



DIVINALAW
Dynamic Lawyering

A PRIMER ON
**Doing Business
in the Philippines**



A blurred office scene with people working at laptops. In the foreground, a person is leaning over a desk, pointing at a laptop screen. In the background, another person stands with arms crossed. The scene is brightly lit, suggesting a window or large light source. A yellow banner is overlaid at the bottom, containing the text 'SETTING UP A BUSINESS'.

SETTING UP A BUSINESS

I. TYPES OF BUSINESS ORGANIZATIONS

The different types of business organizations can be classified into two (2) general categories:

A. Domestic or those organized under Philippine laws

1. Sole proprietorship
2. Partnership
3. Corporation

B. Foreign or those organized under laws other than Philippine laws

1. Branch office
2. Representative office
3. Regional HQs/Regional Operating HQs

ORGANIZED UNDER PHILIPPINE LAWS

1. Sole Proprietorship

Sole Proprietorship is a business entity which is owned by, and registered in favor of, only one individual who must register with the Department of Trade and Industry ("DTI"). A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the business. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government.

2. Partnership

Under Philippine law, a partnership has its own legal personality separate and distinct from that of its partners. A partnership may either be a (1) general partnership, where the partners have unlimited liability for the debts and obligation of the partnership, or (2) limited partnership, where one or more general partners have unlimited liability and the limited partners have liability only up to the amount of their capital contributions.

3. Corporation

A domestic corporation is one incorporated under the Philippine Corporation Code and are regulated by the Securities and Exchange Commission ("SEC"). A corporation has a legal personality separate and distinct from that of its stockholders. A corporation must have at least five (5) but not more than fifteen (15) incorporators each

of whom must subscribe to at least one share of stock of the corporation.

ORGANIZED UNDER LAWS OTHER THAN PHILIPPINE LAWS

A corporation formed, organized, or existing under laws other than Philippine laws are considered as foreign corporations.

A foreign corporation may be allowed to conduct business in the Philippines through any of the following forms:

1. Branch Office

A Branch Office is an extension of a foreign corporation, which carries out business activities of the head office and which derives income in the Philippines. As an extension, a Branch Office has no separate legal personality from the foreign corporation. Consequently, any liability incurred by the branch is a liability of the head office.

A Branch Office is required to put up a minimum paid in capital of two hundred thousand US dollars (USD200,000.00), which can be reduced to one hundred thousand US dollars (USD100,000.00) if (a) its activity involves advanced technology, or (b) it employs at least fifty (50) direct employees. Further, branch offices are required to initially deposit with the SEC for the benefit of present or future creditors, acceptable securities with market value equivalent to at least one hundred thousand pesos (P100,000.00) plus an annual additional deposit of two percent (2%) of the amount by which the branch office's gross income exceeds five million pesos (P5,000,000.00).

2. Representative Office

A Representative Office does not derive any income from the Philippines. A Representative Office may only engage in limited activities such as information dissemination, acts as a communication center and promote company products, as well as quality control of products for export. All the expenses to establish and maintain the Representative Office will therefore come from the parent company's remittances, which shall not be less than thirty thousand US dollars (USD30,000.00) to cover its operating expenses.

3. Regional Headquarters/Regional Operating Headquarters

The following are the characteristics of a Regional or Area



Headquarter or a Regional Operating Headquarter in the Philippines:

A. Regional or Area Headquarters ("RHQ")

An RHQ act as an administrative branch of a foreign company, and shall principally serve as a supervision, communications and coordination center for the foreign company's subsidiaries, branches or affiliates in the Asia-Pacific Region and other foreign markets. As an administrative branch, the RHQ may not earn or derive income in the Philippines.

An endorsement from the Board of Investments ("BOI") is necessary to register a RHQ. Further, it shall be required to remit into the country such amount as may be necessary to cover its operations in the Philippines which amount should not be less than fifty thousand US dollars (USD50,000.00) or its equivalent in other foreign currencies annually .

B. Regional Operating Headquarters ("ROHQ")

An ROHQ is allowed to derive income in the Philippines. However, it only performs qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region and in other foreign markets, particularly:

- i. General administration and planning;
- ii. Business planning and coordination;
- iii. Sourcing/procurement of raw materials and components;
- iv. Corporate finance advisory services;
- v. Marketing control and sales promotion;
- vi. Training and personnel management;
- vii. Logistics services;
- viii. Research and development services, and product development;
- ix. Technical support and maintenance;
- x. Data processing and communication; and
- xi. Business development.

An ROHQs must secure a favorable recommendation from the BOI. It shall be required to remit into the country such amount as may be necessary to cover its operations in the Philippines which amount should not be less than two hundred thousand US dollars (USD200,000.00) or its equivalent in other foreign currencies annually .

II. INVESTMENTS BY FOREIGN OR NON-PHILIPPINE NATIONALS IN DOMESTIC ENTERPRISES

A. Foreign Investments in Domestic Market Enterprises

As a general rule, there are no restrictions on extent of foreign ownership of export enterprises. In domestic market enterprises, foreigners can invest as much as one hundred percent (100%) equity except in areas included in the Foreign Investment Negative List.

Consistent with this declared policy, foreign or non-Philippine national investors are allowed to invest in domestic enterprises except when foreign ownership is either prohibited or limited by law. Section 7 of the Foreign Investment Act of 1991 ("FIA"), as amended , expressly provides:

"Sec. 7. Foreign Investments in Domestic Market Enterprises. - Non-Philippine nationals may own up to one hundred percent (100%) of domestic market enterprises unless foreign ownership therein is prohibited or limited by the Constitution and existing law or the Foreign Investment Negative List under Section 8 hereof."

This Foreign Investment Negative List, which is regularly updated, basically provides for two (2) component lists: (a) List A - which enumerates the areas of activities reserved to Philippine nationals by mandate of the Constitution and specific laws; and (b) List B - which contains the areas of activities and enterprises regulated pursuant to law for reasons of security, defense, risk to health and morals and protection to small and medium-scale enterprises.

Non-Philippine nationals are allowed to engage in small or medium-scale domestic enterprises provided that their paid in capital is at least two hundred thousand US dollars (USD200,000.00). However, when the enterprises involve advance technology as determined by the Department of Science and Technology, or employ at least fifty (50) direct employees, in which case a minimum paid-in capital of one hundred thousand US dollars (USD100,000.00) would be sufficient.

In this regard, the term "Philippine national" is defined as follows:

"a. the term Philippine national shall mean shall mean a citizen of the Philippines, or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation 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; or a corporation 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 or a trustee 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: Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines, in order that the corporation shall be considered a Philippine national."

Thus, for purposes of investments in domestic enterprises, the following are considered as a "Philippine national":

1. A citizen of the Philippines;
2. A domestic partnership or association wholly owned by citizens of the Philippines;
3. A corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the outstanding capital stock and entitled to vote is owned and held by citizens of the Philippines;
4. A corporation organized abroad and registered as doing business in the Philippines of which one hundred percent (100%) of the outstanding capital stock and entitled to vote is wholly owned by Filipinos
5. A trustee of funds for pension or other employee retirement and pension benefits where the trustee is a Philippine national and where at least sixty percent (60%) of the fund will accrue for the benefit of Philippine nationals; and
6. A corporation and its non-Filipino stockholders who own stocks in a SEC registered enterprise, where at least sixty percent (60%) of the outstanding capital stock and entitled to vote are owned and held by citizens of the Philippines.

B. Registration of Foreign Investments

Under Section 5 of the FIA, as amended, a non-Philippine national, not otherwise disqualified by law, and upon registration with the SEC, or with the Department

of Trade and Industry ("DTI") in the case of single proprietorships, is allowed to do business or invest in a domestic enterprise up to one hundred percent (100%) of its capital, unless participation of non-Philippine nationals in the enterprise is prohibited or limited under the Foreign Investments Negative List.

In this regard, Section 3(c) of the same law, defines "foreign investment" as equity investment made by a non-Philippine national in the form of foreign exchange and/or other assets actually transferred to the Philippines and duly registered with the Bangko Sentral ng Pilipinas ("BSP") which shall assess and appraise the value of such assets other than foreign exchange.

Foreign investments registered with the BSP are entitled to full repatriation of capital and remittance of dividends/profits using foreign exchange sourced/purchased from authorized agent banks and/or their subsidiary/affiliate foreign exchange corporations. All applications for registration of foreign direct investments shall be filed with the BSP within one (1) year from the date of inward remittance/actual transfer of assets to the Philippines.

III. REQUIREMENTS IN SETTING UP A BUSINESS ORGANIZATION

A. DOMESTIC BUSINESS ORGANIZATIONS

1. SOLE PROPRIETORSHIP

The following are registration requirements for the establishment of a Sole Proprietorship:

- a. Registration with DTI. This registration requires submission of accomplished DTI Business Name Application Form.
- b. Registration with the Local Government Units ("LGUs").
- c. Registration with the Bureau of Internal Revenue ("BIR").
- d. If there are employees, registration with (i) Social Security System ("SSS"), (ii) Philippine Health Insurance Company ("PhilHealth"), and (iii) Home Development Mutual Fund ("HDMF" or "Pag-IBIG") shall also be required.

