



A General Guide<sup>1</sup>  
**Doing Business in  
the Philippines**

As of March 1, 2023<sup>1</sup>

—SYCIP  
SALAZAR  
& HERNANDEZ  
—GATMAITAN

# Doing Business in the Philippines: A General Guide

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SyCip Salazar Hernandez & Gatmaitan Law Offices

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## Introduction

This guide, which focuses on how foreign corporations can set up a legal presence in the Philippines, was first published in 2015, when our firm celebrated its 70<sup>th</sup> anniversary, and this most recent update was prepared in connection with our 78<sup>th</sup> anniversary celebrations. We hope that this guide, containing the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more, will be instructive to businessmen and lawyers alike and will showcase the Philippines as an attractive venue for business ventures.

## About the Firm

SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) was founded in 1945. It is one of the largest law firms in the Philippines. It has offices in Makati City, the country's business and financial center, as well as Cebu City, Davao City, and the Subic Bay Freeport Zone.

We offer 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
- Dispute resolution

SyCipLaw has specialists in key practice areas such as mergers and acquisitions, energy, power, infrastructure, natural resources, transportation, government contracts, real estate, insurance, international arbitration, mediation, media, business process outsourcing, and technology.

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

SyCipLaw maintains links with established and leading firms based in other jurisdictions, including the United States, and countries in Europe and Asia. We are an active member of various international lawyers' associations, such as the Employment Law Alliance, the Interlex Group, the Multinational Association of Law Firms, the Pacific Rim Advisory Council, the World Law Group, and the World Services Group.

## Recognition and Awards

Recent professional awards include:

- Band 1 Firm in Banking & Finance, Corporate/M&A, and Projects, Infrastructure & Energy, Spotlight Table ranking in Banking & Finance: Capital Markets, *Chambers Global 2023*
- Band 1 Firm in Banking & Finance, Corporate/M&A, Real Estate, Dispute Resolution, Arbitration, Employment, Intellectual Property, Projects, Infrastructure & Energy, and Tax, *Chambers Asia Pacific Rankings 2023*
- Tier 1 Firm in Antitrust & Competition, Aviation, Banking and Finance, Corporate and M&A, Dispute Resolution, Immigration, Intellectual Property, Labor & Employment, Projects and Energy, Real Estate and Construction, Shipping, Tax, and Technology, Media and Telecoms (TMT), *The Legal 500 Asia Pacific Rankings 2023*
- Ranked "Outstanding" in all 15 practice area categories, *asialaw 2023*
- Most Outstanding Law Firm of the Year – Philippines, *asialaw Awards 2023*
- Philippine Law Firm of the Year, *Asia Business Law Journal's Philippine Law Firm Awards 2023*
- Tier 1 Firm, Tax Controversy, *International Tax Review (ITR) World Tax 2023*
- National Firm of the Year: Philippines, *IFLR Asia Pacific Awards 2022*
- Philippine Tax Firm of the Year, *International Tax Review (ITR) Asia Tax Awards 2022*
- Philippine Tax Disputes Firm of the Year, *ITR Asia Tax Awards 2022*
- Tier 1 Firm, Trademark, *Managing IP's IP Stars 2022*
- Tier 1 Firm, Patents and Copyright/ Trademarks, *Asian Legal Business (ALB) IP Rankings 2022*
- Gold ranking, *World Trade Mark Research (WTR) 1000, 2022*
- Tier 1 Firm, Benchmark Litigation Asia Pacific, 2022
- Antitrust & Competition Team of the Year, *The Legal 500 Southeast Asia Awards 2020/21*

## I. Doing Business in the Philippines

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

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

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

The FIA also enumerates certain acts which are not considered as “doing business:”

- (a) investment as a shareholder in a domestic corporation and/or the exercise of rights as such shareholder;
- (b) having a nominee director or officer to represent its interest in a domestic corporation;
- (c) appointing a representative or distributor domiciled in the Philippines which transacts business in the representative’s or distributor’s own name and account;
- (d) the publication of a general advertisement through any print or broadcast media;
- (e) maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;
- (f) consignment by a foreign entity of equipment with a local company to be used in the processing of products for export;
- (g) collecting information in the Philippines; or
- (h) performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis.

