrate powder; and
11. Toluene.

vi. Telescopic sights, sniper scope and other similar devices.

However, the manufacture or repair of these items may be authorized by the Chief of the PNP to non-Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance.

- Manufacture and distribution of dangerous drugs.
- Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks posed to public health and morals, except wellness centers.
- All forms of gambling, except those covered by investment agreements with PAGCOR.
- Micro and small domestic market enterprises with paid in equity capital of less than the equivalent of US$200,000.
- Micro and small domestic market enterprises: (i) that involve advanced technology as determined by the Department of Science and Technology (DOST); or (ii) are endorsed as startup or startup enablers by the lead host agencies, namely the Department of Trade and Industry, Department of Information and Communications Technology, pursuant to R.A. No. 11337, otherwise known as the "Innovative Startup Act;" or (iii) with a majority of their direct employees as Filipinos, but in no case shall the number of Filipino employees be less than fifteen (15), with paid-in equity capital of less than the equivalent of US$100,000.

D. Export Enterprises v. Domestic Market Enterprises

Export Enterprises are [i] manufacturing, processing, and service enterprises that export 60% or more of its output or [ii] traders that purchase products domestically and export 60% or more of such purchases.

Domestic Market Enterprises, meanwhile, are enterprises that [i] produce goods for or renders service to the domestic market entirely or [ii] exports less than 60% of its output

Foreign entities may own up to 100% of Export Enterprises, provided the Export Enterprise's products and services do not fall within the Negative List [Section 6, FIA].

Foreign entities may own up to 100% of Domestic Market Enterprises, unless foreign ownership is restricted under the Negative List [Section 7, FIA].

Note that a foreign entity may own more than 40% of a Domestic Market Enterprise only if the paid-in capital of the enterprise is at least US$200,000.00. This minimum is reduced to US$100,000.00 if (1) the domestic market enterprise is involved in advanced technology as determined by the Department of Science and Technology

("DOST"), or (2) the domestic market enterprise is endorsed as startup or startup enablers by the lead host agencies pursuant to Republic Act No. 11337, otherwise known as the Innovative Startup Act; or (3) a majority of its direct employees are Filipinos, (but in no case less than 15), provided that registered foreign enterprises employing foreign nationals and enjoying fiscal incentive shall implement an understudy or skills development program to ensure the transfer of technology or skills to Filipinos

E. Who is a Philippine National?

Defining a Philippine national, and conversely a foreign entity, is important for purposes of determining compliance with the foreign ownership restrictions discussed above. For instance, a business in an industry that allows up to 40% foreign equity must have at least a 60% Philippine ownership (*i.e.* at least 60% of the shares of the business must be owned by a Philippine national).

In *Gamboa v. Teves [652 SCRA 690 (2011)]*, the Supreme Court defined "capital" in Section 11, Article XII of the Constitution as referring only to the voting shares of a public utility.

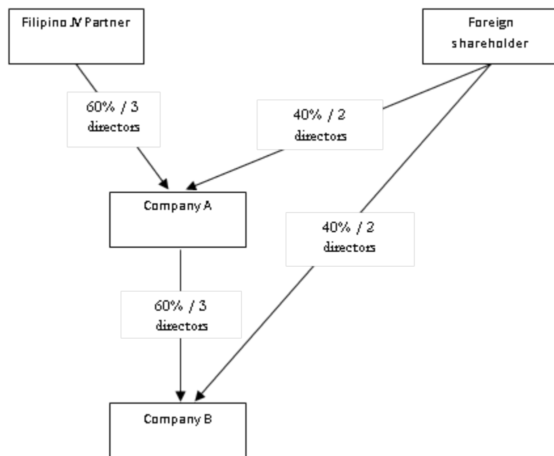
The following are considered "Philippine nationals" under the FIA:

- citizens of the Philippines;
- domestic partnerships or associations wholly owned by citizens of the Philippines;
- corporations organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines;
- corporations organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos; and
- trustees of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals.

F. Control Test and Grandfather Rule

Under the Control Test, the nationality of a corporation is determined according to the nationality of the controlling stockholders. Under this test, shares belonging to corporations at least 60% of the capital of which is owned by Philippine nationals shall be considered as Philippine nationals. If the percentage of Filipino ownership in the corporation is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality.

Applying the Control Test to the layered structure illustrated below, Company A and Company B are both 60% owned by Philippine nationals, and are thus deemed to be 100% Philippine nationals. Both companies are therefore qualified to participate in nationalized activities where the minimum Philippine ownership is 60%.



If the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality.

The Grandfather Rule is not applicable to the illustrated structure above since at least 60% of the shares in both Company A and Company B are owned by Philippine nationals.

In *Narra Nickel Mining v. Redmont [G.R. No. 195580 (2015)],* the Supreme Court, however, ruled that while the Control Test is the prevailing rule, the Grandfather Test should apply if there is no doubt as to who owns the "beneficial ownership" and "control" of the corporation. The Supreme Court stated that although corporate layering is allowed, if it is used to circumvent the Constitution and pertinent laws, then the Grandfather Test should be used.

In *Roy III v. Herbosa [G.R. No. 207246, (2016)],* the Supreme Court upheld Memorandum Circular No. 8 issued by the SEC. The Memorandum Circular provides that for purposes of determining compliance with the minimum Philippine ownership, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors. The Supreme Court stated that this rule is consistent with the decision in *Gamboa v. Teves.*

G. Anti-Dummy Law

It is important to distinguish between [i] compliance with laws on foreign ownership restrictions for companies in Nationalized Industries and Partially Nationalized Industries (*i.e.* the subject matter of the discussion above) and [ii] compliance with laws restricting foreign control over the same companies, *e.g.* Commonwealth Act No. 108 or the Anti-Dummy Law ("ADL").

The following are the key features of the ADL:

- *Limitation on Number of Foreign Board Directors.* For corporations engaged in Partially Nationalized Industries, the ADL limits the number of foreign directors to the proportion of their allowable participation in the corporation's equity capital. For instance, a corporation which is subject to a 40% foreign ownership ceiling and which has a five-member Board can only have a maximum of two foreign nationals in the Board. A corporation engaged in a Nationalized Industry cannot have foreign Directors.

- *Prohibition on Foreign Management and Operational Control.* The ADL prohibits foreign nationals from intervening in the management, operation, administration, or control of

companies engaged in nationalized and partially nationalized activities

- *Prohibition against Circumvention.* The ADL prohibits schemes and devices designed to circumvent foreign ownership restrictions.

- *Prohibition on Capital Simulation.* The ADL prohibits falsely simulating the existence of the minimum required ownership by Philippine nationals.

- *Lack of Financial Capacity as Indicia of Violation.* Under the ADL, the fact that a person had, at the time he acquired his holdings in the corporation under inquiry, no real or personal property, credit, or other assets of value, which shall at least be equivalent to said holdings, is evidence of a violation of the ADL.

- *Penalties.* The penalties for violation of the ADL are: [i] imprisonment; [ii] fine; and/or [iii] forfeiture of the right, franchise, privilege, property, or business enjoyed or acquired in violation of the provisions of the Anti-Dummy Law.

- *Whistle-Blower Immunity.* A dummy who shall voluntarily take the initiative of reporting to the proper authorizes any violation of the ADL is entitled to a reward and shall be exempted from the penal liabilities under the law.

- *Proof Required for Conviction*. Being a criminal statute, the quantum of proof for a conviction under the ADL is proof beyond reasonable doubt.

H. Public Service Act

In 2022, the Public Service Act was amended by R.A. No. 11659 (the "PSA"), which took effect on 9 April 2022. As one of its salient points, the new law drew a distinction between public utilities and public services.

Public utilities for which the nationality restriction in the Constitution applies were limited to the following industries:

1. distribution of electricity;
2. transmission of electricity;
3. petroleum and petroleum products pipeline transmission systems;
4. water pipelines distribution systems and wastewater pipeline systems;
5. seaports; and
6. public utility vehicles.

Therefore, unless otherwise limited by any other law or regulation, foreign investments in other public services that do not fall within the scope of public utilities are no longer restricted as such.

R.A. No. 11659, classified telecommunications as "critical infrastructure" and removed its classification as a public utility. As critical infrastructure, the 40% foreign ownership limitation on public utilities does not apply to companies engaged in the telecommunications industry, subject to reciprocity of investment of the country of origin of the foreign investors, to Philippine nationals. In the absence of reciprocity, foreign nationals of such country are only allowed to hold up to fifty percent (50%) of the capital of critical infrastructure. The Implementing Rules and Regulations of the

PSA ("PSA IRR"), which became effective on 4 April 2023, provides that reciprocity is satisfied if (i) Philippine nationals are allowed to own more 50% of capital stock in any activity related to agriculture, industry, and services in the home country of the foreign national; or (ii) if the home country of the foreign national allows Philippine nationals to invest the same value of capital in any economic activity related to agriculture, industry, and services. Further, the PSA IRR provides that foreign governments or foreign state-owned enterprises may maintain such investment and capital ownership in the capital of critical infrastructure, but are prohibited from investing additional capital therein after the effectivity of the PSA.

Chapter 4: What are the business forms or investment vehicles that are available to foreign entities?

Foreign entities intending to do business or invest in the Philippines may:

- Directly invest in the formation of a new business entity (*i.e.* Foreign Direct Investment ("FDI") – New Entity), in which case the foreign entity may establish any of the following:
    - Domestic Subsidiary
    - Branch Office
    - Representative Office
    - Regional Headquarters
    - Regional Operating Headquarters

- Directly invest in an existing business entity (*i.e.* FDI – Existing Entity), in which case the foreign entity may pursue any of the following vis-à-vis an existing Philippine entity:
    - Establishment of a Joint Venture
    - Purchase of Shares (*e.g.* private equity or venture capital deals)
    - Merger or Consolidation
    - Technology Transfer Arrangement
    - Management Contract

- Make portfolio investments in Philippine public equity and debt capital markets.

The following section summarizes the most relevant fiscal and non-fiscal

considerations for each of the foregoing business forms and investment vehicles.

