

# **FREQUENTLY ASKED QUESTIONS ON FOREIGN INVESTMENT IN THE PHILIPPINES**

## **1. How does the Philippines define foreign corporations?**

Foreign corporations has been defined as one, which owes its existence to the laws of another state, and generally, has no legal existence within another state. Section 123 of the Corporation Code defines a foreign corporation as one formed, organized, and existing under any laws other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in the Philippines.

## **2. What is the general policy of the government for foreign investments?**

The Philippine government is encouraging foreign investors to invest in the country with businesses that will provide opportunities in employment, develop the productivity of resources, heighten the volume as well as the value of exports and provide the future development of the economy's foundation.

## **3. Can a foreign company invest in the Philippines?**

Yes. The Foreign Investment Act (R.A. 7042, 1991, amended by R.A. 8179, 1996) liberalized the entry of foreign investment into the Philippines. Under the FIA, foreign investors are generally treated like their domestic counterparts and must register with the Securities and Exchange Commission (SEC) (in the case of a corporation or partnership) or with the Department of Trade and Industry's Bureau of Trade Regulation and Consumer Protection (in the case of a sole proprietorship).

## **4. What is the percentage of foreign equity allowed under the FIA?**

With the liberalization of the foreign investment law, 100% foreign equity may be allowed in all areas of investment except those reserved for Filipinos under the Philippine Constitution and existing laws.

## **5. What are those businesses with foreign investment restrictions?**

Within the 1991 Foreign Investment Act (FIA) there are two negative lists, also known as the "Foreign Investment Negative List", which defines the foreign investments,

which are limited or restricted by the Constitution and specific laws. Negative List A and Negative List B.

## **6. What is the coverage of Negative List A?**

In Negative List A, foreign ownership in certain businesses is limited by mandate of the Constitution and specific laws. These are:

### **No Foreign Equity**

1. Mass Media except recording
2. Practice of professions
3. Retail trade enterprises with paid-up capital of not less than US\$2,500,000.00
4. Cooperatives
5. Private Security Agencies
6. Small-scale Mining
7. Utilization of Marine Resources in archipelagic waters, territorial sea, and exclusive economic zone
8. Ownership, operation and management of cockpits
9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons
10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personal mines
11. Manufacture of firecrackers and other pyrotechnic devices

### **Up to Twenty Percent (20%) Foreign Equity**

12. Private radio communication network

### **Up to Twenty-Five Percent (25%) Foreign Equity**

13. Private recruitment, whether for local or overseas employment
14. Contracts for the construction and repair of locally-funded public works, except:
  - a. infrastructure/development projects covered in RA 7718; and
  - b. projects which are foreign funded or assisted and required to undergo international competitive bidding (Sec. 2(a) of RA 7718)
15. Contracts for construction of defense-related structure

### **Up to Thirty Percent (30%) Foreign Equity**

16. Advertising

### **Up to Forty Percent (40%) Foreign Equity**

17. Exploration, development and utilization of natural resources

18. Ownership of Private Lands
19. Operation and management of public utilities
20. Ownership/establishment and administration of educational institutions
21. Culture, production, milling, processing, trading excepting retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof
22. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or Municipal Corporation
23. Project Proponent and facility Operator of a BOT project requiring a public utilities franchise
24. Operation of deep-sea commercial fishing vessels
25. Adjustment Companies
26. Ownership of condominium units where the common areas in the condominium projects are co-owned by the owners of the separate units or owned by a corporation

#### **Up to Sixty Percent (60%) Foreign Equity**

27. Financing companies regulated by the Securities and Exchange Commission
28. Investment houses regulated by the SEC

#### **7. What is the coverage of Negative List B?**

In Negative List B, foreign ownership in certain business is limited for reason of security, defense, risk to health and morals and protection of small-and-medium-scale enterprises. These are:

#### **Up to Forty Percent (40 %) Foreign Equity**

1. Manufacture, repair, storage and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance:
  - a. Firearms (handguns to shotguns), parts of firearms and ammunition therefore, instruments or implements used or intended to be used in the manufacture of firearms
  - b. Gunpowder
  - c. Dynamite
  - d. Blasting supplies
  - e. Ingredients used in making explosives
  - f. Telescopic sight, sniper scope and other similar devices
2. Manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) clearance;
  - a. Guns and ammunition for warfare
  - b. Military ordnance and parts thereof (e.g., torpedoes, depth charges,

- bombs, grenades, missiles)
  - c. Gunnery, bombing and fire control systems and components
  - d. Guided missiles/missile systems and components
  - e. Tactical aircraft (fixed and rotary -winged), parts and components thereof
  - f. Space vehicles and component systems
  - g. Combat vessels (air, land and naval) and auxiliaries
  - h. Weapons repair and maintenance equipment
  - i. Military communications equipment
  - j. Night vision equipment
  - k. Stimulated coherent radiation devices, components and accessories
  - l. Armament training devices
  - m. Others as may be determined by the Secretary of the DND
3. Manufacture and distribution of dangerous drugs
  4. Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks posed to public health and morals
  5. All forms of gambling, e.g. race track operation
  6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000
  7. Domestic market enterprises, which involve advanced technology or employ at least fifty (50) direct employees with paid-in-equity capital of less than the equivalent of US\$100,000

**8. What requirements must be complied with before a foreign corporation can do business in the Philippines?**

If the foreign corporation itself intends to do business in the Philippines under its foreign charter, the foreign corporation must first secure a "License to do Business in the Philippines" from the Philippine Securities & Exchange Commission (SEC).

If the foreign corporation intends to do business in the Philippines by incorporating a Philippine company, the foreign corporation must first secure the approval of the SEC by filing its incorporation papers, together with authenticated copies of its foreign charter and by-laws.

**9. Is there a need for the foreign corporation to appoint its local agent in the Philippines?**

Yes, if the foreign corporation intends to do business in the Philippines under its foreign charter. Among the things to be stated in the verified application are the name and address of the foreign corporation's resident agent authorized to accept summons and process in all legal proceedings and, pending the establishment of a local office, all notices affecting the corporation.

**10. How will the foreign corporation appoint its Philippine local agent?**

A written power of attorney must be filed by the foreign corporation with the SEC designating some person who must be a resident of the Philippines, on whom service of summons and other legal processes may be served in all actions or other legal proceedings against such corporation, and consenting that service upon such resident agent shall be admitted and held as valid as if served upon the duly authorized officers of the foreign corporation at its home office.

**11. Is there a need for the foreign corporation to execute an agreement with the SEC regarding service of summons?**

Yes. In consideration of its being granted a "License to Do Business in the Philippines", the foreign corporation shall execute and file with the SEC an agreement or stipulation agreeing that if at any time said 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 in any action or proceeding arising out of any transaction or business which occurred in the Philippines, service of any summons or other legal processes may be made upon the SEC and that such service shall have the same force and effect as if its is made upon the duly authorized officers of the foreign corporation at its home office.

**12. What is the effect of failure to appoint or maintain a local agent?**

The failure to appoint or maintain a resident agent in the Philippines, or after change of its resident agent or his address, failure to submit to the SEC a statement of such change, are grounds for revocation of a license granted to a foreign corporation to do business in the Philippines.

**13. Is there any Reciprocity Compliance?**

Yes. Attached to the application shall also be a duly executed certificate under oath by the authorized official or officials of the jurisdiction of incorporation of the foreign corporation, attesting to the fact that the laws of the country or state of the applicant allow Filipino citizens and corporation to do business therein.

**14. Is there a need to deposit Securities?**

Yes. Within sixty (60) days from issuance of the license to do business, such foreign corporation shall deposit with the SEC, for the benefit of its present and future creditors, Philippine securities in the actual market value of at least Php100,000.00, subject to further deposit of additional securities every six months after each fiscal year equivalent in actual market value to two percent (2%) of the amount by which the foreign corporation's gross income for that fiscal year exceeds Php5,000,000.00.