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

This lack of capacity to sue or denial of access to the courts at the time of the cause of action does not apply to cases of enforcement of foreign arbitral awards obtained in its favor pursuant to an arbitration clause in a contract. The Supreme Court has held in the case of *Tuna Processing, Inc. v. Philippine Kingford, Inc.* (G.R. No. 185582, February 29, 2012) that Republic Act No. 9285, also known as the Alternative Dispute Resolution Act of 2004, does not require that the party seeking the enforcement should have legal capacity to sue.

## II. Getting Started—Subsidiary or Branch Office

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

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

The RCC provides that any person, partnership, association or corporation, singly or jointly with others but not more than 15 in number, may organize a domestic corporation, provided only that each incorporator must be a subscriber to at least one share of capital stock. Further, the corporation may have any number of directors but in no case more than 15, who, likewise, must own at least one share in the corporation’s capital stock. The RCC removed the Philippine residency requirements for incorporators and directors. The board of directors needs to annually elect the officers of the corporation (i.e., a President, a Treasurer, a Corporate Secretary, and other officers provided for under the subsidiary’s by-laws). The President must be a director and cannot simultaneously act as the Treasurer or the Corporate Secretary. The Treasurer must be a resident while the Corporate Secretary must be a Philippine citizen and resident. A Compliance Officer must also be elected if the corporation is one which is vested with public interest (e.g., corporations covered by Section 17.2 of Republic Act No. 8799, otherwise known as “The Securities Regulation Code”, banks, quasi-banks, non-stock savings and loan associations, pawnshops, corporations engaged in money service business, pre-need, trust, and insurance companies, and other financial intermediaries).

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

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

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

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

## **A. Establishment of a Domestic Corporation**

### **1. Subscription Stage**

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

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

The Articles of Incorporation (“AOI”) is the basic charter of a corporation. It should contain the following required information:

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

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

- Business purpose(s) – The purpose clauses confer as well as limit the powers which a corporation may exercise. The purpose(s) should not be patently unconstitutional, illegal, immoral, or contrary to government rules and regulations.
- Place of business – The place must be within the Philippines, specifying the address which shall include, if feasible, the street number, street name, barangay, city or municipality where the principal office of the proposed corporation shall be located.
- Corporate term – Prior to the effectivity of the RCC, the maximum corporate term allowed by law was 50 years, subject to term renewals. Under the RCC, corporations are now given perpetual existence as the default term. If the corporation chooses not to elect perpetual existence, the AOI should specify the term for which the corporation is to exist. The RCC also grants perpetual existence to those corporations with unexpired terms as of the effectivity of the RCC and established before the effectivity of the RCC. However, these corporations may elect to retain the specific term stated in their AOI by majority vote of its stockholders.
- Incorporators – The names of incorporators, with their nationalities and specific residence address must be indicated. The incorporators can be natural persons or juridical persons, residents or non-residents, and should not be more than 15 in number.

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

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

- Capital structure – This refers to the authorized, paid-up, and subscribed capital, the amount of subscription per subscriber and the par value of shares.
- Treasurer – The name of the Treasurer-in-Trust, the individual who will execute the Treasurer’s Affidavit and Authorization to Verify Bank Accounts, should be stated.
- Undertaking to Change Name – The AOI must contain an undertaking by the incorporators to change the corporate name in the event that another person, firm, or entity has acquired a prior right to the use of the name designated in the incorporation papers, or if the corporate name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law, or contrary to public morals, good customs or public policy.

### **3. Documentary Requirements**

The following documents must be prepared for submission to the SEC:

- Articles of Incorporation, which should be (a) accompanied by a Certificate of Authentication signed by all incorporators and the treasurer-in-trust in the form prescribed by the SEC, or (b) acknowledged before a notary public; and if executed abroad must be notarized and: (i) apostilled in accordance with the 1961 Apostille Convention; or (ii) authenticated by a Philippine Consul in the Philippine Embassy nearest the place of execution;
- By-Laws signed by all the incorporators. By-Laws may also be filed after incorporation; however, it must then be signed by stockholders representing at least a majority of the outstanding capital stock of the corporation and filed within a month from the issuance of the certificate of incorporation; and
- SEC Form F-100 (the Application to do Business under the Foreign Investments Act) which contains:
  - (a) the same information as that set forth in the AOI,
  - (b) the foreigner subscribers who are also stockholders or partners of an existing corporation or partnership in the Philippines which is engaged in the same line of business,
  - (c) an undertaking to export at least 60% of its total output (for export enterprises), and
  - (d) an undertaking to change its corporate name upon notice or directive of the SEC.