2. PARTNERSHIP

The following are registration requirements for the establishment of a Partnership:



a. Registration with SEC. Documentary requirements for the registration of a Partnership with SEC are as follows:

- i. Name verification slip;
- i. Articles of Partnership;
- ii. Written joint undertaking to change partnership name, if needed; and
- iii. Clearance/endorsement from other government agencies, if applicable.

b. Registration with the LGUs.

c. Registration with the BIR.

d. If there are employees, registration with (i) SSS, (ii) PhilHealth, and (iii) HDMF or Pag-IBIG shall also be required.

3. CORPORATION

The following are registration requirements for the establishment of a Corporation:

a. Incorporation and Registration with SEC. Documentary requirements for the incorporation and registration of a Corporation with SEC are as follows:

- i. Company name verification slip;
- ii. Duly notarized Articles of Incorporation and By-laws;
- iii. Duly notarized Treasurer's Affidavit;
- iv. Statement of Assets and Liabilities;
- v. Registration Data Sheet with particulars on directors, officers, stockholders, etc;
- vi. Duly notarized written undertaking to comply with SEC reporting requirements; and
- vii. Duly notarized written undertaking to change corporate name, if needed

b. Registration with the LGUs.

c. Registration with the BIR.

d. If there are employees, registration with (i) SSS, (ii) PhilHealth, and (iii) HDMF or Pag-IBIG shall also be required.

B. FOREIGN BUSINESS ORGANIZATIONS

1. BRANCH OFFICE

The following are the documentary requirements of the application with the SEC for the establishment of a Branch Office:

- i. Form F103;
- ii. Name Verification Slip;
- iii. Authenticated copy of Board Resolution authorizing establishment of office in the Philippines designating resident agent and stipulating that in absence of such agent or upon cessation of business in the Philippines any summons may be served to SEC as if the same is made upon the corporation at its home office;
- iv. Financial Statements as of a date not exceeding one year immediately prior to the application certified by independent Certified Public Accountant of home country and authenticated before the Philippine Consulate/Embassy;
- v. Authenticated copies/Certified copies of the Articles of Incorporation/Partnership;
- vi. Proof of inward remittance (USD 200,000.00 minimum) such as bank certificate; and
- vii. Resident Agent's acceptance of appointment (if not signatory in application form).

2. REPRESENTATIVE OFFICE

The following are the documentary requirements of the application with the SEC for the establishment of a Representative Office:

- i. Form F-104
- ii. Name Verification Slip
- iii. Authenticated copy of Board Resolution authorizing establishment of office in the Philippines; designating resident agent & stipulating that in absence of such agent or upon cessation of business in the Philippines, any summons may be served to SEC as if the same is made upon the corporation at its home office.
- iv. Financial Statements as of a date not exceeding one year immediately prior to the application, certified by independent CPA of home country and authenticated before the Philippine consulate/embassy.
- v. Affidavit executed by the resident agent stating that mother office is solvent and in sound financial condition.
- vi. Authenticated copies of Articles of Incorporation with an English translation if in foreign language other than English.



- vii. Proof of inward remittance (USD 30,000.00 minimum) such as bank certificate.
- viii. Resident Agent's acceptance of appointment (if not signatory in application form).

3. RHQ/ROHQ

The following are the documentary requirements of the application with the SEC for the establishment of a RHQ/ROHQ:

- i. Application Form for RHQ/ROHQ;
- ii. Name Verification Slip;
- iii. Authenticated certification that foreign firm is engaged in international trade with affiliates, subsidiaries, or branch offices in the Asia Pacific region & other foreign markets;
- iv. Authenticated certification from principal officer of foreign entity that it was authorized by its Board of Directors or governing body to establish RHQ in the Philippines;
- v. Board of Investments (BOI) endorsement indicating its approval of RHQ/ROHQ; and
- vi. Proof of inward remittance (USD 50,000.00 for RHQ and USD 200,000.00 for ROHQ minimum) such as bank certificate.

IV. TAXES

Taxes imposed in the Philippines may be in the form of a national or a local tax. National taxes, which include income and value-added tax, are collected by the national government through the BIR. On the other hand, local taxes are levied and collected by LGUs, such as provinces, cities, municipalities and barangays.

A. National Tax

National taxes are those imposed in the National Internal Revenue Code of the Philippines.

1. Income Tax

Generally, domestic and resident foreign corporations are subject to (1) thirty percent (30%) income tax or (2) minimum corporate income tax of two percent (2%) of gross income, whichever is higher. However, RHQs are not subject to income tax since, as an administrative branch, it may not earn or derive income in the Philippines. ROHQs, on the other hand, are subject to a preferential income tax rate of ten percent (10%) of its taxable income.

Non-resident foreign corporations, on the other hand, are subject to income tax of thirty-five percent (35%)

of gross income received from sources within the Philippines. However, certain tax treaties provide preferential income tax on income sourced from the Philippines, including income on business profits, royalty, dividends, and interest.

Currently, the Philippines has existing tax treaties with the following countries:

Country	Effectivity	Date and Venue of Signature
Australia	January 1, 1980	May 11, 1979 Manila, Philippines
Austria	January 1, 1983	April 4, 1981 Vienna, Austria
Bahrain	January 1, 2004	November 7, 2001 Manila, Philippines
Bangladesh	January 1, 2004	September 8, 1997 Manila, Philippines
Belgium	January 1, 1981	October 2, 1976 Manila, Philippines
	January 1, 2000	May 11, 1996 Manila, Philippines
Brazil	January 1, 1992	September 29, 1983 Brasilia, Brazil
Canada	January 1, 1977	March 11, 1976 Manila, Philippines
China	January 1, 2002	November 18, 1999 Beijing, China
Czech Republic	January 1, 2004	November 13, 2000 Manila, Philippines
Denmark	January 1, 1998	June 30, 1995 Copenhagen, Denmark
Finland	January 1, 1982	October 13, 1978 Manila, Philippines
France	January 1, 1978	January 9, 1976 Kingston, Jamaica
	January 1, 1998	September 9, 2013 Berlin
Hungary	January 1, 1998	June 13, 1997 Budapest, Hungary
India	January 1, 1995	February 12, 1990 Manila, Philippines
Indonesia	January 1, 1983	June 18, 1981 Manila, Philippines
Israel	January 1, 1997	June 9, 1992 Manila, Philippines
Italy	January 1, 1990	December 5, 1980 Rome, Italy
Japan	January 1, 1981	February 13, 1980 Tokyo, Japan
	January 1, 2009	December 9, 2006 Manila, Philippines
Kuwait	January 1, 2014	November 3, 2009 Kuwait City, Kuwait



Malaysia	January 1, 1985	April 27, 1982 Manila, Philippines
Netherlands	January 1, 1992	March 9, 1989 Manila, Philippines
New Zealand	December 2, 2008	February 21, 2002 Wellington, New Zealand
	January 1, 1981	April 29, 1980 Manila, Philippines
Nigeria	January 1, 2014	September 30, 1997 Manila, Philippines
Norway	January 1, 1998	July 9, 1987 Manila, Philippines
	January 1, 1998	May 22, 1989 Manila, Philippines
Pakistan	January 1, 1979	February 22, 1980 Manila, Philippines
Poland	January 1, 1998	September 9, 1992 Manila, Philippines
Qatar	January 1, 2016	December 14, 2008 Doha
Romania	January 1, 1998	May 18, 1994 Bucharest, Romania
Russia	January 1, 1998	April 26, 1995 Manila, Philippines
Singapore	January 1, 1977	August 1, 1977 Manila, Philippines
South Korea	January 1, 1987	February 21, 1984 Seoul, South Korea
Sri Lanka	January 1, 2019	December 11, 2000 Manila, Philippines
Spain	January 1, 1994	March 14, 1989 Manila, Philippines
Sweden	January 1, 2004	June 24, 1998 Manila, Philippines
Switzerland	January 1, 2002	June 24, 1998 Manila, Philippines
Thailand	January 1, 1983	July 14, 1982 Manila, Philippines
	January 1, 2019	June 21, 2013 Manila, Philippines
Turkey	January 1, 2017	March 18, 2009 Ankara, Turkey
United Arab Emirates	January 1, 2009	September 21, 2003 Dubai, United Arab Emirates
United Kingdom of Great Britain and Northern Ireland	January 1, 1979	June 10, 1976 London, United Kingdom
United States of America	January 1, 1983	October 1, 1976 Manila, Philippines
Vietnam	January 1, 2004	November 14, 2001 Manila, Philippines

2. Other Business Taxes

Sales in the Philippines may either be subject to value-added tax ("VAT") or percentage tax.