Note that each business form or investment vehicle has its own requirements, characteristics, and features that may be viewed as an advantage or a disadvantage, depending on the investor's business goals and growth plan.

A. Options for FDI – New Entity

1. Domestic Subsidiary

a. In General

A Domestic Subsidiary is a corporation which, while incorporated and existing under Philippine law, is either wholly-owned or at least majority-owned by a foreign "parent" corporation. It is considered a domestic or Philippine corporation since it is incorporated under the laws of the Philippines, but it is also considered foreign since its shares of stock are wholly- or majority-owned by a foreign corporation.
Vis-à-vis a Branch Office, a Domestic Subsidiary has the advantage of having a separate and distinct juridical personality from its parent foreign corporation, such that the parent's liability to the subsidiary's creditors is limited to the parent's shareholdings in the subsidiary. The parent foreign corporation is thus protected from the liabilities of the subsidiary in excess of its shareholdings in the subsidiary.

b. Scope of Activities

The powers of a Domestic Subsidiary are defined in its charter documents, *i.e.* its Articles of Incorporation and By-Laws.

Note that a Domestic Subsidiary cannot be given the power to engage in activities reserved for Philippine nationals or to entities that are required to be majority-owned by Philippine nationals. For instance, a Domestic Subsidiary cannot have the power to own private land.

c. Exercise of Powers

The powers of a Domestic Subsidiary are exercised by its Board of Directors, which shall consist of not more than 15 Directors. Each Director must own and have registered in his name at least one share of the Domestic Subsidiary.

d. Minimum Capital Requirement

Pursuant to the FIA, a Domestic Subsidiary that qualifies as a Domestic Market Enterprise (*i.e.* an enterprise that produces goods or renders service to the domestic market entirely or exports less than 60% of its output) must have a paid-up capital of at least US$200,000.00. This amount is reduced to US$100,000.00 if the business involves the use of advanced technology, as determined by the DOST, it is endorsed as a startup or startup enabler under the Innovative Startup Act or if the majority of its direct employees (but not less than 15) are Filipino.

The US$200,000.00 minimum capital requirement does not apply to a Domestic Subsidiary that qualifies as an Export Enterprise (*i.e.* an enterprise that exports 60% or more of its output).

Note that some industries have higher minimum capital requirements (*e.g.* large-scale mining).

e. Taxes and Fees on Establishment

Filing Fee. 1/5 of 1% of the authorized capital stock or the subscription price of the subscribed capital stock of the new entity, whichever is higher, but not less than ₱2,000.00.

Legal Research Fee. 1% of the Filing Fee, but not less than ₱10.00.

Documentary Stamp Tax. ₱2.00 on each ₱200.00 par value of shares issued or fractional part thereof.

Applications under the FIA. Additional ₱3,000.00.

Other Fees. Minimal amount for other incorporation fees and post-incorporation government permits such as Mayor's Permit and Bureau of Internal Revenue ("BIR") registrations.

f. Taxes on Operations

Corporate Income Tax. A Domestic Subsidiary's taxable income from all sources within and without the Philippines is generally subject to a 25% Income Tax. If the Domestic Subsidiary has net taxable income of not exceeding ₱5 million and total assets not exceeding ₱100 million, excluding land on which the business' office, plant, and equipment are situated, its taxable income shall be subject to 20% Income Tax.

Minimum Corporate Income Tax ("MCIT"). A Domestic Subsidiary's gross income is subject to a 2% MCIT beginning on the subsidiary's fourth taxable year after commencing business operations, where the MCIT is greater than the subsidiary's Income Tax (*i.e.* 25% of taxable income). The excess of the MCIT over Income Tax may be carried forward and credited against Income Tax for the three immediately succeeding taxable years. The Secretary of Finance may suspend the imposition of the MCIT on corporations which suffer losses on account of prolonged labor disputes, force majeure, or legitimate business reverses.

Final Tax on Passive Income and Capital Gains. A Final Tax at the following rates is imposed on the following:

Interest income from deposits and deposit substitutes	20%
Interest income from foreign currency deposits	15%
Royalties	20%
Capital gains from sale of shares not listed or traded on the Philippine Stock Exchange ("PSE")	15%
Dividends from another domestic corporation	0%

Value-Added Tax ("VAT"). VAT is a business tax imposed on and collected from any person who, in the course of trade or business, sells, barters, exchanges, or leases goods or properties, renders services, or imports goods. VAT is an indirect tax and may thus be passed on to the buyer or end consumer. The VAT rate of 12% is based on gross sales or receipts.

Subject to certain conditions, export sales of goods and services are subject to VAT at 0%.

g. Taxes on Capital and Profit Repatriation

Remittance of Dividends. Dividends to the parent foreign corporation are generally taxed at 25%. This may be reduced to 15% where the parent's domicile either [i] grants a tax sparing credit of 10% or [ii] does not impose tax on dividends received by the parent. The tax may also be reduced pursuant to an applicable tax treaty.

Capital Repatriation. A return of capital is not considered as taxable income and is therefore not subject to income tax.

2. Branch Office

a. In General

A Branch Office is an extension of the foreign entity's juridical personality in the Philippines. It is established by obtaining a License to Transact Business from the Securities and Exchange Commission ("SEC") [Section 140, Revised Corporation Code].

Unlike a Domestic Subsidiary, a Branch Office does not have a juridical personality separate and distinct from its parent company. A Branch Office may, therefore, conclude contracts with local entities in its parent's name and engage in revenue-generating activities in the same manner as its parent. The parent company, however, may be held fully responsible for the liabilities of its Branch Office.

b. Scope of Activities

A Branch Office may engage in the same activities as its parent company.

Note that a Branch Office cannot engage in activities reserved for Philippine nationals or to entities that require minimum ownership by Philippine nationals. For instance, a Branch Office cannot own private land.

c. Minimum Capital Requirement

A Branch Office is required to have a minimum capital of US$200,000.00. This amount may be reduced to US$100,000.00 if the business involves the use of advanced technology, as determined by the DOST, it is endorsed as a startup or startup enabler under the Innovative Startup Act or if the majority of its direct employees (but not less than 15) are Filipino.

d. Required Deposit of Securities

i. Initial Deposit

Within 60 days from the issuance of its License to Transact Business, a Branch Office is required to deposit with the SEC securities with an actual market value of at least ₱500,000.00. Acceptable securities consist of:

- bonds and other evidence of indebtedness by the Republic of the Philippines, its political subdivisions and instrumentalities, and state-owned enterprises;
- shares of stock of corporations registered with the Board of Investments ("BOI");
- shares of stock of domestic corporations listed in the stock exchange;
- shares of stock in domestic insurance companies and banks; and
- any combination of the foregoing.

This deposit is maintained for the benefit of satisfying claims by creditors of the Branch

Office in the Philippines [Section 126, Corporation Code].

ii. Additional Deposit

Within six months after each fiscal year, the SEC will require a Branch Office to deposit additional securities with an actual market value equivalent to 2% of the amount by which the Branch Office's gross income for the previous fiscal year exceeds ₱10 Million.

The SEC shall also require the deposit of additional securities if the actual market value of the Branch Office's securities on deposit has decreased by at least 10% vis-à-vis their market value at the time such securities were deposited.

The SEC may, at its discretion, release part of the additional securities deposited if the gross income of the Branch Office has decreased or if the actual market value of the total securities on deposit has increased by more than 10% vis-à-vis their market value at the time such securities were deposited.

The SEC may allow the Branch Office to substitute the securities it has on deposit provided the Branch Office is solvent.

The Branch Office shall be entitled to collect the interest or dividends on the securities deposited with the SEC. The securities shall be returned upon cessation of the Branch Office's business in the Philippines.

e. Taxes and Fees on Establishment

Filing Fee. 1% of the actual inward remittance to the Branch Office converted into Philippine Peso, but not less than ₱ 3,000.00.

Legal Research Fee. 1% of the Filing Fee, but not less than ₱10.00.

Applications under the FIA. Additional ₱3,000.00.

Other Fees. Minimal amount for other fees and government permits such as Mayor's Permit and BIR registrations.

f. Taxes on Operations

Corporate Income Tax. A Branch Office's taxable income from all sources within the Philippines is subject to a 25% Income Tax.

MCIT. A Branch Office is also subject to the 2% MCIT imposed on Domestic Subsidiaries (see discussion above).

Final Tax on Passive Income and Capital Gains. A Branch Office is also subject to the Final Tax on certain passive incomes and capital gains imposed on Domestic Subsidiaries (see discussion above).

VAT. A Branch Office is also subject to the VAT imposed on Domestic Subsidiaries (see discussion above).

g. Taxes on Capital and Profit Repatriation

Tax on Branch Profit Remittances. The remittance of profits made by a Branch Office to its head office is subject to a tax of 15%, which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which are registered with the Philippine Economic Zone Authority).

Dividends, interest, capital gains, and other income received by a Branch Office from all sources within the Philippines shall not be treated as branch profits unless the same is effectively connected with the conduct of its trade or business in the Philippines. Branch Profit Remittance Tax is not imposed on such unrelated income.

The tax may be reduced pursuant to an applicable tax treaty

Capital Repatriation. A return of capital is not considered as taxable income and is therefore not subject to income tax.

3. Representative Office

a. In General

A Representative Office is a limited purpose office of a foreign corporation in the Philippines. It cannot derive income from engaging in business in the Philippines and it must be fully subsidized by the foreign corporation that it represents.

b. Scope of Activities

The activities of a Representative Office are limited to the promotion and dissemination of information about the products and/or services of the foreign corporation that it represents. Although it can engage in products and/or services promotion, it cannot conclude contracts on behalf of the foreign corporation that it represents. Such contracts must be concluded between the foreign corporation and the relevant counterparty.