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

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

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

- If the proposed corporation will indicate an amount of paid-up capital in its AOI, a Treasurer-in-Trust Bank Account (“TITF”) is typically opened and the stated paid-up capital deposited in trust for the proposed corporation by the designated Treasurer-in-Trust, before commencing the incorporation process. In this connection, a Treasurer’s Affidavit is typically required by banks for purposes of opening the TITF and may also be required to be presented to the SEC upon incorporation.
- The SEC may require the submission of additional documentary requirements.

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

- for the AOI: 1/5 of 1% of the authorized capital stock of the proposed corporation but not less than PhP2,000 or the subscription price of the subscribed capital stock, whichever is higher;
- for the By-Laws: PhP1,000;
- for FIA Registration (under SEC Form F-100): PhP3,000;
- a legal research fee equivalent to 1% of filing fee for the AOI but not less than PhP10;
- a legal research fee equivalent to 1% of filing fee for the By-Laws but not less than PhP10;
- Documentary Stamp Tax (“DST”): PhP30;
- Name Verification Fee: PhP100; and
- Registration of Stock Transfer Book: PhP150.

After incorporation, the proposed corporation is required to pay DST on its original issuance of stocks at the rate of 1% (PhP2 for every PhP200) of the par value of the subscribed and issued shares. DST is payable on or before the fifth day of the month following the month that the certificate of incorporation is issued by the SEC.

#### 4. Endorsement for Regulatory Agencies

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

#### 5. Filing: Online Application for Registration

The SEC has established the SEC - Electronic Simplified Processing of Application for Registration of Company (“eSPARC”) Facility for the processing of applications for registration of corporations online. It allows the applicant to submit the proposed company name and input details of the AOI for review of the SEC.

Step 1 of the application is Name Verification. It is no longer a separate process that must be undertaken before incorporation. The results may either be “Completed” or “Failed.” In case the result is “Completed,” the applicant may proceed with the application and the name shall be subject to validation by a name verification officer. This, however, shall not be regarded as approval of the registration of the company or any application for change of name. The facility also provides for the reservation of the company’s name. In case the result is “Failed,” it means the proposed name cannot be used. This result may still be appealed by tagging the application for appeal and subsequently uploading name appeal documents.

For Steps 2-4, the same information in the corporation’s AOI shall be provided. This includes company details, capital structure, and company officers.

For Step 5, the name appeal documents, if applicable, shall be uploaded together with any pre-defined additional requirements, if applicable. These requirements refer to the endorsement of regulatory agencies and similar documents which are required for certain types of companies.

For Step 6, the applicant shall be allowed to review the application and ensure that all information provided are correct and complete prior to submission.

The application shall then be reviewed by the SEC within seven working days. After which, if pre-approved, the applicant must pay the corresponding filing fees and submit the documentary requirements under item 3 above either through the facility itself or to the SEC.

### 6. Issuance of Certificate of Incorporation

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

## B. Establishment of a Branch Office

### 1. Documentary Requirements

The following are the basic requirements:

- Cover sheet
- Name verification slip;
- SEC Form F-103 (the Application to Establish a Branch Office in the Philippines);
- Authenticated copy of the Board Resolution:
  - authorizing the establishment of the branch/representative office in the Philippines;
  - designating the resident agent upon whom summons and other legal processes may be served in behalf of the foreign corporation; and
  - stipulating that in the absence of such agent or upon cessation of its business in the Philippines, any summons or legal processes may be served to the SEC as if the same is made upon the corporation at its home office;
- Authenticated copy of the articles of incorporation/partnership of the foreign corporation with an English translation if it is in a foreign language other than English;
- Financial statements for the immediately preceding year at the time of filing of the application which must be audited by an independent certified public accountant of the home country;
- Compliance with financial ratios;
- Notarized proof of inward remittance such as bank certificate of inward remittance or credit advances;

- Affidavit of undertaking to change corporate name;
- Resident agent's acceptance of appointment; and
- Endorsement/clearance from the appropriate government agencies, if applicable.

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

**Filing:** Any person may submit the registration documents to the SEC on behalf of the proposed branch, along with the payment of the corresponding SEC filing fees.