Generally, all sales in the Philippines are subject to twelve percent (12%) VAT. However, if the taxpayer's whose gross annual sales and/or receipts from sales or lease of goods or properties or the performance of service do not exceed P3,000,000, such taxpayer is subject to percentage tax of three (3%) of his gross sales and/or receipts. Further, certain transactions are subject to zero percent (0%) or exempt from VAT, based on conditions set forth under the tax code as amended.

In addition, excise tax is imposed on (1) imported articles, (2) certain services performed in the Philippines, and (3) certain goods manufactured or produced in the Philippines for domestic sales or consumption. These services and goods are enumerated as follows:

- a. Alcohol products, including distilled spirits, wines and fermented liquor;
- b. Tobacco products, including cigars and cigarettes;
- c. Petroleum products;
- d. Automobiles, except purely electric vehicles and pick-ups;
- e. Non-essential goods, including jewelry and precious stones;
- f. Invasive cosmetic procedures and surgeries;
- g. Sweetened beverages; and
- h. Mineral products.

3. Investment Incentives

Aside from entering into tax treaties, the Philippine Government likewise enacted special laws which offer tax incentives for qualified businesses upon their registration with the Investment Promotion Agencies ("IPAs"). In general, entities registered with IPAs enjoy income tax holiday or reduced income tax rate, exemption from duty on importation, exemption on wharfage dues and export tax, zero percent (0%) VAT, among other fiscal and non-fiscal incentives.

Listed below are some of the IPAs where application for registration can be made. See also "Annex A" for the brief description of each IPA.

- a. Board of Investments
- b. Economic Zone Authorities
 - i. Philippine Economic Zone Authority
 - ii. Subic Bay Metropolitan Authority and Clark Development Corporation
 - iii. Cagayan Economic Zone Authority

- iv. Aurora Special Economic Zone Authority
- v. Authority of the Freeport of Bataan

and approved by the President of the Philippines, lists the priority activities for investments.

B. Local Tax

LGUs are likewise granted authority to levy taxes as its own source of revenue, subject to certain limitations. The local taxes are distinct and separate from the national taxes collected by the BIR. While there are different kinds of local taxes, most businesses are required to pay business tax and real property tax.

1. Local Business Tax

Under the Local Government Code (“LGC”), municipalities and cities may impose business tax on persons engaged in trade or commercial activity regularly as a means of livelihood or with a view to profit. The type of business subject to local business tax and the rate thereof shall depend upon the local tax ordinance enacted by the concerned local sanggunian. The local business tax, which generally accrues on the first day of January of each year, shall be computed as a certain percentage of gross sales or receipts.

2. Real Property Tax

Real property tax is a kind of tax imposed by provinces, cities, or municipalities within Metropolitan Manila on real property, such as land, building, machinery and other improvements.

The maximum rate of real property tax that may be levied upon depends on the type of LGU. While a city or municipality within Metro Manila may impose real property tax not exceeding two percent (2%) of the assessed value of the real property, provinces may only impose real property tax not exceeding one percent (1%) of the assessed value of the real property.

A Filipino enterprise can register their activity with the BOI if their project is listed as a preferred project in the current IPP. Said enterprise may engage in domestic-oriented activities listed in the IPP whether classified as pioneer or non-pioneer. However, an activity which is not listed, may also be entitled to incentives if the following conditions are met: (1) At least 50% of the production is for export (for 60% Filipino-40% foreign-owned enterprises); or (2) At least 70% of production is for export (for more than 40% foreign-owned enterprises).

For foreign-owned firms or those whose foreign participation exceeds 40% of the outstanding capital stock who intend to engage in domestic-oriented activities, they can only be registered with BOI if they propose to engage in an activity listed or classified in the IPP as pioneer. If it fails to meet the pioneer classification, it may opt to be an export-oriented firm to qualify for BOI registration provided that it meets the export requirement of at least 70% of actual production.

B. Philippine Economic Zone Authority (“PEZA”)

PEZA, attached to the DTI, is the Philippine government agency tasked to promote investments, extend assistance, register, grant incentives to and facilitate the business operations of investors in export-oriented manufacturing and service facilities inside selected areas throughout the country proclaimed by the President of the Philippines as PEZA Special Economic Zones.

C. Subic Bay Metropolitan Authority (“SBMA”) and Clark Development Corporation (“CDC”)

SBMA and CDC are tasked to manage the Subic Bay Freeport and Clark Freeport Zone, respectively, which are considered as separate customs territory. One hundred percent (100%) foreign equity is allowed for many types of industries including manufacturing, tourism and service-oriented businesses.

D. Cagayan Economic Zone Authority (“CEZA”)

The CEZA is mandated to supervise and manage the development of the Cagayan Special Economic Zone and Freeport (“Cagayan Freeport”) to create employment opportunities in and around the Cagayan Freeport, and to effectively encourage and attract legitimate and productive local and foreign investments. To be qualified for registration, an enterprise must (1) be a duly consti-

ANNEX A

Investment Promotion Agencies

A. Board of Investments (“BOI”)

The BOI, an agency under the DTI, is the lead investments promotion agency of the country. The BOI is mandated by Executive Order 226, otherwise known as the “Omnibus Investments Code”, to encourage investments through tax exemption and other benefits in preferred areas of economic activity specified by the BOI in its Investment Priorities Plan (“IPP”). The IPP, formulated annually by the BOI,



tuted business enterprise organized or domiciled in the Philippines or any foreign country, (2) infuse capital within the Cagayan Freeport, and (3) name a representative or agent who is a legal resident of the Philippines.

E. Aurora Special Economic Zone Authority (“ASEZA”)

The ASEZA manages the Aurora Pacific Economic Zone which is designed to be the Philippines gateway to the Pacific housing an airport and seaport – driven economic center. Both foreign and local investors with export and/or domestic market can apply for registration and availment of incentives.

F. Authority of the Freeport of Bataan (“AFAB”)

AFAB manages the Freeport of Bataan (“FAB”). The FAB is the only Freeport in the Manila Bay area which makes it an ideal transshipment hub, strategically located at a prime transit point for domestic, regional, and global shipping.



LABOR



I. GENERAL CONSIDERATIONS

Constitutional Guarantees

Sections 9 and 10 of Article II of the Philippine Constitution provides that the State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation, free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all and the State shall promote social justice in all phases of national development.

The Philippines has a Pro-Labor State policy

The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Construction in Favor of Labor (Article 4, Labor Code)

All doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.

Constitutional Guarantees, Rights of Laborers

Enshrined in the Philippine Constitution are the Seven Cardinal Rights of Workers. These are:

1. Self-organization
2. Collective Bargaining and Negotiations
3. Peaceful and concerted activities including the right to strike in accordance with law
4. Security of tenure
5. Humane conditions of work
6. Living wage
7. Participation in policy and decision-making processes affecting their rights and benefits as may be provided by law.

II. DEPARTMENT OF LABOR AND EMPLOYMENT

The Department of Labor and Employment (DOLE) is mandated as the primary policy-making, programming, coordinating and administrative entity of the Executive Branch of the government in the field of labor and employment. The Department is responsible for: promoting gainful employment opportunities, optimizing the development and utilization labor, advancing workers' welfare, and ensuring equal protection for the rights of all concerned parties.

III. TYPES OF EMPLOYMENT

A. Probationary Employment

A probationary employee is one who is made to go on a trial period by an employer during which the employer determines whether or not he is qualified for permanent employment, based on reasonable standards made known to him at the time of engagement. Probationary employment shall not exceed 6 months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period, or when the parties mutually agree to extend the original period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

B. Regular Employment

A regular employee is one who is engaged to perform activities which are necessary and desirable in the usual business or trade of the employer, as opposed to those which are undertaken for a specific project or are seasonal. There are two kinds of regular employees:

1. Those who are engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and
2. Casual employees who have rendered at least 1 year of service, whether continuous or broken, with respect to the activity in which they are employees

C. Project employment

A project employee is one who is hired for carrying out a separate job, distinct from the other undertakings of the company, the scope and duration of which has been determined and made known to the employee at the time of employment.

D. Seasonal employment

A seasonal employee is one whose work or services to be performed are seasonal in nature. The employment is for the duration of the season.

E. Fixed-term employment

A fixed-term employee is one whose duration of employment is agreed upon by the parties which may be



any day certain, which is understood to be “that which must necessarily come although it may not be known when.”

F. Casual employment

A casual employee is one engaged to perform a job, work or service which is merely incidental to the business of the employer, and such job, work or service is for a definite period made known to the employee at the time of engagement, provided, that any employee who has rendered at least one year of service, whether such service is continuous or not, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

IV. LABOR STANDARDS or TERMS AND CONDITIONS OF EMPLOYMENT

A. Wages

“No work, no pay” Principle

General Rule: The age-old rule governing the relation between labor and capital or management and employee is that a “fair day’s wage for a fair day’s labor.”