A Representative Office may perform the following activities:

- disseminate foreign market information;
- promote the export of Philippine products, specially non-traditional products;
- act as a message center or a communication center between interested parties and its head office;
- promote products presently being distributed in the Philippines;
- render, assist, and give technical know-how and training to existing and future customers of its foreign principal's products;
- provide and facilitate better communication and contact between its head office and affiliated companies on the one hand and present and future customers on the other;
- inform potential customers of price quotations of the head office and affiliated companies;
- conduct surveys and studies on the market, economic, and financial conditions in the Philippines; and
- attend to the needs of end-users of its foreign principal’s products in the Philippines, advise them on the proper care and maintenance of their equipment, and communicate to its head office problems that call for consultations.

c. Minimum Capital Requirement

A minimum amount of US$30,000.00 must be remitted initially to a Representative Office.

d. Taxes and Fees on Establishment

Filing Fee. 1/10 of 1% of the actual inward remittance to the Representative Office converted into Philippine Peso, but not less than ₱2,000.00.

Legal Research Fee. 1% of the Filing Fee, but not less than ₱10.00.

Other Fees. Minimal amount for other fees and government permits such as Mayor's Permit and BIR registrations.

e. Taxes on Operations

A Representative Office does not derive income from its operations and is therefore not subject to income tax.

4. Regional Headquarters (“RHQ”)

a. In General

An RHQ is an administrative branch of a multinational company established in the Philippines which acts as a supervision, communications, and coordination center for the multinational company’s subsidiaries, branches, and affiliates in the Asia-Pacific region and in other foreign markets. It cannot solicit or do business or earn income in the Philippines and all its expenses are financed by its principal multinational company.

b. Scope of Activities

An RHQ is only allowed to perform supervision, communications, and coordination activities and only with respect to its principal’s subsidiaries, branches, and affiliates. It cannot solicit or do business or earn income in the Philippines, *i.e.* it can only operate as a cost center.

“Supervision” means superintending, overseeing and guiding the activities of its principal’s subsidiaries, branches, and affiliates to conform to approved policies and objectives, without participating directly in the execution of the work or activities necessary to implement said policies and objectives.

“Communications” means transmitting, disseminating and receiving information, messages and instructions from and to its principal’s subsidiaries, branches, and affiliates.

“Coordination” means adjusting, arranging or harmonizing the policies and workings of its principal’s subsidiaries, branches, and affiliates for their harmonious and efficient functioning.

Unlike a Domestic Subsidiary and a Branch Office, an RHQ is not allowed to solicit or do business or earn income in the Philippines.

Unlike a Representative Office, an RHQ is not allowed to deal with the clients of its principal, even for purposes of products and/or services promotion.

An RHQ is not allowed to participate in the management of its principal’s Domestic Subsidiary, Branch Office, or Representative Office in the Philippines, if any.

c. Minimum Capital Requirement

A minimum amount of US$50,000.00 must be remitted initially to an RHQ.

d. Required Annual Capital Infusion

The RHQ's principal is required to finance all the expenses of the RHQ. Thus, the principal should remit into the Philippines the amount necessary to cover the operations of its RHQ. Such remittance shall not be less than US$50,000.00 for any given year.

All funds of an RHQ shall be utilized for salaries, rental of offices, transportation and communication expenses, and other costs necessary for the operation and maintenance of the RHQ.

e. Taxes and Fees on Establishment

SEC Filing Fee. ₱5,000.00 upon filing of the application for registration and ₱2,000.00 upon issuance of the Certificate of Registration.

Legal Research Fee. 1% of the Filing Fee, but not less than Php10.00.

BOI Filing Fee. ₱4,545.00.

Other Fees. Minimal amount for other fees and government permits such as Mayor's Permit and BIR registrations.

f. Taxes on Operations

Exempt from Income Tax. An RHQ is not subject to income tax, provided it does not earn or derive income from the Philippines and merely act as an administrative center for its principal's subsidiaries, branches, and affiliates.

Exempt from VAT. An RHQ is exempted from VAT and its purchase and lease of goods and services is subject to 0% VAT.

Exempt from Local Taxes. An RHQ is exempt from local taxes, fees and charges, except for real property tax on land improvements and equipment.

Tax and Duty Free Importation. An RHQ is entitled to tax and duty free importation of training materials and equipment.

5. Regional Operating Headquarters ("ROHQ")

a. In General

An ROHQ is an operating headquarters of a multinational company established in the Philippines which, unlike an RHQ, is allowed to derive income in the Philippines. Such income, however, may only be derived from performing qualifying services to its principal's subsidiaries, branches, and affiliates in the Asia-Pacific region and in other foreign markets

b. Scope of Activities

An ROHQ may only perform [i] qualifying services [ii] vis-à-vis its principal's subsidiaries, branches, and affiliates.

An ROHQ may provide the following qualifying services:

- general administration and planning;
- business planning and coordination;
- sourcing and procurement of raw materials and components;
- corporate finance advisory services;
- marketing control and sales promotion;
- training and personnel management;
- logistic services;
- research and development services and product development;

- technical support and communications; and
- business development.

An ROHQ is prohibited from offering qualifying services to entities other than its principal's subsidiaries, branches, and affiliates, as declared in its registration with the SEC.

Like an RHQ, an ROHQ is not allowed [i] to solicit or do business or earn income in the Philippines (except if derived from the above); [ii] to deal with the clients of its principal, even for purposes of products and/or services promotion; and [iii] to participate in the management of its principal's Domestic Subsidiary, Branch Office, or Representative Office in the Philippines, if any.

c. Minimum Capital Requirement

A minimum amount of US$200,000.00 must be remitted initially to an ROHQ.

d. Taxes and Fees on Establishment

Filing Fee. 1% of the actual inward remittance to the ROHQ converted into Philippine Peso, but not less than 1% of the Peso equivalent of US$200,000.00.

Legal Research Fee. 1% of the Filing Fee, but not less than Php10.00.

Other Fees. Minimal amount for other fees and government permits such as Mayor's Permit and BIR registrations.

e. Taxes on Operations

Regular Income Tax. An ROHQ's taxable income from all sources within the Philippines is subject to a 25% Income Tax or a 2% Minimum Corporate Income Tax Rate.

VAT. An ROHQ is subject to the VAT imposed on Domestic Subsidiaries (see discussion above).

Exempt from Local Taxes. An ROHQ is exempt from local taxes, fees and charges, except for real property tax on land improvements and equipment.

Tax and Duty Free Importation. An ROHQ is entitled to tax and duty free importation of training materials and equipment.

f. Taxes on Capital and Profit Repatriation

Tax on Branch Profit Remittances. An ROHQ is subject to the 15% Tax on Branch Profit Remittances imposed on a Branch Office (see discussion above).

B. Options for FDI – Existing Entity

1. Joint Venture

a. In General

A foreign corporation can enter into a joint venture with an existing domestic corporation by forming a new domestic corporation (*i.e.* the "Joint Venture Corporation"). A joint venture is a cooperative arrangement of corporations, whether foreign or domestic, to jointly perform a single, specific undertaking or project with each of the partners contributing to the performance.

b. Scope of Activities

A Joint Venture Corporation may engage in any business activities subject to the foreign ownership ceilings prescribed in the

Negative List. For instance, a Joint Venture Corporation which has a foreign equity component of more than 40% cannot own private land.

c. Minimum Capital Requirement

If foreign ownership in the Joint Venture Corporation does not exceed 40%, the only requirement is for the Joint Venture Corporation to have a paid-in capital of at least ₱5,000.00.

If foreign ownership exceeds 40% and the Joint Venture Corporation qualifies as a Domestic Market Enterprise (*i.e.* an enterprise that produces goods or renders service to the domestic market entirely or exports less than 60% of its output) the Joint Venture Corporation must have a paid-up capital of at least US$200,000.00. This amount is reduced to US$100,000.00 if the business involves the use of advanced technology, as determined by the DOST, or if the business directly employs at least 50 employees.

The US$200,000.00 minimum capital requirement does not apply to a Joint Venture Corporation that qualifies as an Export Enterprise (*i.e.* an enterprise that exports 60% or more of its output).

Note that some industries have higher minimum capital requirements (*e.g.* large-scale mining).

d. Taxes and Fees on Establishment

The establishment of a Joint Venture Corporation is subject to the same taxes and fees imposed on the establishment of a Domestic Subsidiary (see discussion above), except that if foreign ownership in the Joint Venture Corporation does not exceed 40%, the FIA fee of ₱2,000.00 becomes inapplicable.

e. Taxes on Operations

The operations of a Joint Venture Corporation is subject to the same taxes imposed on a Domestic Subsidiary (see discussion above), except that if foreign ownership in the Joint Venture Corporation does not exceed 40% (*i.e.* the corporation is qualified to own land), the Joint Venture Corporation becomes subject to a final tax of 6% on the gross selling price or fair market value, whichever is higher, realized by the Joint Venture Corporation in selling or otherwise disposing of lands and or buildings treated as capital assets.

f. Taxes on Capital and Profit Repatriation

Capital and profits repatriated by a Joint Venture Corporation to its foreign shareholders is subject to the same taxes imposed on dividends remitted by a Domestic Subsidiary to its parent foreign corporation (see discussion above).

g. Other regulatory requirements

Republic Act No. 16067, the Philippine Competition Act (the "PCA") imposes a pre-acquisition notification requirement on the creation of joint ventures that breach the thresholds in the PCA. Consequently, prior approval of the Philippine Competition Commission (the "PCC") may be required prior to consummating the joint venture if the thresholds are met. Notification to the PCC may also be required upon the exit of one of the joint venture partners if the thresholds in the PCC are met. *See* Section I of Chapter 6 below.

2. Purchase of Shares

a. In General

A foreign corporation may invest in the Philippines by acquiring shares in an existing domestic corporation. In doing so, the foreign corporation may take advantage of the goodwill already generated by the domestic corporation as a going concern.

b. Scope of Activities

The domestic corporation may continue pursuing its activities and exercising its powers as defined in its charter documents.

Note that the amount of shares that a foreign corporation can purchase in an existing domestic corporation is subject to the foreign ownership ceilings prescribed in the Negative List.

c. Taxes on Acquisition of Shares

Capital Gains – Unlisted Corporation. The seller of shares of a corporation not listed or traded on the PSE is subject to capital gains tax of 15%.