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

- Name Verification Fee: PhP100;
- 1% of the actual inward remittance of the foreign corporation converted into Philippine currency but not less than PhP3,000; and
- Legal research fee equivalent to 1% of the filing fee.

## 2. Resident Agent

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

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

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

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

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

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

made upon the SEC in any action or proceeding "the [name of the foreign corporation] hereby stipulates and agrees, in consideration of its being granted a license to transact business in the Philippines, that if the corporation shall cease to transact business in the Philippines, or shall be without any resident agent in the Philippines on whom any summons or other legal processes may be served, then service of

any summons or other legal process may be arising out of any business or transaction which occurred in the Philippines and such service shall have the same force and effect as if made upon the duly authorized officers of the corporation officers at its home office."

## 3. Endorsement of Regulatory Agency

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

## 4. Issuance of License to do Business

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

## C. Other Substantive Requirements

### Applicable to a Domestic Corporation or a Branch Office of a Foreign Corporation

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

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

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

## D. Anti-Competition

Mergers and acquisitions of corporations in the Philippines are governed by the Republic Act No. 10667, otherwise known as the Philippine Competition Act ("PCA"), its implementing rules and regulations (the "PCA Rules"), and the PCC Rules on Merger Procedure ("Merger Rules"). The PCA prohibits anti-competitive practices that aim to eliminate competitive forces in the Philippine market, such as anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions. The PCA Rules define merger as the joining of two or more entities into an existing entity or to form a new entity including joint ventures; while acquisition is defined as the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control by –

- one entity of the whole or part of another;
- two or more entities over another; or
- one or more entities over one or more entities.

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

Where the value of a merger or acquisition transaction reaches the then current thresholds set by the PCA Rules for size of party and size of transaction, the parties are required by the Merger Rules to notify the Philippine Competition Commission (“PCC”) within 30 days from the execution of the definitive agreements relating to the transaction but before any consummation of such agreements. Currently, the size of party (defined under the PCA Rules as the value of assets or revenues of the ultimate parent entity of either party) is PHP7 billion and the size of transaction (defined under the PCA Rules as the value of assets or revenues of the acquired party and the entities it controls) is PHP2.9 billion. When the PCC deems it necessary, it may likewise investigate mergers or acquisitions on its own initiative.

If the transaction reaches the notification threshold and the PCC is notified of the transaction, it will conduct a sufficiency determination within 15 days in order to determine the completeness of the submissions of the parties. During this stage the PCC may request additional information which would toll the 15-day period.

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

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

At the end of Phase 1 Review, the PCC may issue a decision stating that it has decided to take no further action or issue no decision on the transaction and have the waiting period automatically expire. If the PCC still has unresolved concerns regarding the competitive effect of the transaction at the end of Phase 1, it will declare that a more comprehensive review of the transaction is required, and the review will proceed to Phase 2.

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

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

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

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

### III. Post-Registration Requirements

The original issuance of shares of stock by the subsidiary to its shareholders is subject to the payment of DST at the rate of 1% of the par value of the shares subscribed. The tax is due not later than five days after the close of the month after the SEC certificate of registration is issued.

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

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

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

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

- (a) within 60 days after the issuance of its license, securities with an actual market value of at least PHP500,000;
- (b) within six months after the end of the corporation’s fiscal year, as indicated in its financial statements, additional securities must be deposited under the following circumstances:
  - i. if the foreign corporation’s gross income within the Philippines for that fiscal year exceeds PHP10,000,000, additional securities with an actual market value equivalent to 2% of the increase must be deposited; and
  - ii. if the actual market value of the securities deposited has decreased by at least 10% from the time it was deposited, additional securities with an actual market value that would cover the decrease must be deposited.

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

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

## IV. Taxes

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

For tax identification purposes, any person required to make, render, or file a return, or a document, will be supplied with or assigned a taxpayer identification number (“TIN”) which must be indicated on such return, statement, or document. A corporation must register with the appropriate revenue district office of the BIR (i.e., the office which has jurisdiction over the domestic corporation’s principal office, or the office of the branch of a foreign corporation) within 30 calendar days from the issuance of the certificate of incorporation or license to do business by the SEC.

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

- BIR Form No. 1903, the application form for registration;
- SEC registration documents (certificate of incorporation or license to do business); and
- proof of representative’s authority to process the registration (if transacting through a representative).