Exception: When the laborer was able, willing, and ready to work but was illegally locked out, suspended or dismissed, or otherwise illegally prevented from working.

“Equal Work for Equal Pay” Principle

Employees working in the Philippines, if they are performing similar functions and responsibilities under similar working conditions should be paid equally. If an employer accords employees the same position and rank, the presumption is that these employees perform equal work.

Regulating Authority

The National Wages and Productivity Commission (NWPC), an attached agency of the DOLE, and the Regional Tripartite Wages and Productivity Boards (RTWPBs) in all regions of the Philippines are responsible for the regulation of wages in the country. Among their functions are to: advise the President and Congress on matters relating to wages, incomes, and productivity, determine and fix minimum wage rates at the regional, provincial and industry levels, undertake researches and studies on wages and productivity, and formulate policies and guidelines on wages, incomes, and productivity.

Minimum Wage

The minimum wage is the basic cash wage without deduction of whatever benefits, supplements or allowances

which the employees enjoy free of charge aside from the basic pay. The Regional Wage Orders prescribe the daily minimum wage rates per industry per locality within the region. It applies to all private sector workers and employees receiving the daily minimum wage rates regardless of their position, designation, or status of employment, and irrespective of the method by which their wages are paid subject to certain exemptions.

As per Wage Order No. NCR-21, effective 5 October 2017 which covers the cities of Caloocan, Las Pinas, Makati, Malabon, Mandaluyong, Manila, Marikina, Muntinlupa, Paranaque, Pasay, Pasig, Quezon, San Juan, Taguig, Navotas, and Valenzuela, and Municipality of Pateros, below is the prescribed minimum wage:

Sector/ Industry	Basic Wage	Basic Wage Increase	New Basic Wage	Cost of Living Allowance	New Minimum Wage Rates
Non-Agriculture	₱481.00	₱21.00	₱502.00	₱10.00	₱512.00
Agriculture (Plantation and Non plantation)	₱444.00	₱21.00	₱465.00	₱10.00	₱475.00
Retail/ Service Establishments employing 15 workers or less	₱444.00	₱21.00	₱465.00	₱10.00	₱475.00
Manufacturing Establishments regularly employing less than 10 workers	₱444.00	₱21.00	₱465.00	₱10.00	₱475.00

In cases of violation or non-compliance with the prescribed increases or adjustments in the Wage Rates, any person, whether natural or juridical, shall be punished a fine of not less than Php25,000.00 to not more than Php100,000.00 or imprisonment of not less than 2 years not more than 4 years, or both at the discretion of the court, without the benefit of probation. In case the violation is committed by a juridical person, the penalty of imprisonment shall be imposed upon the responsible officers.

Night Shift Differential

All employees are entitled to an additional compensation of 10% of an employee’s regular wage for each hour of work performed between 10pm and 6pm.

Exceptions:

1. Retail and service establishments regularly



employing not more than 5 employees

2. Managerial employees, or those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

3. Field personnel and other employees whose time and performance are unsupervised by the employer including those who are engaged on task or contract basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.

13th Month Pay

All employers are required to pay all their rank and file employees a 13th month pay not later than December 24 of every year provided, they have worked for at least 1 month during a calendar year. The employer may also give to the employee half of the 13th month pay before the opening of the regular school year and half on or before 24 December of every year. The frequency of payment of this monetary benefit may be the subject of agreement between the employer and the recognized Collective Bargaining Agreement of the employees

Exceptions:

1. Employers already paying their employees the “equivalent” of 13th month pay in a calendar year
2. Employers of those who are paid on purely commission, boundary or task basis, and those who are paid a fixed amount for performing specific work, irrespective of the time consumed in the performance thereof (except those workers who are paid on a piece-rate basis, in which case their employer shall grant them a 13th month pay).

“Equivalent” may refer to:

1. Christmas bonus, mid-year bonus, cash bonuses
2. Other payments amounting to not less than 1/12 of the basic salary (not including: cash and stock dividends, cost of living allowance (COLA), and all other allowances regularly enjoyed by the employee as well as non-monetary benefits)

Computation:

1/12 of the total basic salary earned by an employee within a calendar year

Basic Salary shall include:

1. COLA integrated into the basic salary of a covered employee pursuant to Executive Order No. 178
2. All remunerations or earnings paid by the employer for services rendered

Basic Salary does not include the cash equivalent of:

1. Unused vacation and sick leave credits
2. Overtime Premium
3. Night Shift Differential
4. Holiday Pay, and
5. COLA not integrated into the basic salary

B. Work Hours

General Rule: The normal hours of work of any employee shall not exceed 8 hours a day.

Compensable Work Hours

Rest Periods

Rest periods or coffee breaks running from 5 to 20 minutes shall be considered as compensable working time.

On Call

If the employee is required to remain on call in the employer's premises or so close thereto that he cannot use the time effectively and gainfully for his own purpose, he/she shall be considered as working while on call and therefore, entitled to be compensated.

Travel Time

Travel that is all in the day's work- Travel of the employee from jobsite to jobsite must be counted as hours worked.

Travel way from home- Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is worktime when it cuts across the employee's workday.

Travel from home to work- This is compensable only when the employee is called to travel during emergency, done through conveyance furnished by the employer, travel is done under vexing and dangerous circumstances, or travel is done under the supervision and control of the employer.

Compressed Work Week (CWW)

Under the CWW scheme, the normal workday goes beyond 8 hours without the corresponding overtime premium. The total hours work, shall not exceed 12 hours a day or 48 hours a week, or else, the premium shall be paid.



Requirements:

1. The CWW scheme must be undertaken under an express and voluntary agreement of majority of the covered employees or their duly authorized representatives.
2. In firms using substances, chemicals, noise, contaminants or others where prolonged exposure may pose hazards to employees' health and safety, there must be a certification from an accredited health and safety organization or practitioner from the firm's safety committee that work beyond 8 hours is within the threshold limits or tolerable levels of exposure, as set in the OSHS.
3. The employer shall notify DOLE, through the Regional Office having jurisdiction over the workplace, of the adoption of the CWW scheme.

Overtime

Overtime compensation is additional pay for service or work rendered or performed in excess of eight hours a day by employees or laborers covered by the 8-hour Labor Law.

Rules regarding Overtime:

1. Generally, no waiver of overtime pay allowed.

Exception: Overtime pay may be waived in the following instances:

- (a) Compressed work week
- (b) In consideration of certain valuable privileges (i.e. tips during overtime)

2. An employer cannot compel an employee to work overtime except emergency overtime work as provided in Article 89 of the Labor Code.

3. Additional compensation is demandable only if the employer had knowledge and consented to the overtime work rendered by the employee.

Exception: Express approval by a superior is NOT a requisite to make overtime compensable:

- (a) If the work performed is necessary, or that it benefitted the company; or
- (b) That the employee could not abandon his work at the end of his 8-hour work because there was no substitute ready to take his place

Note: The Supreme Court has also ruled that a claim for overtime pay is NOT justified in the absence of a written authority to render overtime after office hours during Sundays and holidays.

4. Compensation for work rendered in excess of the eight (8) normal working hours in a day.

(a) For ordinary days, additional 25% of the basic hourly rate.

(b) For rest day/ special day/ holiday, additional 30% of the basic hourly rate.

5. A given day is considered an ordinary day, unless it is a rest day.

6. Undertime does not offset overtime.

Calculation:

Overtime work on:	
Regular Day	125% x 100%
Rest Day	130% x 130%
Special Holiday	130% x 130%
Special Holiday on a Rest Day	130% x 150%
Regular Holiday	130% x 200%
Regular Holiday on a Rest Day	130% x 200% x 130%
Double Holiday	130% x 300%
Double Holiday on a Rest Day	130% x 300% x 130%

C. Holidays

Regular Holidays for 2018		
Date	Day	Event
January 1, 2018	Monday	New Year's Day
March 29, 2018		Maundy Thursday
March 30, 2018		Good Friday
April 9, 2018	Monday	Araw ng Kagitingan
May 1, 2018	Tuesday	Labor Day
June 12, 2018	Tuesday	Independence Day
August 27, 2018	Last Monday of August	National Heroes' Day
November 30, 2018	Friday	Bonifacio Day
December 25, 2018	Tuesday	Christmas Day
December 30, 2018	Sunday	Rizal Day

Special (Non-Working) Holidays for 2018		
Date	Day	Event
February 16, 2018	Friday	Chinese New Year



February 25, 2018	Sunday	EDSA Revolution Anniversary
March 31, 2018		Black Saturday
August 21, 2018	Tuesday	Ninoy Aquino Day
November 1, 2018	Thursday	All Saints' Day
December 8, 2018	Saturday	Feast of the Immaculate Conception
December 31, 2018	Monday	Last day of the year

Additional special (non-working) holidays for 2018		
November 2, 2018	Friday	All Souls' Day
December 24, 2018	Monday	Christmas Eve

Note: Proclamations to declare national holidays for Eid' Fitr and Eid'l Adha follow after approximate dates of the Islamic holidays have been determined.