**15. What is the effect of being issued a "License to Do Business in the Philippines"?**

When a foreign corporation is issued the license to do business in the Philippines, it may commence to transact its business in the Philippines and continue to do so for as long as it retain its authority to act as a corporation under the laws of the country or state of its incorporation, unless such license is sooner surrendered, revoked, suspended, or annulled.

**16. What are the consequences of not obtaining a license to do business?**

A foreign corporation doing business in the Philippines without first obtaining the license to do business (a) shall not be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; (b) but such foreign corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

**17. Are there any tax incentives for foreign corporations investing in the Philippines?**

Yes. There are several tax incentives available to foreign corporations depending on the government office or export zone under which such foreign corporation intends to undertake or register its investment. Please refer to "*The Investor's Guide to Doing Business in the Philippines*" for a more comprehensive list of the investment options available to foreign corporations.

**18. Can foreign corporations acquire or own land in the Philippines?**

Yes, provided the following requirements are met: (a) it must be a private land, which means any land of private ownership; and (b) the foreign equity in the corporation must not exceed forty percent (40%).

**19. What will happen if foreign ownership exceeds forty percent (40%)?**

The effect would be that the foreign corporation would lose its capacity to hold the private land. They may, however, be granted temporary rights such as a lease contract which is not prohibited by the Constitution.

**20. What are the other exceptions to the ownership of land by foreign investors and corporations?**

- a. Acquisition through hereditary succession;
- b. Purchase by a former natural-born Filipino citizen pursuant to the Dual Citizenship Law which states that a former Filipino re-acquiring his Filipino Citizenship shall be deemed not to have lost his Philippine citizenship, thus enabling them to enjoy all the rights and privileges of a Filipino;
- c. If a former natural-born Filipino who has become a naturalized citizen of another state opts not to re-acquire Filipino citizenship according to the Dual Citizenship Act, he may nonetheless own land but limited to the following according to BP 185 and RA 8179):
  - i. For residential use:
    - 1. Up to 1,000 square meters of residential land
    - 2. Up to 1 hectare of agricultural land
  - ii. For business or commercial use
    - 1. Up to 5,000 square meters of urban land
    - 2. Up to 3 hectares of rural land
- d. Purchase of not more than 40% interest in a condominium project; and
- e. Ownership through Filipinos who are married to aliens who retain their Filipino citizenship

**21. Can foreign corporations own real properties in the Philippines other than land?**

Yes. Foreign corporations can acquire other immovable or real properties such as buildings and other improvements on the land, including condominium units.

**22. Are foreigners and foreign corporations allowed to lease lands in the Philippines?**

Yes. Foreign investors investing in the Philippines can now lease private lands up to 75 years. Based on R.A. No. 7652, entitled “**Investor’s Lease Act**”, lease agreements may be entered into with Filipino landowners. Lease period is 50 years, renewable once for another 25 years. For tourism projects, the lease shall be limited to projects with an investment of not less than US\$5M, 70% of which shall be infused in said project within 3 years from signing of the lease contract.

**23. Are arbitration clauses accepted in the Philippines?**

Yes. Consistent with UNCITRAL Model Law, the Alternative Dispute Resolution (ADR) Act of 2004 was recently enacted. The Law promotes the use of different modes of ADR for the speedy and impartial dispensation of justice. The ADR Act expressly adopted under Section 19 thereof the UNCITRAL Model Law as the law governing international commercial arbitration in the Philippines. /in short, the ADR Act has now opened the window for the Philippines to be a venue for international commercial arbitration and mediation.

**24. Can foreign corporations participate in bidding for projects by the Philippine Government?**

Yes. Under the “Government Procurement Reform Act of 2003”, all procurement shall be done through competitive bidding, a method of procurement which is open to participation by any interested party.