Capital Gains – Listed Corporation. The seller of shares of a corporation listed in the PSE is subject to a final stock transfer tax equivalent to 6/10th of 1% of the value of the stock sold, regardless of any gain or loss.

Documentary Stamp Tax ("DST") – Primary Issuance. Shares purchased pursuant to a primary or original issuance is subject to 1% DST computed based on the purchased shares' par value.

DST – Secondary Issuance. Shares purchased pursuant to a secondary issuance is subject to 0.75% DST computed based on the purchased shares' par value.

Tax-Free Exchange. Where a person exchanges his property for stock in a corporation resulting in that person alone, or together with others, not exceeding four, gaining or maintaining control of the corporation, the transaction is considered a tax-free exchange.

d. Taxes on Dividends

Dividends to foreign shareholders is subject to the same taxes imposed on dividends remitted by a Domestic Subsidiary to its parent foreign corporation (see discussion above).

e. Other regulatory requirements

The PCA imposes a pre-acquisition notification requirement on the acquisition of voting shares that breach the thresholds in the PCA. Consequently, prior approval of the PCC may be required prior to consummating the transaction if the thresholds are met. *See* Section I of Chapter 6 below.

3. Merger or Consolidation

a. In General

A Domestic Subsidiary can merge or consolidate with an existing domestic corporation.

A merger occurs when one or more existing corporations are absorbed by another corporation which survives and continues the combined business. Consolidation occurs when two or more existing corporations consolidate or join their

businesses to form a new, single, consolidated corporation.

The imposes a notification requirement on certain transactions that breach the thresholds in the PCA. Consequently, prior approval of the PCC may be required prior to consummating the merger or consolidation if the thresholds are met. *See* Section I of Chapter 6 below.

b. Scope of Activities

A Merged or Consolidated Corporation may engage in any business activities subject to the foreign ownership ceilings prescribed in the Negative List. For instance, a Merged or Consolidated Corporation which has a foreign equity component of more than 40% cannot own private land.

c. Minimum Capital Requirement

Since the entities that will merge or consolidate are both pre-existing, no minimum capital requirement is required.

This is subject to minimum capital requirements in some industries (*e.g.* large-scale mining).

d. Taxes upon Merger or Consolidation

Filing Fee. 1/5 of 1% of the equity of the absorbed corporation/s, but not less than ₱3,000.00.

For mergers, in case of simultaneous filing of an application for an Increase of the Authorized Capital Stock of the surviving corporation, the filing fee shall be the higher of: [i] the filing fee for increase in capital stock (*i.e.* 1/5 of 1% of the increase in capital stock or the subscription price of the subscribed capital stock whichever is higher, but not less than ₱3,000.00) or [ii] the filing fee for merger (*i.e.* 1/5 of 1% of the equity of the absorbed corporation/s, but not less than ₱3,000.00).

For consolidations, where the total equity of the constituent corporations is different from the authorized capital stock of the consolidated corporation, the filing fee shall be the higher of: [i] 1/5 of 1% of the total equity of the constituent corporations or [ii] the filing fee for Articles of Incorporation (1/5 of 1% of the authorized capital stock or the subscription price of the subscribed capital stock whichever is higher, but not less than ₱2,000.00).

Legal Research Fee. 1% of the Filing Fee, but not less than ₱10.00.

DST – Primary Issuance. Shares issued pursuant to a primary or original issuance, if any, is subject to 1% DST computed based on the issued shares' par value.

DST – Secondary Issuance. Shares transferred pursuant to a secondary issuance, if any, is subject to 0. 75% DST computed based on the transferred shares' par value.

Other Fees. Minimal amount for other incorporation fees and post-incorporation government permits such as Mayor's Permit and BIR registrations.

Non-Recognition of Gains and Losses. The Philippine Tax Code generally recognizes the entire amount of gain or loss upon the sale or exchange of any property. However, in a merger or consolidation, no gain or loss is recognized, provided the constituent corporation exchanges property, stocks or other securities solely for stocks or other securities of the

surviving or consolidated corporation. If the exchange contemplates some payment in money or delivery of other property, no gain or loss will be recognized, provided the money and/or other property is distributed to the stockholders of the constituent corporations pursuant to the merger or consolidation plan.

Exempt from Securities Registration. The transfer or exchange of shares of stock or other securities pursuant to a plan of merger or consolidation is exempt from registration under Philippine securities law.

e. Taxes on Operations

The operations of a Merged or Consolidated Corporation are subject to the same taxes imposed on a Joint Venture Corporation (see discussion above).

f. Taxes on Capital and Profit Repatriation

Capital and profits repatriated by a Merged or Consolidated Corporation to its foreign shareholders is subject to the same taxes imposed on dividends remitted by a Domestic Subsidiary to its parent foreign corporation (see discussion above).

4. Technology Transfer Arrangement

a. In General

A foreign corporation may enter into a Technology Transfer Arrangement with a domestic entity. Technology Transfer Arrangements refer to contracts or agreements involving any or all of the following:

- transfer of systematic knowledge for the manufacture of a product or the application of a process;
- rendering of a service, including management contracts; and
- transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software, except computer software developed for mass market..

Provisions of Technology Transfer Contracts: [i] should not have adverse effects on competition and trade; [ii] must provide for effective quality control by the licensor over the product or service covered; and [iii] must allow continued access to improvements in the transferred technology.

Technology Transfer Agreements are no longer required to be registered with the Documentation, Information, and Technology Transfer Bureau if they comply with the provisions of and/or include the stipulations/conditions required under Sections 87 and 88 of the Intellectual Property Code ("IP Code"). Otherwise, the agreements will be considered unenforceable. Non-complying agreements, however, may be allowed registration under exceptional circumstances provided in Section 91 of the IP Code.

b. Fees on Registration

Technology Transfer Arrangements required to be registered with the Intellectual Property Office ("IPO") are subject to the following:

Filing Fee. ₱2,500.00 plus 1% legal research fund paid to the IPO.

Registration Fee. ₱2,500.00 plus 1% legal research fund.

c. Taxes on Royalty Payments

Income Tax. Royalty payments received pursuant to a Technology Transfer Arrangement by a foreign corporation not doing business in the Philippines are subject to a final withholding income tax at 25%.

VAT. Royalty payments are subject to 12% VAT.

5. Management Contract

a. In General

A foreign corporation may enter into a management contract with a domestic corporation. Under a management contract, the foreign corporation shall undertake to manage all or substantially all of the business of a domestic corporation. It may be entered into for a period of only five years for any one term.

Domestic corporations engaged in Nationalized Industries or Partially Nationalized Industries cannot enter into a management contract with a foreign corporation.

b. Taxes

Income Tax. The foreign corporation's income from its management contract is subject to 25% income tax.

Chapter 5: What incentives are available to foreign entities that do business or invest in the Philippines?

Foreign investors may choose to register with an Investment Promotion Agency ("**IPA**") and avail of the relevant incentives under the Corporate Recovery and Tax Incentives for Enterprises Act ("**CREATE Act**") and other related laws.

The CREATE Act attempts to rationalize and consolidate the grant of fiscal and non-fiscal incentives to foreign investors.

The incentives granted to foreign investors would vary depending on their location and the classification of the industry to which they belong (i.e., whether the enterprise falls under an industry classified as Tier I, Tier II, or Tier III in the Strategic Investment Priorities Plan or the "**SIPP**").

For Domestic Market Enterprises, a usual incentive package would include:

1. Income tax holiday ("**ITH**");
2. Enhanced deductions for purposes of calculating the income tax ("**ED**") after ITH;
3. Duty exemptions on the importation of capital equipment, raw materials, spare parts, or accessories that are directly and exclusive used in the registered project or activity of the enterprise ("**Duty Exemption**"); and
4. Exemption from local taxes, such as local business taxes.

Additionally, Export Enterprises enjoy a special corporate income tax ("**SCIT**") for 10 years after the end of the ITH. The SCIT amounts to 5% of the gross income of the Export Enterprise.

The incentives for Domestic Market Enterprises under the CREATE Act are summarized in the table below:

	Tier I	Tier II	Tier III
National Capital Region ("**NCR**")	• ITH for four (4) years • ED for five (5) years • Duty Exemption	• ITH for five (5) years • ED for five (5) years • Duty Exemption	• ITH for six (6) years • ED for five (5) years • Duty Exemption
Metropolitan areas or areas contiguous and adjacent to NCR	• ITH for five (5) years • ED for five (5) years • Duty Exemption	• ITH for six (6) years • ED for five (5) years • Duty Exemption	• ITH for seven (7) years • ED for five (5) years • Duty Exemption
All other areas	• ITH for six (6) years • ED for five (5) years • Duty Exemption	• ITH for seven (7) years • ED for five (5) years • Duty Exemption	• ITH for seven (7) years • ED for five (5) years • Duty Exemption

Meanwhile, Export Enterprises enjoy the following incentives under the CREATE Act:

	Tier I	Tier II	Tier III
NCR	• ITH for four (4) years • SCIT for 10 years • ED for five (5) years • Duty Exemption	• ITH for five (5) years • SCIT for 10 years • ED for five (5) years • Duty Exemption	• ITH for six (6) years • SCIT for 10 years • ED for five (5) years • Duty Exemption
Metropolitan areas or areas contiguous and adjacent to NCR	• ITH for five (5) years • SCIT for 10 years • ED for five (5) years • Duty Exemption	• ITH for six (6) years • SCIT for 10 years • ED for five (5) years • Duty Exemption	• ITH for seven (7) years • SCIT for 10 years • ED for five (5) years • Duty Exemption
All other areas	• ITH for six (6) years • SCIT for 10 years • ED for five (5) years • Duty Exemption	• ITH for seven (7) years • SCIT for 10 years • ED for five (5) years • Duty Exemption	• ITH for seven (7) years • SCIT for 10 years • ED for five (5) years • Duty Exemption

In addition to these tax incentives, some IPAs also offer non-tax incentives, such as "one-stop shops" that seek to rationalize the compliance of registered business enterprises to the licenses, permits, and clearances.

1. **2022 SIPP**

The 2022 SIPP, which was approved on 24 May 2022, is the current IPP.