Calculation:

Worked Performed On	Formula (% multiplied by Regular Wage)
Regular Day	100%
Rest Day	130%
Special Holiday	130%
Special Holiday on a Rest Day	150%
Regular Holiday	200%
Regular Holiday on a Rest Day	200% x 130%
Double Holiday	300%
Double Holiday on a Rest Day	300% x 130%

D. Leaves

Service Incentive Leave (SIL)

Every employee who has rendered at least 1 year of service shall be entitled to a yearly SIL of five days with pay.

"1 year" means service for not less than 12 months, continuous or broken, reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contract is less than 12 months, in which case said period shall be considered as one year.

Maternity Leave

Every pregnant woman, in the private sector, whether married or unmarried, is entitled to maternity leave benefits up to 4 times. This applies to childbirth and

miscarriage and is not included in the computation of the 13th month pay as it is granted to an employee in lieu of wages, which is the basis for computing the 13th month. The availment of this benefit bars the recovery of sickness benefits provided by the Labor Code for the same period for which daily maternity benefits have been received.

Requisites:

1. *Employment:* A female employee employed at the time of delivery or miscarriage;
2. *Contribution:* Employee must have had at least 3 monthly contributions in the 12-month period immediately preceding the semester of her childbirth, or miscarriage;
3. *Notice:* Employee notified employer of her pregnancy and the probable date of her childbirth, which notice shall be transmitted to the SSS in accordance with the rules and regulations it may provide; and
4. *Employer:* The employer shall advance the benefit to the employee. The SSS shall immediately reimburse the employer of 100% of the amount upon receipt of satisfactory proof of such payment and legality thereof.

Paternity Leave

Paternity leave is granted to all married male employees in the private and public sectors, regardless of their employment status (e.g. probationary, regular, contractual, project basis). The purpose of this benefit is to allow the husband to lend support to his wife during her period of recovery and/or in nursing her newborn child. The benefit is for 7 calendar days, with full pay, consisting of basic salary and mandatory allowances fixed by the Regional Wage Board and can be availed of before or during the delivery provided, that the total number of days shall not be more than 7 days for each covered delivery. An employee can avail of paternity leave for the first 4 deliveries of the employee's wife with whom he is cohabiting.

Parental Leave for Solo Parents

Any solo parent or individual employee is entitled to a parental leave of not more than seven (7) working days every year provided he/she has rendered at least 1 year of service whether continuous or broken and is left alone with the responsibility of parenthood due to the following causes:

1. Giving birth as a result of rape or and other crimes against chastity even without a final conviction of the offender, provided, that the mother keeps and raises the child;
2. Death of spouse;



3. Spouse is detained or is serving sentence for a criminal conviction for at least 1 year;
4. Physical and/ or mental incapacity of spouse as certified by a public mental practitioner;
5. Legal separation or de facto separation from spouse for at least 1 year provided, that he/she is entrusted with the custody of the children;
6. Declaration of nullity or annulment of marriage as decreed by a court or by a church, provided, that he/she is entrusted with the custody of the children;
7. Abandonment of spouse for at least 1 year;
8. Unmarried father/ mother who has preferred to keep and rear his/her child/ children, instead of having others care for them or give them up to a welfare institution;
9. Any other person who solely provides parental care and support to a child or children provided, that he/she is duly licensed as a foster parent by the Department of Social Welfare and Development (DSWD) or duly appointed legal guardian by the court; and
10. Any family member who assumes the responsibility of head of family as a result of the death, abandonment, disappearance, or prolonged absence of the parents or solo parent for at least 1 year.

Note: The employee must have notified the employer within a reasonable period of time and has presented a Solo Parent Identification Card from the DSWD.

Special Leave for Women Workers

A female employee's leave entitlement of 2 months with full pay from her employer based on her gross monthly compensation following surgery caused by gynecological disorders, provided that she has rendered continuous aggregate employment service for at least 6 months for the last 12 months.

Special Leave for Victims of the Anti-Violence Against Women and Their Children Law (VAWC)

Women employees who are victims of VAWC are entitled to a leave of up to 10 days with full pay to cover the days that the woman employee has to attend to medical and legal concerns. The leave is extendible, as specified in the protection order issued by the barangay or the court. The only requirement is for the employee to present to her employer a certification from the barangay chairman (Punong Barangay) or barangay councilor (barangay kagawad) or prosecutor or the Clerk of Court, as the case may be, that an action relative to the matter is pending.

E. Retirement

Employees shall be retired upon reaching the age of sixty (60) years or more but not beyond sixty-five (65) years old and have served the establishment for at least five (5) years.

The minimum retirement pay shall be equivalent to one-half month salary for every year of service. A fraction of at least six (6) months is considered as one (1) whole year.

In computing retirement pay, "one-half month salary" shall include (1) fifteen (15) days salary, (2) cash equivalent of five (5) days service incentive leave, and (3) one-twelfth of the thirteenth-month pay. Hence, "one-half month salary" is equivalent to 22.5 days.

V. TERMINATION OF EMPLOYMENT

A. By the Employer

Causes

Employers may choose to terminate their employees based on just or authorized causes.

Just Causes include: serious misconduct or willful disobedience (insubordination), gross & habitual neglect of duties, loss of trust and confidence, commission of a crime, and analogous causes.

Authorized Causes include: installation of labor saving device, retrenchment, redundancy, and closure of business. If the termination was due to labor-saving devices or redundancy, the employee shall be entitled to: 1 month pay, or at least 1 month pay for every year of service, whichever is higher. On the other hand, if the separation was due to retrenchment, closure or suspension of operations, the employee shall receive: 1 month pay, or at least ½ month pay for every year of service, whichever is higher.

Procedure of termination

A valid dismissal requires compliance with substantive and procedural due process. Substantive due process means that the dismissal must be for a just or authorized cause while procedural due process is observed when the employee is afforded the opportunity to be heard and defend himself. Pursuant to this, employers must adhere to the following mandated procedure of termination:



For Just Causes of Termination:

1. Issuance of a Show Cause Notice or Notice to Explain

It outlines (a) specific causes or grounds for termination; (b) detailed narration of the facts and circumstances that will serve as basis for the charge; (c) specific rule and/or policy violated; and (d) period of time to submit a written explanation and/or reply which in case shall be less than five (5) calendar days.

2. Submission of Letter Reply/Explanation

The employee must submit his/her letter reply or explanation within the time provided in the Show Cause Notice or Notice to Explain.

3. Administrative Hearing or Conference

The employer must issue a Notice for Administrative Hearing or Conference. During the said Hearing or Conference, the employee shall be given the opportunity to (a) explain and clarify his/her defenses to the charge; (b) present evidence in support of said defenses; and (c) rebut the evidence presented against the employee.

4. Issuance of Final Notice of Termination

After a determination that dismissal is justified, the Employer shall serve a written Notice of Termination indicating; (a) all circumstances involving the charge against the employee have been considered; and (b) grounds have been established to justify the severance of employment. The effectivity date of the termination will be stated in the Notice.

Note: In the interim and prior to the final decision of the Employer regarding the charges against the employee, the Employer may, at its discretion, when the employee's continued employment poses a serious and imminent threat to the life or property of the Employer and/or its employees, issue a Preventive Suspension Order without pay for thirty (30) days only, unless the Employer decides to extend the same subject to payment of wages and other benefits due to the employee

For authorized causes of termination:

1. Service of a written Notice of Termination to the employee at least 30 days before the effectivity of the termination specifying the grounds thereof.
2. Filing of a Termination Report with the Re-

gional Office of the DOLE at least 30 days before the effectivity of the termination

3. Payment of Separation Pay

Consequences for non-compliance with Procedural Due Process:

Situation	Validity of Dismissal	Liability of Employer
Just/ Authorized cause + Due Process	Valid	No liability. Separation pay only in authorized cause.
No Just or Authorized cause + Due Process	Invalid	Reinstatement or separation pay, if reinstatement not possible, + full back wages.
No Just or Authorized cause + No Due Process	Invalid	Reinstatement or separation pay, if reinstatement not possible, + full back wages.
Just or Authorized Cause + No Due Process	Valid	Liable for damages due to procedural infirmity. Separation pay if for authorized cause.

B. By the employee

Resignation

An employee may terminate his/her employment without just cause by serving a written notice on the employer at least 1 month in advance. If no notice is received by the employer, the employee is liable for damages.