The fees payable include:

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

The process of registration with the BIR includes the registration of the subsidiary’s or branch office’s books of account, sales invoices, and official receipts, or, if applicable, its computerized accounting system and computerized books of accounts, including electronic storage system and components thereof.

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

### B. Domestic Corporation

#### 1. General Corporate Income Tax

A domestic corporation is taxable on all income derived from sources within and without the Philippines at the corporate income tax rate of 25% of its taxable net income or the minimum corporate income tax (“MCIT”) of 2% of gross income, whichever is higher.

The corporate income tax rate is reduced to 20% for domestic corporations whose taxable net income does not exceed Php5,000,000 and total assets do not exceed Php100,000,000, excluding the land on which the entity’s office, plant, and equipment are situated.

For the period beginning July 1, 2020 to June 30, 2023, the MCIT is reduced to 1% of gross income.

The MCIT is imposed beginning on the fourth taxable year immediately following the year in which a domestic corporation commenced its business operations, when it is greater than the regular corporate income tax computed for that taxable year.

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

#### 2. Dividends

Dividends remitted by a Philippine subsidiary to its foreign parent company are generally taxed at 25% on the gross amount of dividends remitted, which tax is required to be withheld by the Philippine subsidiary. The final withholding tax rate imposed on the amount of cash dividends may be reduced to 15% if the country where the parent company is domiciled either

- allows a credit against the tax due from the parent company taxes deemed to have been paid in the Philippines equivalent to 10% which represents the difference between the regular corporate income tax of 25% on non-resident foreign corporations and the 15% tax on dividends, or
- does not impose any income tax on such dividends received.

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

### C. Branch Office

#### 1. General Corporate Income Tax

As a general rule, a resident foreign corporation (such as a branch office of a foreign corporation) is subject to income tax at the rate of 25% on its taxable income derived from all sources within the Philippines. Beginning January 1, 2022, Regional Operating Headquarters are also subject to the 25% regular corporate income tax rate (from the previous 10% preferential income tax rate).

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

#### 2. Branch Profits Remittance

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

### D. Employer’s Withholding Tax Obligation

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



## E. Tax Incentives

The Tax Code of 1997, as amended, and special laws provide tax incentives to certain corporations depending on their business activities and location, subject to their registration with the appropriate government agency.

Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises (“CREATE”) Act introduced a new title, Title XIII: Tax Incentives, to the Tax Code of 1997, as amended. The CREATE Act, which took effect on April 11, 2021, amended and modified the special laws granting tax incentives, such as Executive Order No. 226, series of 1987, otherwise known as the Omnibus Investments Code (the “Omnibus Investments Code”), and Republic Act No. 7916, otherwise known as Special Economic Zone Act of 1995 (the “PEZA Law”).

The Fiscal Incentives Review Board (“FIRB”) has the power to grant tax incentives; however, the FIRB shall delegate the power to grant tax incentives to the investment promotion agencies (“IPAs”) where the invested capital is P1,000,000,000 or below.

The IPAs include the Board of Investments (“BOI”), the Philippine Economic Zone Authority (“PEZA”), and other government entities existing or may be created by law, in charge of promoting investments, granting and administering tax and non-tax incentives, and overseeing the economic zones and freeports in accordance with their respective special laws.

The incentives under the CREATE Act are dependent on the entity’s location and whether the project or activity is included under the strategic investment priorities plan. The incentives include:

- (a) Income tax holiday (“ITH”) granted for a minimum of four years and a maximum of seven years followed by:
  - i. Special Corporate Income Tax (“SCIT”) rate of 5% on gross income earned in lieu of all national and local taxes; or
  - ii. Enhanced deductions (“ED”), such as additional depreciation, labor expense, research and development expense, training expense, power expense, and net operating losses for five or ten years;
- (b) Duty exemption on importation of capital equipment, raw materials, spare parts, and accessories directly and exclusively used in the registered project or activity; and
- (c) Value-added tax (“VAT”) exemption on importation and VAT zero-rating on local purchases of goods and services directly and exclusively used in the registered project or activity.

The Strategic Investment Priorities Plan (“SIPP”) contains the list of priority projects or activities and the industry tiers where investments are encouraged. The SIPP is subject to review and amendment every three years.