Listed below are some notable inclusions in the 2022 IPP:

Tier I

- Essential goods and services related to COVID-19;

- Investment in activities intended to generate employment opportunities outside of congested urban areas;
- Qualified manufacturing activities, including agro-processing;
- Agriculture, fishery, and forestry;
- Strategic services, such as the design of integrated circuits, creative industries and knowledge-based services (including information technology and business process management or "IT-BPM"), and telecommunications;
- Healthcare and disaster risk reduction management services;
- Mass housing
- Infrastructure and logistics;
- Innovation drivers;
- Inclusive business models that provide business opportunities to micro and small enterprises as part of their value chains;
- Environment or climate change-related projects;
- Energy;
- Production and manufacture of export products;
- Services exports;
- Activities in support of exporters; and
- Those covered by special laws.

Tier II

- Green ecosystems, such as electric vehicles, renewable energy, and energy storage technologies;
- Health-related activities, such as those endorsed by the Department of Health, Department of Science and Technology, or other similar agencies;
- Defense-related activities, such as those endorsed by the Department of National Defense, Armed Forces of the Philippines, or National Security Council;
- Industrial value-chain gaps, such as those that address value chain gaps;
- Food security-related activities

Tier III

- Research and development and activities adopting advanced digital production technologies of the fourth industrial revolution, such as robotics, artificial intelligence, data analytics, biotechnology, and digital transformative technologies (e.g., cloud computing, data centers, and digital infrastructure);
- Highly technical manufacturing and production of innovative products and services
- Establishment of innovation support facilities, such as R&D hubs, science and technology parks, and tech start-ups.

Chapter 6: What are the key regulations that foreign entities must consider?

A. Regulation of Foreign Currency Transactions

Rules governing transactions involving foreign currency (*e.g.* current account transactions such as import and export trades, and capital account transactions such as foreign loans and investments) are prescribed by the Philippines' Central Bank, *i.e.* the Bangko Sentral ng Pilipinas ("BSP"), and consolidated in the Manual of Regulations on Foreign Exchange Transactions ("ForEx Manual").

1. Classification of Inward Foreign Investments

The ForEx Manual defines foreign direct investments as cross-border investments associated with a resident in one economy having control or a significant degree of influence on the management of an enterprise that is resident in another economy. This includes the following:

a. (i) Assigned Capital and Operational Working Fund – for onshore branches/regional headquarters/regional operating headquarters and offices/representative offices; and (ii) Contributed Capital – for onshore partnerships/joint ventures;
b. Ownership or purchase of condominium unit; and
c. Capitalized expenses incurred by foreign firms pursuant to government-approved service contracts/similar contracts for oil, gas, and geothermal energy exploration/development.

Foreign portfolio investments are a cross-border transactions and positions involving debt or equity securities, other than those included in foreign direct investment. This includes debt securities issued by the National Government and other public sector entities.

The following investment instruments may fall under the category of foreign direct investments or foreign portfolio investments depending on the degree of control or influence of the investor:

a. Equity securities that are – (i) not listed; and (ii) listed at an onshore exchange (e.g., Philippine Stock Exchange ("PSE"));
b. Debt securities (e.g., notes, bonds and non-participating preferred shares) issued by private sector residents that are not covered by the provisions of Part Three, Chapter I of the FX Manual (Loans and Guarantees) – (i) not listed; and (ii) listed at an onshore exchange (e.g., PSE, Philippine Dealing and Exchange Corporation ("PDEX"));
c. Exchange traded funds ("ETFs");
d. Investment funds [e.g., mutual funds ("MFs") and unit investment trust funds ("UITFs")); and
e. Philippine Depositary Receipts ("PDR)"

Any other investment that does not fall under the above classifications may be form part of the residual category, which includes investment in peso time deposits with BSP-licensed bank ("**AAB**") with a maturity of at least 90 days.

2. Registration of Inward Foreign Investments

Pursuant to the ForEx Manual, inward foreign investments are not required to be registered with the BSP, provided no

foreign currency will be purchased from the Philippine banking system (i.e. from AABs or subsidiary/affiliate foreign exchange corporations of authorized agent banks) for the purpose of repatriating capital and remitting earnings back to the foreign investor. Conversely, BSP registration is required if the investor foresees the need to purchase foreign currency from the Philippine banking system for purposes of capital and earnings repatriation.

Note that foreign currency may be sourced either from the Philippine banking system or from non-banking institutions such as foreign exchange dealers. However, these other sources of foreign currency outside the Philippine banking system may be subject to greater exchange rate volatility and liquidity constraints.

If an investor anticipates that it will need to source foreign currency from the Philippine banking system, it must register such inward remittance either with the BSP directly or with an AAB, depending on the type of inward foreign investment

a. BSP Registration

The following inward foreign investments must be registered with the BSP within one year from the relevant reckoning dates:

i. (a) Assigned Capital and Operational Working Fund – for onshore branches/regional headquarters/regional operating **headquarters and offices/representative offices; and** (b) Contributed Capital – for onshore partnerships/joint ventures;

ii. Ownership or purchase of condominium unit; and

iii. **Capitalized expenses incurred by foreign firms pursuant** to **government-approved service contracts/similar contracts** for oil, gas, and geothermal energy exploration/development

iv. Equity securities issued onshore by residents that are not listed at an onshore exchange

v. **Equity securities issued onshore by residents that are not listed** at an onshore exchange

vi. **Debt securities issued onshore by private sector residents that are not listed at an onshore exchange and not covered by the provisions of Part Three, Chapter I of the FX Manual (Loans and** Guarantees)

vii. **Investment funds created onshore by residents (e.g., MFs and** UITFs) whether listed or not listed at an onshore exchange

viii. PDRs that are not listed at an onshore exchange

ix. **Debt securities issued onshore by non-residents that are not** listed at an onshore exchange

x. **Instruments issued by residents and non-residents which are not covered by Sections 33, 34 and the provisions of Part Three, Chapter I of the FX Manual (Loans and Guarantees), and not** contrary to applicable laws, rules and regulations

xi. **Instruments under Section 36.1(a-g) used as collateral involving transfer of legal/beneficial ownership of the collateral to the** non-resident investor.

Foreign exchange inwardly remitted to the Philippines to fund the aforementioned investments need not be converted to pesos, except for the following:

- **i.** foreign direct investments in foreign bank branches' permanently assigned capital with such conversion to be made at the exchange rate prevailing at the time of remittance, pursuant to applicable laws and the Manual of Regulations for Banks (MORB); and
- **ii.** if investment is required to be funded by pesos.

b. Registration with AABs

The following investments may be registered with an AAB with authority to operate a foreign currency deposit unit:

- **i. Debt securities issued onshore by the National Government** and other public sector entities
- **ii. Equity securities issued onshore by residents that are listed at** an onshore exchange (e.g., PSE)
- **iii. Debt securities issued onshore by private sector residents that are listed at an onshore exchange and not covered by the provisions of Part Three, Chapter I of the FX Manual (Loans and** Guarantees)
- **iv.** ETFs issued/created onshore by residents
- **v.** PDRs that are listed at an onshore exchange
- **vi. Peso time deposits with an AAB with a maturity of at least** 90 days
- **vii. Equity securities issued onshore or offshore by non-residents** that are listed at an onshore exchange
- **viii. Debt securities issued onshore by non-residents that are** listed at an onshore exchange
- **ix. Instruments under Section 37.2(a-h) used as collateral** involving transfer of legal/beneficial ow

Foreign exchange inwardly remitted to fund these investments must be converted to pesos with AABs or AAB subsidiary/ affiliate forex corporations, except if investment is required to be funded by foreign exchange.

3. Foreign Currency as Consideration for Stocks

Subscription to shares of stock may be paid in foreign currency. For purposes of determining the Philippine Peso equivalent of the foreign currency payment, the Philippine Dealing System Weighted Average Rate ("PDSWAR"), as published in the BSP's Reference Exchange Rate Bulletin, shall be used.

B. Taxation

Laws, regulations, interpretations, and administrative practices on taxation in the Philippines are complex and constantly changing. It is strongly recommended that investors obtain tax advice prior to pursuing an investment.

1. Transfer Pricing

Transfer pricing is generally defined as the pricing of cross-border, intra-firm transactions between related parties or associated enterprises. Under the law, taxpayers must demonstrate that their "transfer prices" between related parties (In this case, the parent company based abroad and the local company) are consistent with the arm's length principle. "Arm's length principle" requires that the transaction with a related party to be made under comparable conditions and circumstances as a transaction with an independent party.

If the Philippine Bureau of Internal Revenue (BIR) determines that the transaction is not at arm's length, the Commissioner of Internal Revenue is authorized to distribute, apportion or allocate gross income or deductions between or among two or more organizations, trades or businesses (whether or not incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, if he determines that such distribution, apportionment or allocation is necessary in order to clearly reflect the income of any such organization, trade or business.

a. Related Party Transactions and Transfer Pricing Documentations

Under Revenue Regulation No. 34-2020, the following entities are required to file a Related Party Transaction Form (BIR Form 1709) and prepare/submit the Transfer Pricing Documentation ("TPD"):

1. Large taxpayers;
2. Taxpayers enjoying tax incentives, i.e. Board of Investments ("BOI")-registered and economic zone enterprises, those enjoying Income Tax Holiday ("ITH") or subject to preferential income tax rate;
3. Taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years; and
4. A related party which has transactions with any of the above-described taxpayers.

AND entities above who meet the following thresholds:

1. Annual gross sales/revenue for the subject taxable period exceeding One Hundred Fifty Million Pesos (₱150,000,000) **and** the total amount of related party transactions with foreign and domestic related parties exceeds Ninety Million Pesos (₱90,000,000);
2. Related Party Transactions meeting the following materiality threshold:
    a. If involving sale of tangible goods in the aggregate

amount exceeding Sixty Million Pesos (₱60,000,000) within the taxable year

b. If involving service transaction, payment of interest, utilization of intangible goods or other related party transaction in the aggregate amount exceeding Fifteen Million Pesos (₱15,000,000.00) within the taxable year; **or**

c. If TPD was required to be prepared during the immediately preceding taxable period for exceeding either (a) or (b) above.