Termination for Cause

An employee may terminate his/her employment without serving any notice if the same is due to (1) serious insult on the honor and person of the employee, (2) inhuman and unbearable treatment, (3) commission of a crime against the employee or his/her immediate family and/or (4) other analogous causes.

VI. RIGHT TO SELF ORGANIZATION

Self- organization is a fundamental right guaranteed by the Philippine Constitution and the Labor Code. Employees have the right to form, join or assist labor organizations for the purpose of collective bargaining or for their mutual aid and protection. The following may unionize for purposes of collective bargaining: all employees, government employees of corporations created under the Corporation Code, supervisory employees, aliens with valid working permits and whose country grants the same rights to Filipinos, and security personnel. On the other hand, the following cannot form join, or assist labor or-



ganizations: managerial and confidential employees, non-employees, member-employee of a cooperative, employees of international organizations, high-level government employees, and members of the AFP, police officers, policemen, firemen, and jail guards.

VII. SOCIAL BENEFITS/LEGISLATIONS

Employers are mandated by law to provide the following types of insurance under the country’s social welfare legislation: Social Security Legislation (SSS), Home Development Mutual Fund (HDMF)/ PAG-IBIG, and Philippine Health Insurance Corporation (PHILHEALTH).

SSS

SSS Coverage may be compulsory or voluntary. Employers are required to register their employees who are not over 60 years of age. The exceptions to the coverage are: employment that is purely casual and not for the purpose of occupation or business of the employer, service performed on or in connection with an alien vessel by an employee if he is employed when such vessel is outside the Philippines, and contractual employees with no employee-employer relationship with the agency they serve. Employers are required to be registered with the SSS from the 1st day of operation

HDMF/ PAG-IBIG

All new employers shall first register with the Pag-ibig branch with jurisdiction over them prior to the start of their business operation. Employers shall submit to the Fund all data and information that may be required in relation to their respective businesses and employees within thirty (30) days from the start of their business operations. In addition, said employers shall ensure that their newly-hired employees are registered with the Fund within thirty (30) days from the start of their employment. In case of any change in the employer’s name, the New DTI Registration/Amended DTI Registration or Articles of Incorporation/Amended Articles of Incorporation shall be presented.

PHILHEALTH

Employers must register their company with PhilHealth for them to be assigned a PHILHEALTH Employer Number (PEN). They must also register their employees with the said agency within thirty (30) days from assumption to office. In case of an employee’s separation, the Employer must notify Philhealth within 30 calendar days from separation through a Employer’s Remittance Report. Employers should also inform PHILHEALTH of any change in company data, such as address or business name, or in case of temporary/permanent cessation of business operations.

VIII. FOREIGN EMPLOYEES

All foreign nationals who intend to engage in gainful employment in the Philippines is required to apply for an Alien Employment Permit (AEP). This is also a requirement for aliens to procure a work visa. *(Please refer to the Immigration Part of the Primer for the Alien Work Visas).*

General Requirements for an AEP

- 1. Application Form duly accomplished and must be notarized
- 2. Original copy of notarized appointment or Contract of Employment
- 3. Notarized Board Secretary’s Certificate on the election of Foreign National (Original or duplicate original is required)
- 4. Certified Photocopy of passport with visa or certificate of recognition for refugees
- 5. Mayor’s Permit or Business Permit Certified True Copy on every page by the local government’s Business Permit and Licensing Office (if Mayor’s permit is not applicable submit copy of SEC Registration or Photocopy of PEZA Registration Certificate for 47A2 visa holders)
- 6. Certificate of Registration and Articles of Incorporation certified as true copy on every page by the SEC
- 7. Updated General Information Sheet certified as true copy on every page by the SEC.
- 8. Pictures 2 pcs 1x1 and 2 pcs 2x2
- 9. Other documents (e.g. cover/ endorsement letter of application and authorization letter from company or alien)

Fees

Application	Prescribed Fees
Application of AEP	Php9,000.00 for 1 year
Extension/renewal of AEP	Php4,000.00 for every additional year
Courier fee	Php200.00 for online applications
Loss of AEP or Change of Entries	Php 1,500.00
Processing and issuance of Certificate of Exclusion	Php500.00 per application

NOTE: The amount of fees may vary from time to time, subject to government regulations.

Processing Period of AEP

After submission of the duly accomplished form, additional documents and payment of the requisite fees, the DOLE Regional Officer where the application was filed shall publish in a newspaper of general circulation the application within 2 working days from receipt thereof. The application shall also be published in the DOLE website and posted in PESO for 30 days. Any objections against the employment of a foreign national must be filed within 30 days after publication.

Processing and issuance of the AEP is done within 3 working days after the publication and payment of required fees. Applications for renewal shall be processed within 1 day after receipt.

Validity of AEP

Valid for one year for the position and the company unless the employment contract provides otherwise, which shall in no case exceed 3 years.

Renewal of AEP

Application	When to File
Renewal	Not earlier than 60 days before its expiration
In case of travel outside the Philippines which will hinder the filing of renewal within the prescribed period	Filed earlier
Expired AEPs	Processed as a new application
For officers whose appointment or election takes place before expiration of AEP	Not later than 15 working days after appointment or before its expiration whichever is later.
For appointment or election after the expiration of the AEP	Filed before the expiration of the AEP. Secretary's Certification for the appointment or election must be submitted within 15 working days after the election or appointment.

Aliens Exempt from the AEP Requirement

1. Members of the governing board with voting rights only and do not intervene in the management of the corporation or in the day to day operation of the enterprise
2. President and Treasurer, who are part-owner

of the company

3. Consultancy service providers who do not have employers in the Philippines

4. Intra-corporate transferee who is manager, executive or specialist for at least one (1) year continuous employment prior to deployment to a branch, subsidiary, affiliate or representative office in the Philippines who would not directly perform tasks related to the actual provision of the services of the organization.

a. Executive – person who primarily directs the management of the organization, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives.

b. Manager – person who primarily directs the organization/department/subdivision and exercises supervisory and control functions over other supervisory, managerial or professional staff.

c. Specialist – person within the organization who possesses knowledge at an advanced level of expertise essential to the establishment and/or possesses proprietary knowledge of the organization's service, equipment, techniques or management.

5. Contractual service supplier who is a manager, executive or specialist and an employee of a foreign service supplier which has no commercial presence in the Philippines

a. Who enters in the Philippines temporarily to supply a service

b. Must possess appropriate educational and professional qualifications

c. Must be employed by the foreign service supplier for at least one year prior to the supply of service to the Philippines

6. Representative of the Foreign Principal/Employer assigned in the Office of Licensed Manning Agency in accordance with POEA law, rules and regulations

Processing and Issuance of Certificate of Exclusion

All foreign nationals excluded from securing AEP shall secure a Certificate of Exclusion from the Regional Office. The Regional Office shall issue said Certificate within 2 working days after receipt of the complete documentary requirements and fees.

IX. OTHER LABOR CONCERNS

Non- diminution of benefits

General Rule: There is a prohibition against elimination or diminution of benefits (Art. 100, Labor Code) No wage order issued by any regional board shall provide for wage rates lower than the statutory minimum wage rates prescribed by Congress. (Art. 127, Labor Code, as amended by RA No. 6727, June 9, 1989)

Sexual harassment in the Workplace:

Employment or work related sexual harassment occurs when the sexual favor is made as a condition for:

1. hiring or in the employment, re-employment or continued employment of said individual, or
2. granting said individual favorable compensation, terms, conditions, promotions, or privileges, or
3. not limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

The above acts would either:

1. Impair the employee's rights or privileges under existing labor laws; or
2. Result in an intimidating, hostile, or offensive environment for the employee.

Persons who may be liable:

1. Any employer, employee, manager, supervisor, agent of the employer, or any other person, regardless of whether the demand, request for requirement for submission is accepted by the object of said act having authority influence or moral ascendancy over another in a work or training or education environment, who demands, requests or otherwise requires any sexual favor from another;
2. Any person who directs or induces another to commit any act of sexual harassment as herein defined; or
3. Any person who cooperates in the commission by another without which it would not have been committed, shall also be held liable under the law.

Work Place Safety

The DOLE has promulgated a set of rules known as the Occupational Safety and Health Standards (OSH), the primary objective of which is to protect every workman against the dangers of injury, sickness or death

through safe and healthful working conditions, thereby assuring the conservation of valuable manpower resources and the prevention of loss or damage to lives and properties, consistent with national development goals and with the State's commitment for the total development of every worker as a complete human being.

As an initial step in complying with these rules, in every place of employment, a health and safety committee shall be organized and for new establishments within 1 month from the date the business starts operating. The Committee shall reorganize every January of the following year.

Anti-Age Discrimination Act:

This Act covers all employers, publishers, labor contractors or subcontractors, and labor organizations, whether or not registered. As stated in the law, it is the policy of the State to:

1. Promote employment of individuals on the basis of their abilities, knowledge, skills and qualifications rather than their age.
2. Prohibit arbitrary age limitations in employment.
3. Promote their rights of all employees and workers, regardless of age, to be treated equally in terms of compensation, benefits, promotion, training, and other employment opportunities.



