

Because of changing investment and consumer norms and a shifting global policy and regulatory landscape, sustainability and environmental, social and governance (ESG) concerns have become a compelling issue for businesses, and responding to these concerns have turned into an important performance metric and part of business agenda. In this bulletin, the Firm's Sustainability & ESG Group notes key legal developments in this area.

EXTENDED PRODUCER RESPONSIBILITY BECOMES LAW

Concepts such as “circular economy”, “plastic neutrality”, and “sustainable consumption and production” became part of Philippine statutory law with the enactment of [Republic Act No. 11898 or the Extended Producer Responsibility Act of 2022 \(the “EPRA”\)](#). Extended Producer Responsibility (“EPR”) refers to the environmental policy approach and practice that requires producers to be environmentally responsible throughout the life cycle of a product, especially its post-consumer or end-of-life stage.

The EPRA requires product producers (which includes brand owners and product manufacturers) to recover up to 80% of their plastic packaging waste by 2028. Product producers obliged to implement EPR are those enterprises that generate plastic packaging whose total value of assets exceeds PhP100 million waste. Micro, small, and medium enterprises are not covered by the EPRA but are encouraged to practice EPR voluntarily.

Obligated enterprises must establish audit systems to determine compliance with the EPRA and their own EPR programs. The audit must be conducted by an independent third-party auditor in line with uniform standards to be promulgated by the Department of Environment and Natural Resources (“DENR”).

Certified reports on plastic product footprint generated and recovered by obligated enterprises will be made available to the public through the website of the DENR.



Obligated enterprises may opt to organize themselves to form or authorize a Producer Responsibility Organization) for the purpose of establishing a viable platform for the implementation of their respective EPR programs.

The EPRA requires product producers (which includes brand owners and product manufacturers) to recover up to 80% of their plastic packaging waste by 2028.

To motivate the development of an effective solid waste management, the EPRA provides incentives, namely: (i) cash and/or non- cash rewards and/or recognitions; (ii) tax incentives; and (iii) deductibility of EPR expenses for income tax purposes.

An obliged enterprise that fails to register its EPR program with the NSWMC may be penalized with a fine ranging from PhP5 million to PhP20 million, and automatic suspension of business permit on its third offense.

On the other hand, obliged enterprises that fail to meet the targets for the recovery of plastic product footprint may be ordered to pay the above-mentioned fines or a fine twice the cost of recovery and diversion of the footprint or its shortfall, whichever is higher.

[The Philippines joins countries such as Japan, Australia, and some states in Europe and Latin America](#) that have institutionalized EPR to hold plastic producers accountable for their plastic waste. It is a significant step for the Philippines, which at present is the third-ranking contributor to plastic pollution in the world, producing at least [2.7 million metric tons of plastic waste every year](#).

DOJ: UTILIZATION OF RE RESOURCES NOT SUBJECT TO FOREIGN OWNERSHIP RESTRICTIONS

The Philippine Department of Justice (“DOJ”) has issued an opinion to the effect that the exploration, development and utilization (“EDU”) of solar, wind, hydro and ocean or tidal energy sources is not subject to the forty percent (40%) foreign equity limitation under Article XII, Section 2 of the [Philippine Constitution](#).

Prior to the opinion, [the Philippine Department of Energy \(“DOE”\) has required that corporation applicants for renewable energy \(“RE”\) contracts \(subject to exceptions in case of geothermal resources and biomass\)](#) be at least sixty percent (60%) Filipino-owned. This is based on the understanding that exploitation of RE resources constitutes EDU of natural resources which, under Article XII, Section 2 of the Philippine Constitution, may only be undertaken by the State or by Filipino citizens or corporations or associations at sixty percent (60%) of whose capital is owned by Filipino citizens. This limitation has hampered foreign investments in and, consequently, the development of, the RE sector in the Philippines. Notably, where an industry or undertaking is nationalized or partly nationalized, aside from equity ownership limitations, foreigners are also prohibited participating management, operation, control and administration of the enterprise. Thus, foreigners have, to date, been limited to the role of passive investors in RE undertakings.

The DOJ opinion which was issued at the request of and is addressed to the DOE. The DOJ cited the following as basis for its opinion:

- Solar, wind, hydro and ocean or tidal energy sources are inexhaustible and, therefore, not within the ambit of the term “natural resources” in Article XII, Section 2 of the Philippine Constitution. The reason behind the imposition of foreign ownership restrictions, i.e., to prevent depletion of exhaustible resources by foreigners, does not apply to inexhaustible energy resources.

- While Article XII, Section 2 makes reference “all forces of potential energy” as among the natural resources subject to the restriction, such term should be interpreted to exclude kinetic energy or “energy in motion”.
- Its interpretation is consistent with the Constitutional policies of advancing the right of the people to a balanced and healthful ecology and developing a self-reliant and independent national economy, as the development of RE (which requires foreign capital, technology and expertise) will provide the country with clean energy not subject to price fluctuations and market forces to which fossil fuels are vulnerable.