A registered activity or project may be located in the National Capital Region (“NCR”), metropolitan areas or areas contiguous or adjacent to the NCR, and all other areas in the Philippines.

The qualified activities under the industry tiers are as follows:

Tier I	Includes activities that – (a) Have high potential for job creation; (b) Take place in sectors with market failures resulting in under-provision of basic goods and services; (c) Generate value creation through innovation, upgrading, or moving up the value chain; (d) Provide essential support for sectors critical to industrial development; or (e) Emerging owing to potential comparative advantage
Tier II	Includes activities that produce supplies, parts and components, and intermediate services that are not locally produced but are critical to industrial development and import-substituting activities, including crude oil refining
Tier III	Includes – (a) Research and development resulting in demonstrably significant value-added, higher productivity, improved efficiency, breakthroughs in science and health, and high-paying jobs; (b) Generation of new knowledge and intellectual property registered and/or licensed in the Philippines; (c) Commercialization of patents, industrial designs, copyrights and utility models owned or co-owned by a registered business enterprise; (d) Highly technical manufacturing; or Activities that are critical to the structural transformation of the economy and require substantial catch-up efforts.

On May 24, 2022, the President issued Memorandum Circular No. 61 approving the 2022 SIPP indicating the qualified activities under each industry tier.

The following incentives are available for the following industry tier and location:

### A. Exporters’ Activities

Location	Industry Tier		
	Tier I	Tier II	Tier III
NCR	4 years ITH + 10 years ED/SCIT	5 years ITH + 10 years ED/SCIT	6 years ITH + 10 years ED/SCIT
Metropolitan Areas or areas contiguous and adjacent to NCR	5 years ITH + 10 years ED/SCIT	6 years ITH + 10 years ED/SCIT	7 years ITH + 10 years ED/SCIT
All other areas	6 years ITH + 10 years ED/SCIT	7 years ITH + 10 years ED/SCIT	7 years ITH + 10 years ED/SCIT

### B. Domestic Market Activities

Location	Industry Tier		
	Tier I	Tier II	Tier III
NCR	4 years ITH + 5 years ED	5 years ITH + 5 years ED	6 years ITH + 5 years ED
Metropolitan Areas or areas contiguous and adjacent to NCR	5 years ITH + 5 years ED	6 years ITH + 5 years ED	7 years ITH + 5 years ED
All other areas	6 years ITH + 5 years ED	7 years ITH + 5 years ED	7 years ITH + 5 years ED

For registered business enterprises (“RBEs”) with incentives granted prior to the effectivity of CREATE, a sunset period was imposed as follows:

- (a) RBEs whose projects or activities were granted only an income tax holiday shall be allowed to avail the income tax holiday for its remaining period as specified in their registration;
- (b) RBEs whose projects or activities were granted the 5% tax on gross income earned incentive (“5% GIT”) after the income tax holiday shall be allowed to avail of the 5% GIT for 10 years from the effectivity of the CREATE Act or until April 10, 2031.
- (c) RBEs currently availing of the 5% GIT shall be allowed to continue availing it for 10 years from the effectivity of the CREATE Act or until April 10, 2031.

## V. Labor

### A. Registration with Government Agencies

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

The Social Security System (“SSS”) is compulsory upon all employees not over 60 years of age and their employers. Coverage in the Home Development Mutual Fund Law Fund (the “Pag-ibig Fund”) is also mandatory upon all employees covered by the SSS and their respective employers.

All private sector employees are compulsory members of the National Health Insurance Program. The National Health Insurance Program is administered by the Philippine Health Insurance Corporation (“PhilHealth”). Private sector employers are required to register with PhilHealth and a permanent PhilHealth Employment Number will be issued for each employer.

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

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

### B. Employment of Expatriate Employees

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

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

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

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

The visa is approved by the Philippine Department of Justice and implemented by the BI.

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

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

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

Expatriates applying for a 9(g) visa or 47(a)(2) visa are also required to obtain an AEP from the DOLE unless the expatriate is exempt or excluded from securing an AEP (e.g., directors with voting rights only, foreigners who will work for a regional operating headquarters in the Philippines, or officers or staff of international organizations).

An AEP may be issued by the DOLE after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.

Subject to renewal, the AEP is usually issued for a period of one year unless a longer period is granted by the employment contract but in no case to exceed three years.

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