IMMIGRATION



VISA CATEGORIES (FOR BUSINESS)

1. 9(d) Treaty Trader or Treaty Investor

This visa is available only if the foreigner is a national of a country with which the Philippines has in place an agreement for the admission of treaty traders or investors, specifically (1) USA, (2) Japan, and (3) Germany.

a. Qualifications

- A foreign national of the United States of America (USA), Japan and Germany who is entering the Philippines solely to carry on trade or commerce pursuant to an existing treaty of commerce and navigation OR a foreigner who seeks admission for the purpose of developing and directing the operations of an enterprise in the Philippines.

b. Benefits

- Valid entry in the Philippines for a period of one-year subject to extension upon application
- Visa may be extended to the foreigner's spouse and unmarried children below 21 years of age.

2. 9(g) Pre-arranged Employment Visa (Commercial Visa)

This is a working visa that allows employers/proprietors in the Philippines to employ foreign nationals with skills, qualifications and experience that may be short in supply in the Philippines.

a. Qualifications

- Foreign nationals who are proceeding to Philippines to engage in any lawful occupation, whether for wages or salary or other forms of compensation
- A foreign national applying for a pre-arranged employee visa has to make sure that he/she has been hired by a Philippine-based company, who will be applying for his/her pre-arranged employee visa as his/her petitioner.

b. Benefits

- Valid stay in the Philippines based on the duration of the employment contract. You may have an initial period of one (1), two (2) or three years (3) validity on your 9(g) Pre-Arranged Employees – Commercial visa. You may also extend said visa for one (1), two (2) or three year (3) years depending on the Employer-Employee Contract.

- Visa may be extended to the foreigner's spouse and unmarried children below 21 years of age.

3. Special Non-Immigrant Visa (47 (a) (2) Visa)

The 47 (a) 2 visa is a special category of working visa under the oversight of the Department of Justice.

a. Qualifications

Unless expressly excluded from entering the Philippines under Section 29 of CA no. 613, as amended, foreign nationals falling under the following categories may be issued 47(a)(2) visas:

- Those employed as executives, supervisors, specialists, consultants, contractors or personal staff at enterprises registered with Export/Special Economic Processing Zones, Philippine Economic zone Authority (PEZA), Board of Investments (BOI), or Authority of the Freeport Area of Bataan (AFAB);
- Those employed in enterprises that have existing agreement/s with the government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, for the completion of a project;

b. Benefits

- Valid entry in the Philippines for an authorized period, subject to extension thereof by complying with the applicable documentary requirements
- Visa may be extended to the dependent spouse and/or unmarried minor child/ren of the foreign national, including those children born during the period of the latter's authorized stay

4. Special Investor's Resident Visa (SIRV) under Executive Order 226 or the Omnibus Investment Code of 1987

The Special Investor's Resident Visa (SIRV) entitles the holder to reside in the Philippines for an indefinite period as long as the required qualifications and investments are maintained.

a. Qualifications

Any alien, except for restricted nationals, at least twenty-one (21) years of age, who meets the following qualifications:

- 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 any mental disorder or disability;
- He is willing and able to invest the amount of at least US\$75,000.00

b. Benefits

- Right to reside in the Philippines for an indefinite period;
- Multiple entry privileges;
- Exemption from the Exit Clearance and Re-Entry requirements of the Bureau of Immigration (BI), Alien Certificate of Registration;
- The applicant's spouse and unmarried children under twenty-one (21) years of age may also be issued the same visa.

5. Special Resident Retiree's Visa (SRRV)

1. SRRV SMILE

a. Qualifications

- Active / healthy principal retirees 35 years old and above
- Deposit of at least US\$20,000.00 in any of the PRA designated banks (non-convertible to long term lease investment or condominium purchase);

b. Benefits

- Option to Retire Permanently in the Philippines
- Multiple Entry Privileges
- Exemptions from:
 - a. Income tax over pension and annuities
 - b. Exit and re-entry permits of the Bureau of Immigration;
 - c. Annual registration requirement of the Bureau of Immigration;
 - d. Customs Duties and Taxes with regard to the importation of household goods and personal effects up to US\$7,000.00;
 - e. Travel tax, if stay in the Philippines is less than one year from the last entry date;
 - f. Alien Certificate of Registration Immigration Card (ACR I-Card)
 - g. Study Permit or Student's Visa for dependent children intending to study in the Philippines
- Assistance of the Philippine Retirement Authority to obtain basic documents from other government agencies including but not limited to:
 - a. Alien Employment Permit

- b. Driver's License and motor vehicle registration
- c. Philippine Tax Exemption/Extension Certificate
- d. Tax Identification Number
- e. National Bureau of Investigation (NBI) Clearance

- Use of foreign health cards in accredited Philippine hospitals or clinics

2. SRRV Classic

a. Qualifications

- Active / healthy principal retirees who would opt to use their Visa deposit of US\$10,000.00 or US\$20,000.00 (50 years old & above) or US\$50,000.00 (35 to 49 years old)
- Deposit may be in cash or may be used to purchase condominium units or for long term lease of house and lot;

b. Benefits

- Option to Retire Permanently in the Philippines
- Multiple Entry Privileges
- Exemptions from:
 - a. Income tax over pension and annuities
 - b. Exit and re-entry permits of the Bureau of Immigration;
 - c. Annual registration requirement of the Bureau of Immigration;
 - d. Customs Duties and Taxes with regard to the importation of household goods and personal effects up to US\$7,000.00;
 - e. Travel tax, if stay in the Philippines is less than one year from the last entry date;
 - f. Alien Certificate of Registration Immigration Card (ACR I-Card)
 - g. Study Permit or Student's Visa for dependent children intending to study in the Philippines
- Assistance of the Philippine Retirement Authority to obtain basic documents from other government agencies including but not limited to:
 - a. Alien Employment Permit
 - b. Driver's License and motor vehicle registration
 - c. Philippine Tax Exemption/Extension Certificate
 - d. Tax Identification Number
 - e. National Bureau of Investigation (NBI) Clearance
- Use of foreign health cards in accredited Philippine hospitals or clinics



3. SRRV Courtesy/Expanded Courtesy

a. Qualifications

- Former Filipinos (35 years old & above), and foreign nationals (50 years old & above) who have served in the Philippines as diplomats, ambassadors, officers/staff of international organizations.
- Deposit of US\$1,500.00.

b. Benefits

- Option to Retire Permanently in the Philippines
- Multiple Entry Privileges
- Exemptions from:
 - a. Income tax over pension and annuities
 - b. Exit and re-entry permits of the Bureau of Immigration;
 - c. Annual registration requirement of the Bureau of Immigration;
 - d. Customs Duties and Taxes with regard to the importation of household goods and personal effects up to US\$7,000.00;
 - e. Travel tax, if stay in the Philippines is less than one year from the last entry date;
 - f. Alien Certificate of Registration Immigration Card (ACR I-Card)
 - g. Study Permit or Student's Visa for dependent children intending to study in the Philippines
- Assistance of the Philippine Retirement Authority to obtain basic documents from other government agencies including but not limited to:
 - a. Alien Employment Permit
 - b. Driver's License and motor vehicle registration
 - c. Philippine Tax Exemption/Extension Certificate
 - d. Tax Identification Number
 - e. National Bureau of Investigation (NBI) Clearance
- Use of foreign health cards in accredited Philippine hospitals or clinics

4. SRRV Human Touch

a. Qualifications

- Retirees with pre-existing but non-contagious medical condition in need of ongoing medical care or services
- At least 35 years old
- Deposit of US\$10,000.00
- Monthly pension of at least US\$1,500.00
- Health insurance policy

b. Benefits

- Option to Retire Permanently in the Philippines
- Multiple Entry Privileges
- Exemptions from:
 - a. Income tax over pension and annuities
 - b. Exit and re-entry permits of the Bureau of Immigration;
 - c. Annual registration requirement of the Bureau of Immigration;
 - d. Customs Duties and Taxes with regard to the importation of household goods and personal effects up to US\$7,000.00;
 - e. Travel tax, if stay in the Philippines is less than one year from the last entry date;
 - f. Alien Certificate of Registration Immigration Card (ACR I-Card)
 - g. Study Permit or Student's Visa for dependent children intending to study in the Philippines
- Assistance of the Philippine Retirement Authority to obtain basic documents from other government agencies including but not limited to:
 - a. Alien Employment Permit
 - b. Driver's License and motor vehicle registration
 - c. Philippine Tax Exemption/Extension Certificate
 - d. Tax Identification Number
 - e. National Bureau of Investigation (NBI) Clearance
- Use of foreign health cards in accredited Philippine hospitals or clinics

6. Special Visa for Employment Generation (SVEG)

This visa is founded on public interest, particularly on an aspect of employment generation for Filipinos.

a. Qualifications

Non-immigrant foreigners who wish to avail of the SVEG should comply with the following conditions:

- The foreigner shall actually, directly or exclusively engage in a viable and sustainable commercial investment/enterprise in the Philippines, exercises/performs management acts or has the authority to hire, promote and dismiss employees;
- He evinces a genuine intention to indefinitely remain in the Philippines;
- He is not a risk to national security; and
- The foreigner's commercial investment/enterprise must provide actual employment to at least



ten (10) Filipinos in accordance with Philippine labor laws and other applicable special laws.