If the corporation falls under any of the foregoing criteria, it is required to prepare the following: (1) BIR Form 1709 for Related Party Transactions; and (2) Transfer Pricing Documentation and other supporting documents. If the corporation does not fall under any of the foregoing criteria, then the corporation is required to disclose this fact in the Notes to Financial Statements, stating that they are not covered by the requirements and procedures for related party transactions.

2. Revenue Memorandum Circular No. 05-2024

The BIR issued on 10 January 2024 Revenue Memorandum Circular No. 05-2024 which sought to clarify the tax treatment of cross-border services. In the Circular, the BIR stated that fees paid from the Philippines for services conducted abroad by a foreign entity may be subject to income tax and VAT. The BIR reasoned that since the benefit from the services is utilized or enjoyed in the Philippines, the Philippines is the source of the business activity and thus, the fees may be taxed in the Philippines.

3. Tax Treaties

Income tax relief may be available pursuant to tax treaties of the Philippines with other countries.

The Philippines is party to tax treaties with countries such as:

- Australia
- Austria
- Bahrain
- Bangladesh
- Belgium
- Brazil
- Canada
- China
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Hungary
- India
- Indonesia
- Israel
- Italy
- Japan
- Korea (South)
- Kuwait
- Malaysia
- Mexico
- Netherlands
- New Zealand
- Nigeria
- Norway
- Pakistan
- Poland
- Qatar
- Romania
- Russian Federation
- Singapore
- Sri Lanka
- Spain
- Sweden
- Switzerland
- Thailand

- Turkey
- United Arab Emirates
- United Kingdom
- United States of America
- Vietnam

4. Local Taxation

Local government units in the Philippines are given the power to levy fees, charges and taxes, such as real property taxes and business taxes.

C. Labor and Employment

1. State Policy Geared Towards the Protection of Labor

The Philippine Constitution affirms labor as a primary social economic force, and mandates the State to "protect the rights of workers and promote their welfare." Particularly, Article XIII, Section 3 of the Constitution guarantees the basic workers' rights to, among others, the right to security of tenure.

The Constitution likewise recognizes the interdependency between labor and capital and the necessity of safeguarding their respective rights. Thus, while the Philippine Constitution manifests special regard for labor welfare, this does not mean that Philippine law disregards management's rights.

With the Constitutional preference for labor, Philippine law is quite strict in the mode and manner of addressing employee issues. This is most apparent, for instance, in the fact that Philippine law does not recognize at-will employment. Labor laws and other social legislation adhere strongly to security of tenure as one of the fundamental rights of employees. In dispute resolution, labor tribunals follow the rule that any doubts in statute, regulations, private employment contracts, and employment policies should be ruled in favor of the employee. Thus, while laws and jurisprudence are rich in supporting management prerogative in prescribing standards of employment as well as in disciplining employees, the matter of termination of employees must always be implemented with the twin requirements of a valid reason and proper procedure.

It is thus strongly recommended that investors obtain legal advice prior to making any labor and employment-related decision.

2. Employment Relationship

The employment status of a person is defined and prescribed by law, and not by what the parties say it should be. Thus, the existence of an employer-employee relationship cannot be negated by expressly repudiating it in the relevant contract, and providing therein that the "employee" is an independent contractor, when the terms of the agreement clearly show otherwise. The fact that a worker is employed on paper by a third-party entity deployed to a principal does not necessarily mean, as well, that said worker will not be considered as an employee of the principal under Philippine law.

An employment relationship is determined by considering the so-called "four-fold test" namely:

- **a.** The selection and engagement of the employee;
- **b.** The payment of wages;
- **c.** The power of dismissal; and
- **d.** The control test or the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished.

Among these, the most important criterion in determining the existence of an employer-employee relationship is the power to control the means and methods by which employees perform their work. Otherwise stated, an employer-employee relationship exists if the employer has the power to control both the end to be achieved, and the manner and means to be used to achieve that end.

Aside from the control test, the economic reality test has also been used in the determination of the existence of an employer-employee relationship. Under this test, the economic realities prevailing within the activity or between the parties are examined, taking into consideration the totality of circumstances surrounding the true nature of the relationship between the parties. This is especially appropriate when there is no written agreement or contract on which to base the relationship. The benchmark of economic reality in analyzing possible employment relationships for purposes of applying the Labor Code is the economic dependence of the worker on his employer.

Independent Contracting vs Labor-Only Contracting

While Philippine law recognizes and allow business persons and entities to engage third-party firms and agencies to provide manpower, such contractual relationship should follow specifically guidelines.

Where the arrangement is made in such a way as to make the contractor merely an employer on record, but the client/customer/principal is in practice exercising the authority of an employer over the former's employees (using the tests discussed in the preceding section), then the arrangement is considered as a labor-only contracting one which is prohibited by law.

Under labor regulations, there is Labor-only contracting when the contractor or subcontractor:

a.i. does not have substantial capital; or

a.ii. does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others, and the contractor; and,
a.iii. its employees are performing activities which are directly related to the main business operation of the principal; or,

b. does not exercise the right of control over the performance of the work of the employee.

If there is a finding of labor-only contracting the principal shall be deemed the direct employer of the contractor or subcontractor's employees.

Labor regulations on independent contractor arrangements exempt the Construction industry from its coverage, since contractors are licensed by the Philippine Contractors Accreditation Board (PCAB). Department Circular No. 1 series of 2017, however, clarified that if these PCAB-licensed contractors engage in arrangements other than construction activities, such contractors are required to register under DO 174. Also excluded from its scope are professionals or individuals with unique skills and talents, and information-enabled services involving an entire or specific business process such as:

- Business Process Outsourcing
- Knowledge Process Outsourcing
- Legal process Outsourcing
- IT infrastructure Outsourcing
- Application Development
- Hardware and/or Software Support
- Medical Transcription
- Animation Services
- Back Office Operations/Support

3. Minimum Labor Standards

The Labor Code and other statutory enactments provide for minimum terms and conditions of employment which employers must generally observe. These minimum terms include:

- Prohibition against employment of minors less than 15 years of age or less than 18 years of age in hazardous undertaking.
- Payment of a minimum wage, which varies depending on the place of employment;
- Payment of overtime pay for work performed beyond eight hours a day;
- Payment of night shift differential for work performed between 10:00 PM and 6:00 AM;
- Provision of a weekly rest period of 24 consecutive hours after every six consecutive normal work days;
- Payment of additional or premium compensation for work performed on a rest day or holiday; and
- Provision of yearly service incentive leave of five days with pay for those who have rendered one year of service.
- Provisions for maternity, paternity and solo parental leave
- Provision for leave due to military training
- Leaves due to domestic violence and surgery caused by gynecological disorders
- Provision for Retirement Benefits
- Provisions for work-related employee disability, social security, and housing loans.

4. Labor Relations

Philippine legislation grants employees the right to form and join unions and engage in concerted bargaining activities, including the right to strike, subject to compliance with procedural requirements. However two types of employees, namely managerial and confidential employees are prohibited from engaging in concerted bargaining activities.

5. Security of Tenure; No At Will Employment

Under Philippine law, security of tenure is a constitutionally guaranteed right. Hence, employees may not be terminated from their regular employment except for just or authorized causes under Articles 297 and 298 of the Labor Code and other pertinent laws. In other words, employees cannot be terminated at will.

Further, while management prerogative does allow an employer to terminate the services of an employee, there must be compliance with substantive and procedural due processes requirements. Otherwise, the employer may be held liable for illegal dismissal (which will lead to a labor arbiter to order reinstatement of the employee, payment of back wages, among others).

Substantive due process is complied with once the grounds are established to justify termination. As a general rule, the grounds relied upon for termination should be one of the just causes or authorized causes found in the Labor Code.

Further, the penalty of dismissal must be commensurate to the offense. As a rule, minor violations cannot justify immediate dismissal. There should be a step-ladder approach to the imposition of penalties for minor or moderate offenses before resorting to the ultimate penalty of dismissal. Thus, it would be best if

repeated minor and moderate offenses are well-documented. Jurisprudence provides that in imposing a penalty on an erring employee, the totality of infractions must be considered. All circumstances surrounding the employee's case must be taken into account in deciding whether or not the penalty of dismissal should be imposed.

To lessen the risk of being held liable for illegal dismissal, the penalty of **immediate termination** should be reserved for **very serious offenses. Minor and moderate offenses** should be penalized in a step-ladder fashion before resorting to termination (if the employee commits the same offense despite corrective measures). The offenses must be well-documented and the evidence must be clear because the doctrine that "**all doubts are resolved in favor of labor**" is well-entrenched in Philippine jurisprudence.

On the other hand, procedural due process is complied with by issuing the required notices and following the procedure for termination of employment under labor laws and rules.

a. Twin Requirements of Legal Grounds and Valid Procedure

Article 279 of the Labor Code guarantees regular employees security of tenure. This means that regular employees may only be terminated [i] upon legal grounds and [ii] pursuant to valid procedure.

b. Legal Grounds

The legal grounds for termination are the "just causes" enumerated under Article 282 of the Labor Code and the "authorized causes" enumerated under Article 283. Without a "just" or "authorized" cause, an employer cannot validly terminate the employment of a regular employee.

Just causes are those directly attributable to the fault or negligence of the employee, namely:

1. serious misconduct which refers to the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not mere error in judgment.

2. willful disobedience or insubordination which refers to disobedience or insubordination to an order that pertains to the duties which the employee has been engaged to discharge, which is willful or intentional characterized by a wrongful and perverse attitude;

3. gross and habitual neglect of duties;

4. fraud or willful breach of trust in connection with the employee's work committed against the employer or his/her representative;

5. loss of confidence caused by an act, omission, or concealment of an employee holding a position of trust and confidence that justified the loss of trust and confidence of the employer;

6. commission of a crime or offense against the person of employer, any immediate member of his family, or his duly authorized representative; and

7. analogous causes expressly specified in the company rules and regulations or policies.