The DOJ, however, noted that its opinion is subject to the following limitations: (i) the forty percent (40%) foreign equity limitation would remain unless the implementing rules and regulations of the Renewable Energy Act (Republic Act No. 9513), which restate the limitation, is amended; and (ii) the use of hydro and ocean or tidal energy sources, if the same is directly harvested from the source by foreign nationals or entities, would still not be permitted based on the Water Code and existing jurisprudence.

DOJ opinion paves the way for the issuance by the DOE of amended implementing rules and regulations to remove foreign equity ownership restrictions in respect of entities engaged in the EDU of solar, wind, hydro and ocean or tidal energy sources.

Solar, wind, hydro and ocean or tidal energy sources are inexhaustible and, therefore, not within the ambit of the term “natural resources” in Article XII, Section 2 of the Philippine Constitution. The reason behind the imposition of foreign ownership restrictions, i.e., to prevent depletion of exhaustible resources by foreigners, does not apply to inexhaustible energy resources.



BSP ISSUES GUIDELINES FOR SUSTAINABLE INVESTMENTS BY BANKS

The *Bangko Sentral ng Pilipinas* (“BSP”; the Philippine Central Bank) issued [BSP Circular No. 1149, series of 2022 \(Guidelines on the Integration of Sustainability Principles in Investment Activities of Banks\)](#). The Circular sets expectations on the prudent conduct of investment activities, as well as minimum practices that banks must establish for the management and control of investment-related risks. It amends Section 614 of the Manual of Regulations for Banks regarding the investment activities of BSP-supervised financial institutions, and embeds sustainability-related requirements therein.

Salient amendments include the following:

- *Board and senior management oversight.* A bank’s board of directors must oversee the integration of sustainability principles and objectives in the bank’s investment activities and monitor the bank’s progress in attaining such objectives. Meanwhile, portfolio objectives developed by senior management pursuant to board-approved strategic objectives must provide how the bank’s investment activities will be aligned with the sustainability objectives of the bank.
- *Policies, Procedures and Limits.* A bank’s policies, procedures and limits for managing investment management activities must be consistent with the organization’s broader business strategies, including its sustainability objectives. Due diligence review must cover, among others, the assessment of material environmental and social (E&S) risk exposures of the investment as well as the issuing company, and an analysis of exit strategies for securities that are found to have high E&S risks.
- *Investment Strategies.* A bank may adopt any or a combination of the following approaches to investment: integration approach (which involves an exclusive and systemic inclusion of material E&S factors in investment analysis); screening approach (which involves the application of filters to lists of potential investments to rule companies in and out of contention for investment); or thematic approach (which refers to investing based on trends, such as a social, industrial, or demographic trends).

A bank may also adopt other approaches and global best practices. The bank must adopt measures to ensure that investments are channeled to companies that comply with sustainability-related standards, laws and regulations, as well as companies that do not engage in greenwashing.

- *Risk Measurement.* A bank whose investments are exposed to material E&S risk must adopt appropriate tools and metrics to assess, measure, and monitor these risks.
- *Credit Risk Due Diligence.* Factors that a bank may consider as part of its credit risk due diligence review include material E&S risks to which the issuer is exposed based on criteria such as the level of greenhouse gas emissions, vulnerability to extreme weather events, or linkages to unsustainable energy practices.

The Circular is part of the BSP’s on-going reforms pursuant to the [Sustainable Finance Framework](#) put in place in March 2020. Earlier, in October 2021, the BSP issued [BSP Circular No. 1128, series of 2021](#), which focuses on a bank’s E&S risk management system, including its credit risk management system and operating risk management system.



RE MARKET GOES INTO INTERIM COMMERCIAL OPERATIONS

Under the [Renewable Energy Act \(Republic Act No. 9513\) \(the “RE Act”\)](#), it is a policy of the state to increase the utilization of renewable energy (“RE”) by institutionalizing the development of national and local capabilities in the use of RE systems. Towards this end, the RE Act instituted the Renewable Portfolio Standards (“RPS”), a policy mechanism that obliges electric power participant such as generation companies, distribution utilities and retail electricity suppliers (referred to as “Mandated Participants”) to source or produce a fraction of their electricity requirements from eligible RE resources.

To facilitate Mandated Participants’ compliance with the RPS, the RE Act mandated the creation of the renewable energy market (“REM”). The REM is the venue for the trading of Renewable Energy Certificates (“RECs”) equivalent to an amount of power generated from RE resources.

Under the REM, the Renewable Energy Registrar (“RER”) will issue to eligible trading participants one REC for every megawatt hour (MWh) of actual RE generation. A REM trading participant may (i) bank a REC for up to three years from the date of its issuance, (ii) transfer it to another REM trading participant, or (iii) surrender it for compliance with its RPS requirements.