The above-mentioned requirements must be continually satisfied by the foreigner for him/her to continue to be a holder of the SVEG.

b. Benefits

- Multiple-entry privileges
- On conditional extended stay, without need of prior departure from the Philippines
- Exemption from payment of exit clearance certificate and special return certificate
- Privileges extend to the qualified foreigner, his/her spouse and dependent unmarried child/children below eighteen (18) years of age whether legitimate, illegitimate or adopted

7. Special Investor's Resident Visa under EO 63 or the Law Granting Incentives to Foreign Investment in Tourist-Related Projects and Tourist Establishments and for Other Purposes

This visa is given as an incentive and part of the enhancement of international tourism through the acquisition or operation of tourist establishments and tourist related projects in our country and by the infusion of capital therein by foreign investors

a. Qualifications

A foreign investor may be issued a Special Investor's Resident Visa (SIRV) provided that, he is able to prove the following qualifications:

- He has not been convicted of a crime involving moral turpitude
- He is not afflicted with AIDS or any loathsome, dangerous or contagious disease
- He has not been institutionalized for any mental disorder or disability
- He is willing and able to invest at least US\$50,000 in a tourism related project In the case of foreign corporation which is willing to invest the amount of at least US\$50,000.00 in a tourist-related project, the SIRV may be issued to the corporation's Chief Executive Officer.

b. Benefits

- The wife and unmarried minor children of the foreign investor may also be issued the same visa, subject to the qualifications under items (a) to (c).
- The investor, his wife and unmarried minor children shall be permitted to enter and reside in the

Philippines as special investor residents for as long as the investment subsists

- Multiple entry in the Philippines without further documentary requirements other than valid passports or other travel documents in the nature of passports.
- Exempt from payment of alien immigration and registration fees and from securing alien certificates of registration.

8. Special Visas Issued by Economic Zones

Subic and Clark Special Economic Zone under Republic Act 7227 or the Bases Conversion and Development Act of 1992

1. Subic and Clark Special Investor's Visa

a. Qualifications

Any foreign investor who has made an investment of not less than US\$250,000.00 within the Subic Bay Freeport (SBF) or Clark Special Economic Zone

b. Benefits

- Special multiple entry privileges;
- May reside in the Philippines for as long as his investment subsists; and
- Exemptions from exit clearances certificates, re-entry permits and special return certificates

2. Special Subic-Clark Working Visa

a. Qualification

A foreigner who is gainfully employed within the Subic or Clark Special Economic Zones and a holder of an Alien Employment Permit (AEP)

b. Benefits

- Special multiple entry privileges
- Exemptions from exit clearances certificates, re-entry permits and special return certificates
- Grants a temporary residence status in the Philippines
- It is valid for two (2) years and extendible every two (2) years. It is coterminous with the employment contract or the Alien Employment Permit whichever validity is shorter.



3. Subic Bay Freeport Residency Visas for Retirees

a. Qualifications

- Over 60 years old
- Good moral character
- No previous conviction of crime involving moral turpitude
- No longer employed or self-employed
- Receiving pension or passive income payable in Subic Bay Freeport in an amount more than US \$50,000 per year

b. Benefits

- Expedited visa processing by Clark Development Corporation
- Tax & duty free importation of supplies, raw materials, equipment
- Tax free and duty free exportation of finished goods
- Exemption from value added tax, local tax and national tax

Aurora Special Economic Zone SIRV (RA 9490)

a. Qualifications

Any foreign national who invests an amount of \$150,000.00 in the Aurora Special Economic Zone, either in cash and/or equipment, in a registered enterprise shall be entitled to an investor's visa: Provided, That,

- He is at least eighteen (18) years of age;
- He has not been convicted of a crime involving moral turpitude;
- He is not afflicted with any loathsome, dangerous or contagious disease; and
- He has not been institutionalized for any mental disorder or disability

b. Benefits

- Permanent resident status within Aurora Special Economic Zone while his investment subsists;
- Freedom of ingress and egress to and from the Aurora Special Economic Zone without any need of special authorization from the Bureau of Immigration.
- The visa may extend to his/her spouse and dependent children under twenty-one (21) years of age

Cagayan Special Economic Zone SIRV (RA 7922)

a. Qualifications

Any foreign investor who establishes a business enterprise within the Cagayan Special Economic Zone and who maintains capital investment of not less than One hundred fifty thousand United States dollars (US\$150,000)

b. Benefits

- Permanent resident status within Cagayan Special Economic Zone while his investment subsists;
- Freedom of ingress and egress to and from the Cagayan Special Economic Zone without any need of special authorization from the Bureau of Immigration.
- The visa may extend to his/her spouse and dependent children under twenty-one (21) years of age

Freeport Area of Bataan SIRV (RA 9728)

a. Qualifications

Any foreign national who invests an amount of One hundred fifty thousand US dollars (US\$150,000.00), either in cash and/or equipment, in a registered enterprise in the Freeport Area of Bataan shall be entitled to an investor's visa: Provided, That he has the following qualifications:

- He is at least eighteen (18) years of age;
- He has not been convicted of a crime involving moral turpitude;
- He is not afflicted with any loathsome, dangerous or contagious disease; and
- He has not been institutionalized for any mental disorder or disability

b. Benefits

- Permanent resident status within Freeport Area of Bataan while his investment subsists;
- This privilege may extend to the investor's spouse and dependent children under 21 years of age.

Zamboanga City Special Economic Zone SIRV (RA 7903)

a. Qualifications

Any foreign investor who establishes a business enterprise within the ZAMBOECOZONE and who maintains capital investment of not less than One hundred fifty thousand United States dollars (US\$150,000)

b. Benefits

- Permanent resident status within the ZAMBOECOZONE while his investment subsists;



- This privilege may extend to the investor's spouse and dependent children under 21 years of age

NOTE: Working visas are also issued in each economic zone, renewable every two (2) years, to foreign executives and foreign technicians with highly specialized skills which no Filipino possesses, as certified by the Department of Labor and Employees.

9. Visa Upon Arrival (VUA)

a. Qualifications

The following can apply for Visa Upon Arrival:

- Foreign investors and businessmen duly endorsed by the Board of Investments (BOI), Philippine Retirement Authority (PRA), Philippine chamber of Commerce and Industry (PCCI), local business councils, or local as well as foreign chambers of commerce and industry;
- Athletes and delegates to sports competitions, conventions or exhibitions duly endorsed by its organizers and/or sponsors;
- Delegates and participants to, resource speakers in, international conventions, symposia, conference and similar gatherings duly endorsed by its organizers and/or sponsors;
- Foreign investors and their executives in investments that are endorsed by the government, or those resulting from bilateral agreements as well as those in response to Presidential Invitations for Investments during presidential trips or State Visits abroad;
- Officials of World Bank, Asian Development Bank, and other international development partners, including their dependent spouse and unmarried minor children;
- Other foreigners who, in the discretion of the Commissioner, may be entitled to the benefits of this program

b. Benefits

- Valid stay in the Philippines for more than 30 days but less than 59 days

10. Multiple Entry Special Visa

1. Foreign Personnel of Offshore Banking Units under Presidential Decree 1034, Section 7

a. Qualifications

Foreign personnel of offshore banking units of foreign banks duly licensed by the Central Bank of the Philip-

ines to operate as such pursuant to Presidential Decree No. 1034

b. Benefits

- Multiple entry special visa, valid for a period of one year, to enter the Philippines;
- Visa is extended to their respective spouses and unmarried children under twenty-one (21) years of age

2. Foreign Personnel of Regional or Area Headquarters of Multinational Companies under Executive Order 226 or the Omnibus Investment Code of 1987

a. Qualification

Foreign personnel of regional or area headquarters and regional operating headquarters of multinational companies

b. Benefits

- Multiple entry privileges valid for a period of three (3) years to enter the Philippines;
- Exemption from the payment of all fees due under the immigration and alien registration laws; securing alien certificates of registration; and obtaining emigration clearance certificates, and all types of clearances required by any government department or agency
- Visa is extended to their respective spouses and unmarried children under twenty-one (21) years of age, if accompanying them or if following to join them after their admission into the Philippines as non-immigrant





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