Authorized causes are those brought by the necessity and exigencies of business, changing economic conditions, and illness of the employee. The following are the authorized causes for termination of employment:

1. Installation of labor-saving devices or a reduction of the number of workers in any workplace made necessary by the introduction of labor-saving machinery or devices;

2. Redundancy being the termination of the employment where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise;

3. Retrenchment being the economic ground for the termination of employment primarily to avoid or minimize business losses;

4. Closure or cessation of business operations of an establishment or an undertaking, which refers to the complete or partial cessation of the operations and/or shut-down of the establishment of the employer; and

5. Disease wherein continued employment of the employee is either prohibited by law or prejudicial to his/her health as well as to the health of his/her co-employees. Provided, that there must be a certification by a competent public health authority that the disease is incurable within a period of six (6) months even with proper medical treatment.

c. Valid Procedure

For Just Cause

In order to validly terminate employment on the basis of any just cause for termination or disease (which is an authorized cause for termination), the due process requirements of notice and hearing must be complied by the employer.

Pre-termination requirements:

1. Service of First Written Notice. The first notice should contain the following:

   a. The specific causes or grounds for termination as provided for under the Labor Code and company policies, if any;
   b. Detailed narration of the facts and circumstances that will serve as basis for the charge against the employee. A general description of the charge will not suffice; and
   c. A directive that the employee is given opportunity to submit a written explanation within a reasonable period. Reasonable period should be construed as a period of at least five (5) calendar days from receipt of the notice.

2. Administrative Hearing. After serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself with the assistance of his representative if he desires. A formal hearing or conference, however, is only mandatory if (i) requested by the employee in writing; (2) when substantial evidentiary disputes exists; or (3) when company rule or practice requires it. Otherwise, a formal hearing can be dispensed with.

3. Service of Second Written Notice. After determining that termination of employment is justified, the employer shall serve the employee

a written notice of termination which should contain the following:

a. All circumstances involving the charge against the employee have been considered; and
b. The grounds have been established to justify the severance of their employment.

Post-termination requirements

Under current labor regulations, an employer is required to release the final pay of an employee, which is the sum of all monetary benefits due to the employee regardless of the cause of the termination of the employment, within thirty (30) days from the date of termination of employment, unless there is a more favorable company policy, individual or collective agreement thereto. Moreover, labor regulations require an employer to issue a certificate of employment within three (3) days from the time of the request by the employee. The certificate of employment specifies the dates of an employee's engagement and termination of his employment, as well as the type of work in which the employee is employed.

For Authorized Cause

Pre-termination

For termination for authorized cause, the requirements of due process are complied with by serving a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least 30 days before the effectivity of the termination, specifying the ground or grounds for termination. If these requirements are not satisfied, the employer shall be liable for the payment of indemnity in the form of nominal damages amounting to Php50,000.00 Philippine Pesos.

Further, separation pay shall be paid by the employer to the employee terminated due to authorized causes. The amount of the separation pay payable depends on the authorized cause for termination:

Cause	Computation of Separation Pay
• Installation of labor-saving devices • Redundancy	Separation pay is equivalent to at least one (1) month pay (if the employee has not reached one year tenure) or at least one (1) month pay for every year of service, whichever is higher. In this connection, a fraction of at least six (6) months service is considered as one (1) whole year.
• Retrenchment • Closure or cessation of business operation *not due to serious business losses* • Disease	Separation pay is equivalent to at least one (1) month pay (if the employee has not reached one year tenure) or at least one-half (1/2) month pay for every year of service, whichever is higher. In this connection, a fraction of at least six (6) months service is considered as one (1) whole year.

• Closure of business due to serious business losses or financial reverses	No separation pay is required

Post-termination

The same requirements for post-termination for termination due to just cause are applicable to termination due to authorized cause, including payment of separation pay within thirty (30) days from the date of termination of employment.

D. Immigration

1. Entry Visa

Foreign nationals may come to the Philippines for reasons of business, pleasure or health with a temporary visitor's visa. This visa allows stays for periods of 59 days, extendable for a maximum of one year. To extend their stay, visitors must register with the Bureau of Immigration or with the office of the municipal or city treasurer in areas outside Manila. Executive Order No. 408 allows foreign nationals, except those of specifically restricted nationalities, to stay in the Philippines for up to 21 days without a visa.

The following are the more common types of work visas:

- Multiple Entry Special Visa;
- Special Non-Immigrant or 47(a)(2) Visa; and
- Pre-Arranged Employment or 9(g) Visa

2. Work Permits

Generally, foreign nationals seeking employment in the Philippines, whether resident or non-resident, must secure an Alien Employment Permit ("AEP") from the Department of Labor and Employment ("DOLE"). An AEP is valid for either one year from the date of issue or for the same term as the employment contract but shall not exceed five years. It may be renewed subject to approval of the DOLE. Executives of RHQs, ROHQs, and Offshore Banking Units, as well as treaty trader visa holders, are exempt from the requirement to obtain an AEP.

A local employer who wishes to employ a foreign national must apply on the foreign national's behalf with the DOLE for an AEP. The petitioning company must prove that the foreign national possesses the required skills for the position and that no Filipino is available who is competent, able and willing to do the specific job for which the foreign national is desired.

To ensure a proper transfer of technology, the DOLE requires the employers of foreign nationals to provide an Understudy Training Program ("UTP") and to designate at least two Filipino understudies. The functions of these employers must be deemed permanent, and they must require skills or expertise that are scarce in the Philippines.

3. Special Investor Resident Visa

The Special Investor Resident Visa ("SIRV") entitles the holder to reside in the Philippines for an indefinite period as long as his investment subsists. Any alien, except restricted nationals under the Foreign Service Code, may apply for an SIRV provided he meets the following requirements:

- He has not been convicted of a crime involving moral turpitude.
- He is not afflicted with any loathsome, dangerous or contagious disease.
- He has not been institutionalized for mental disorder or disability.
- He is willing and able to invest the amount of at least US$75,000.00 in the Philippines.

The government has liberalized visa requirements for foreign entrants to encourage foreign participation in the economic development of the Philippines. Among the liberalized rules are the following provisions:

- Foreign stockholders, investors, representatives of investment houses, land developers and tourism developers are among the categories entitled to the special visa incentive, which grants privileges to certain foreign nationals.
- Aliens entitled to enter the country under the provision of a treaty of amity, commerce and navigation may be admitted as non-immigrants. They are given treaty-trader visas for the sole purpose of carrying on substantial trade between the Philippines and the state of which they are nationals.
- Foreign technicians may be admitted to the Philippines with a pre-arranged employment visa if their employers can prove that the skills they possess are not available in the country.

4. Special Work Visas

The Philippine Government issues as well special visas for foreign nationals in executive or highly technical positions exempted from the AEP (i.e. Offshore Banking Units, RHQ, ROHQ, and those employed in establishments within the Subic Free Port Zone and Clark Special Economic Zone.

E. Intellectual Property Protection

The Philippines is a party to the following treaties on intellectual property administered by the World Intellectual Property Organization (“**WIPO**”):

1. Beijing Treaty on Audiovisual Performances (2021);
2. Berne Convention for the Protection of Literary and Artistic Works (1951);
3. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("**Madrid Protocol**") (2012);
4. Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled ("**Marrakesh VIP Treaty**") (2019);
5. Paris Convention for the Protection of Industrial Property (1965);
6. Patent Cooperation Treaty (2001);
7. Phonograms Convention (signed 1972);
8. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1984);
9. WIPO Convention (1980);
10. WIPO Copyright Treaty (2002); and
11. WIPO Performances and Phonograms Treaty (2002)

In addition to these treaties, and by virtue of its membership in the World Trade Organization ("**WTO**"), the Philippines adheres to the Agreement on Trade Related Aspects of Intellectual Property Rights ("**TRIPS**").

Republic Act No. 8293, otherwise known as the Intellectual Property Code, serves as the country's primary legislation governing intellectual property. The most common forms of intellectual property granted protection under the IP Code include:

- Copyright;
- Trademarks and service marks (including trade names, collective marks, and geographical indications);
- Patents;
- Industrial design;
- Utility model; and
- Lay-out design of integrated circuits

F. Environmental Regulation

Philippine law ensures the right of its people to a balanced and healthful ecology. The Department of Environment and Natural Resources formulates and implements the government's environmental protection policy. Presidential Decree No. 984, otherwise known as the National Pollution Control Decree is the country's main law on pollution prevention. Industry specific legislation has been passed concerning the handling of solid wastes, toxic substances, hazardous and nuclear wastes. In addition, laws have been passed concerning air and water pollution.

Among the environmental laws in the Philippines are the following:

- P.D. 856 Philippine Sanitation Code (1975)
- P.D. 1067 Water Code of the Philippines (1976)
- P.D. 1586 Philippine Environmental Impact Statement System (1978)
- R.A. 6969 Toxic Substances, Hazardous and Nuclear Waste Control Act of 1990
- R.A. 8749 Philippine Clear Air Act of 1999
- R.A. 9003 Ecological Solid Waste Management Act of 2000
- R.A. 9275 Philippine Clear Water Act of 2004
- R.A. 9729 Climate Change Act of 2009

G. Recognition and Enforcement of Foreign Judgements and Arbitration

The Philippines is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"). Republic Act No. 9285, more commonly known as the Alternative Dispute Resolution Act, expressly states that the New York Convention will govern the recognition and enforcement of foreign arbitral awards in the Philippines.

The New York Convention requires the parties therein to recognize the validity and binding effect of foreign arbitral awards in their respective jurisdictions, as well as enumerate the grounds for refusing the enforcement of foreign arbitral awards, such as:

- *Incapacity of party or invalidity of arbitration agreement:* A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- *Lack of proper notice:* The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- *Lack of due process:* The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- *Irregularities in the composition of arbitral tribunal or the arbitral procedure:* The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- *Lack of binding effect of the arbitral award:* The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- *Subject matter incapable of settlement by arbitration:* The subject matter of the dispute is not capable of settlement by arbitration under Philippine law; or
- *Violation of public policy:* The recognition or enforcement of the award would be contrary to Philippine public policy.