In June 2022, the Department of Energy (“DOE”) issued [Department Circular No. 2022-06-0019](#) declaring the interim commercial operations of the REM. This means that the RER can commence to perform its functions, except for any financial transactions, until such time that the full commercial operations of the REM has been declared. In particular, the RER shall facilitate registration and participant support, conduct REM awareness activities, REC data submission and validation, REC issuance and validation, and submit REC reports, among others.

Full commercial operation of the REM is expected once certain regulatory structures are put in place, including the approval of a REC price cap by the DOE and the preparation and approval of the structure and level of transaction fees.



VARIOUS BILLS FILED TO ADDRESS WASTE MANAGEMENT CONCERNS

[Republic Act No. 9003, also known as the Ecological Solid Waste Management Act of 2000](#), is a landmark environmental legislation designed to meet the country’s waste management problems. It requires local government units to achieve 25% waste reduction through re-using, recycling, and composting activities and other resource recovery activities. However, two decades after its enactment, solid waste management remains to be a major challenge. [The Philippines produces over 21 million metric tons of garbage every year, with the National Capital Region as the biggest producer of garbage.](#)

In this light, bills have been filed at the Philippine Senate to further address the problems of excessive waste and garbage disposal.

These include the following:

- *Total Ban of Waste Importation Act* ([Senate Bill No. 1329](#)) – It proposes to prohibit bringing in of all kinds of waste and its by-products or residues from foreign countries into the Philippines. Violations will be punishable by imprisonment, ranging from 8 to 12 years, or by a fine ranging from PhP1.5 million to PhP15 million.

- *E-Waste Management Act* ([Senate Bill No. 751](#)) – It proposes to require manufacturers of electronic equipment to adopt a recovery plan that would, among others, enable the consumer to recycle electronic equipment without paying a separate fee. Accordingly, manufacturers must collect from consumers any electronic equipment that has reach the end of its useful life. In turn, electronic equipment collected shall be recycled and/or re-used.
- *Zero Food Waste Act* (Senate Bill Nos. [785](#) and [240](#)) – These propose to require food-related businesses (such as food manufacturers, supermarkets, restaurants, cafeterias, and hotels) to, among others, enter into a contract with: (i) food banks to redistribute edible food wastes to the food insecure; and (ii) waste management and recycling enterprises to recycle inedible food wastes into fertilizers or composts.

To become law, these bills must be passed by both houses of Congress and approved by the Philippine President.

Two decades after its enactment, solid waste management remains to be a major challenge. The Philippines produces over 21 million metric tons of garbage every year, with the National Capital Region as the biggest producer of garbage.

SyCipLaw is one of the largest law and oldest firms in the Philippines. It offers a broad and integrated range of legal services, covering the following fields: Banking, Finance and Securities; Special Projects; Corporate Services; General Business Law; Tax; Intellectual Property; Employment and Immigration; Litigation; and Dispute Resolution. This bulletin has been prepared pursuant to the Firm's Sustainability Policy. Under the latter, the Firm seeks to, among others, assist in the task of social and economic development by practicing law in the best traditions of the profession, and to assist the Firm's clients in their own quest for sustainability.

The links to our earlier bulletins and briefings can be found at the SyCipLaw information hub, www.syciplawresources.com. For more information about the regulations covered by other bulletins and briefings, please contact your account partner or email info@syciplaw.com

Managing Partner
Hector M. de Leon, Jr.

Editor
Jose Florante M. Pamfilo

Contributors
Julia Alexandra D. Chu
Rei Luis Anton A. Domingo
Patrice Jane L. Romero

For more information about the legal issuances discussed in this bulletin, please contact Jose Florante M. Pamfilo at jfmpamfilo@syciplaw.com.

This bulletin contains a summary of the legal issuances discussed above. It was prepared by SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) to update its clients about recent legal developments.

This bulletin is only a guide material and is circulated for information purposes only. SyCipLaw assumes no responsibility for the accuracy, completeness or timeliness of any information provided in this bulletin. It does not constitute legal advice of SyCipLaw or establish any attorney-client relationship between SyCipLaw and the reader. It is not a substitute for legal counsel. Online readers should not act upon the information in this bulletin without seeking professional counsel. For more specific, comprehensive and up-to-date information, or for help regarding particular factual situations, please seek the opinion of legal counsel licensed in your jurisdiction.

SyCipLaw may periodically add, change, improve or update the information in this bulletin without notice.

Please check the official version of the issuances discussed in this bulletin. There may be other relevant legal issuances not mentioned in this bulletin, or there may be amendments or supplements to the legal issuances discussed here which are published after the circulation of this bulletin.

No portion of this bulletin may be emailed, forwarded, reposted, copied in different electronic devices, copied or posted online in any platform, copied or reproduced in books, pamphlets, outlines or notes, whether printed, mimeographed or typewritten, or copied in any other form, without the prior written consent of SyCipLaw.