Under the Philippines Rules of Court, foreign judgments may also be recognized or enforced in the Philippines. In case of a judgment or final order upon a specific thing, the judgment or final order, is conclusive upon the title to the thing; and in case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In both cases, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

H. Cross-Border Insolvency

Philippine law provides for the recognition of foreign insolvency proceedings and adopts the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law.

Said Model law provides that a foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.

However, the Court is not precluded from refusing to take an action governed by it if the action would be manifestly contrary to the public policy of this State.

I. Anti-Trust Regulation

On 21 July 2015, the President of the Philippines signed the PCA into law. The PCA became effective on 8 August 2015.

The PCA serves as the country's primary legislation regulating competition and features provisions on anti-competitive agreements, abuse of dominance, and merger and acquisitions.

Anti-competitive agreements

Anti-competitive agreements refer to those that substantially prevent, restrict, or lessen competition in the relevant market. In more concrete terms, an agreement is deemed "anti-competitive" if it impairs indicators of competition, such as an increase in price, a reduction in quality, and restrictions in innovation.

The PCA prohibits three types of anti-competitive agreements:

i. The following horizontal agreements (i.e., those between or among competitors) are *per se* prohibited:

1. *Price-fixing:* Restricting competition as to price, or other terms of trade; and

2. *Bid-rigging:* Fixing the price at an auction or in any form of bidding.

ii. The following horizontal agreements are prohibited if they have the object or effect of substantially lessening competition:

1. *Supply restriction:* Setting, limiting, or controlling production, markets, technical development, or investment;
2. *Market restriction:* Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers, or any other means.

Both categories of horizontal anti-competitive agreements are punishable by imprisonment ranging from two to seven years and/or a fine of not less than ₱50,000,000.00. These agreements may also be penalized with an administrative fine of up to ₱100,000,000.00 for the first offense and ₱250,000,000.00 for the second offense.

iii. Agreements, whether vertical or horizontal, are prohibited if they have the object or effect of substantially lessening competition.

These agreements may be penalized with an administrative fine of up to ₱100 million for the first offense and ₱250 million for the second offense.

Abuse of dominant position

Abuse of dominant position refers to the unilateral or concerted abuse of an entity's or entities' economic strength to substantially prevent, restrict or lessen competition on the market. In this context, the term "dominant position" pertains to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers. Notably, the PCA does not penalize mere dominance, but the abuse of such dominant position in any of the following ways:

1. Selling goods or services below cost with the object of driving competition out of the relevant market;
2. Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner
3. Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;
4. Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially;
5. Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially;
6. Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;
7. Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers;
8. Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers; and,
9. Limiting production, markets or technical development to the prejudice of consumers.

These acts may be penalized with an administrative fine of up to Php100 million for the first offense and Php250 million for the second offense.

Merger review

As previously discussed, the PCA authorizes the PCC to review mergers and acquisitions to determine whether a proposed merger or acquisition is likely to substantially prevent, restrict, or lessen competition in the relevant market.

The PCA adopts a compulsory notification regime, where parties to a merger or acquisition that meets the notification thresholds (collectively, "**Notifiable Transactions**") are required to notify the PCC within 30 days from signing the definitive agreement. This 30-day period is known as the waiting period, during which the parties are prohibited from consummating the Notifiable Transaction. Failure to observe the waiting period will render void the merger or acquisition and subject the parties to administrative fines.

Parties to a Notifiable Transaction are required to notify the PCC when the aggregate annual gross revenues in, into, or from the Philippines, or value of the assets in the Philippines of the ultimate parent entity ("**UPE**") of at least one of the acquiring or acquired entities, including that of all entities that the UPE controls, directly or indirectly, exceeds ₱7,000,000,000.00 ("**Size of Party Test**"); and the following thresholds are breached:

1. With respect to a merger or acquisition of assets, when either (i) the value of the acquired assets or (ii) revenues generated by the acquired assets exceed ₱2,900,000,000.00;

2. With respect to an acquisition of voting shares of a corporation, or interest in a non-corporate entity when either (i) the aggregate value of assets of the corporation or (ii) gross revenues from sales in, into, or from the Philippines of the corporation or by entities it controls exceeds ₱2,900,000,000.00, and (iii) if as a result of the proposed acquisition the acquirer would own voting shares in excess of either 35% or 50% if prior to the transaction, such entity already held more than 35%.

In any event, and regardless of whether these thresholds are breached, the PCC has the power and discretion to investigate any merger or acquisition on its own initiative ("***motu proprio* investigation**").

J. Data Privacy Protection

The Data Privacy Act ("DPA") sets out the requirements and guidelines needed for the lawful processing of data either by the private or public sector. The National Privacy Commission ("NPC") is the primary government agency overseeing the implementation of the DPA. The DPA governs the processing of Personal Information and Sensitive Personal Information. Processing includes the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data. These requirements are set out below.

1. Appointing a Data Protection Officer

A Personal Information Controller ("PIC") or Personal Information Processor ("PIP") shall designate an individual or individuals who shall function as Data Protection Officer (DPO). The DPO shall be accountable for ensuring the compliance by the PIC or PIP with the DPA, its IRR, issuances by the NPC, and other applicable laws and regulations relating to privacy and data protection. The DPO must be a full time or regular employee of the PIC or PIP.

2. Conducting a Privacy Impact Assessment

A Privacy Impact Assessment ("PIA") helps a PIC and PIP navigate the process of understanding the personal data flows in the organization. It identifies and provides an assessment of various privacy risks, and proposes measures intended to address them. A PIA should be conducted for both new and existing systems, programs, projects, procedures, measures, or technology products that involve or impact processing personal data. For new processing systems, it should be undertaken prior to their adoption, use, or implementation.

The PIC or PIP may forego the conduct of a PIA only if it determines that the processing involves minimal risks to the rights and freedoms of individuals, taking into account recommendations from the DPO. In making this determination, the PIC or PIP should consider the size and sensitivity of the personal data being processed, the duration and extent of processing, the likely impact of the processing to the life of data subject and possible harm in case of a personal data breach.

In conducting a PIA, it is important that its results are properly documented in a report that includes information on stakeholder involvement, proposed measures for privacy risk management, and the process through which the results of the PIA will be communicated to internal and external stakeholders.

a. Structure and Form

There is no prescribed format or standard for a PIA and it is up to the PIC / PIP to determine the structure and form of the PIA. However, the PIA must comply based on the criteria stated under NPC Advisory No. 2017-03. Note that a PIA requires documentation and procedures for review. Its results should be contained in a corresponding report.

b. Privacy Management Program and Privacy Manual

A **Privacy Management Program (PMP)** is a holistic approach to privacy and data protection, important for all agencies, companies or other organization involved in the processing of personal data. It is a process intended to embed privacy and data protection in the strategic framework and daily operations of a personal information controller or personal information processor.

Each personal information controller or personal information processor is expected to produce a Privacy Manual. The Manual serves as a guide or handbook for ensuring the compliance of an organization or entity with the DPA, its Implementing Rules and Regulations (IRR), and other relevant issuances of the National Privacy Commission (NPC). It also encapsulates the privacy and data protection protocols that need to be observed and carried out within the organization for specific circumstances (e.g., from collection to destruction), directed toward the fulfillment and realization of the rights of data subjects.

In brief, the privacy manual should discuss how the organization complies with the data privacy principles, and upholds the rights of the data subjects, both of which are laid out in the DPA. This includes: (i) the processing of personal data from collection to disposal; (ii) security measures implemented in order to protect personal data (such as organizational, physical, and technical measures); and (iii)

policies regarding breach and security incidents.

c. Data Protection Measures

PIC and PIP shall implement reasonable and appropriate *organizational, physical, and security measures* for the protection of data. These security measures aim to maintain the availability, integrity, and confidentiality of personal data and are intended for the protection of personal data against any accidental or unlawful destruction, alteration, and disclosure, as well as against any unlawful processing. The security measures are also implemented in order to protect personal data against natural dangers, such as accidental loss or destruction, and human dangers such as unlawful access, fraudulent misuse, unlawful destruction, alteration and contamination.

Organizational measures also refer to the system's environment, particularly to the individuals carrying them out. Implementing the organizational data protection policies aim to maintain the availability, integrity, and confidentiality of personal data against any accidental or unlawful processing. The security policies and procedures will be applied from the collection up to its disposal of personal information.

Physical Security must be implemented properly to prevent unauthorized access. Its main focus is to protect physical assets through office designs and layout, environmental components, emergency response readiness, accessibility to the public, security against natural disasters and any other relevant points.

Technical Security involves the technological aspect of security in protecting personal information. It includes protecting the network, encrypting personal information in storage and in transit, mitigating data transfer risks, implementing software system designs and having efficient access control policies. The NPC has issued technical security guidelines for the personal information controllers and personal information processors, specifically for Data Center, Encryption and Access Control Policy.

d. Breach Reporting Procedures

All personal information controllers (PICs) and personal information processors (PIP) must implement a security incident management policy. This policy is for managing security incidents, including data breaches. In cases of data breaches, the NPC and affected data subjects must be notified by the personal information controller.

Chapter 7: Firm Background

Romulo Mabanta Buenaventura Sayoc & de los Angeles traces its roots to the law firm of Gibbs, McDonough and Ozaeta that practiced law in the Philippines in 1902, under the American regime.

Romulo offers a full range of legal services with its team of talented and experienced lawyers who are experts in their own fields.

Romulo is composed of more than 90 lawyers – all of whom speak English fluently, and majority of whom have received training and graduate degrees from international universities.

Romulo offers a full range of legal services including mergers & acquisitions, capital markets, foreign investments, dispute resolution, art & antiquity, taxation, mining, oil & gas, infrastructure, environment, family, immigration, insurance, labor & employment, real estate, securities, banking, intellectual property, aviation, and admiralty.

Romulo is the sole Philippine member of Lex Mundi, a worldwide network of more than 160 independent law firms, with a combined total of more than 21,000 lawyers in all commercially significant jurisdictions throughout the world.