

PRIMER ON FOREIGN INVESTMENT IN THE PHILIPPINES

外國投資菲律賓入門

1. How does the Philippines define foreign corporations?

菲律賓如何定義外資企業？

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 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.

外資企業已被定義為一個依他國國家法律而存在，一般而言，於另一個國家無合法存在。企業法第123節在菲律賓以外任何法律下形成、組成及存在，其法律允許菲律賓公民和企業在菲律賓經營。

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

政府對外商投資之一般政策為何？

The government recognizes the pivotal role of private sector investments and, thereby, commits to continuously enhance the business climate. Foreign investments are encouraged to fill in capital gaps, help provide employment, increase production, and provide a base for the overall development of the economy.

政府意識到私部門投資之關鍵作用，因此，致力不斷提升商業氛圍。鼓勵外商投資以填補資金缺口，協助提供就業，增加生產，並為經濟整體發展提供基礎。

3. Can a foreign company invest in the Philippines?

外國公司可否投資菲律賓？

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).

可以。外國投資法 (Foreign Investment Act, R.A. 7042, 1991, amended by R.A. 8179, 1996) 放寬外國投資進入菲律賓之限制。在外國投資法下，外國投資者一般地被對待為國內方，且必須於證券監理委員會 (Securities and Exchange Commission, SEC) 登記 (就公司或合夥而言)；或於貿易產業部貿易管制及消費者保護局 (Department of Trade and Industry's Bureau of Trade Regulation) 註冊登記 (就獨資而言)。

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

外國投資法下外資資本允許百分比為何？

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

隨著外國投資法限制放寬，除菲律賓憲法及特別法予以保留於菲律賓人外，外資得100%投資各領域。

5. What are those businesses with foreign investment restrictions?

外資投資業務限制為何？

RA No. 7042, also known as the 'Foreign Investments Act of 1991', provides for the formulation of a Regular Foreign Negative List, covering investment areas/activities which may be opened to foreign investors and/or reserved to Filipino Nationals. It covers Negative List A and Negative List B.

共和國法案第7042號，或稱「1991外國投資法」規定一般外國投資負面表列公式，包含投資領域/

活動得開放於外國投資及/或保留於菲律賓國民。其包括負面表列A及負面表列B。

*Please see EO No. 98 for the 9th Regular Foreign Investment Negative List

*詳見行政命令第98號第9次一般外資投資負面表列

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

外國公司於菲律賓營業前須遵循之要求為何?

A foreign corporation must first secure the necessary licenses or registrations from the appropriate government bodies. In the case of corporations or partnerships, the necessary incorporation papers from the SEC must first be obtained. In the case of single proprietorship, registration from the Bureau of Trade Regulation & Consumer Protection of the Department of Trade and Industry must be secured.

外資企業首先必須獲得必要執照或自合適政府機關註冊。就公司或合夥來說，必須獲得SEC必要法人文件。就獨資來說，必須獲得貿易產業部貿易管制消費者保護局之註冊登記。

7. What are the requisites for obtaining a license to do business in the Philippines?

於菲律賓為獲得營業執照之要件為何?

A foreign corporation shall be granted a license to transact business by filing a verified application with the SEC setting forth specifically required data, including certified copies of its articles of incorporation and by-laws.

外資企業應向SEC所設置之特別要求資訊提出證明申請同意核發執照以進行業務，包括公司章程經認證影本。

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

外國公司是否有需要指派菲律賓當地代理人?

Yes. 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.

需要。申請證明文件上多數事宜為外資企業之代理人名稱及地址，授權接受傳喚及所有法律訴訟程序，及暫緩所在地辦公處所之設立及所有影響設立通知。

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

外資企業將如何任命菲律賓當地代理人?

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.

外資企業必須向SEC提出書面授權書，任命某些人必須為菲律賓居住者為傳喚及所有法律訴訟程序以任何方式為送達，並同意該居住代理人應被承認並保有效力，等同送達至外資企業負責人辦公處所。

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

SEC是否有需要對外資企業執行有關服務協議傳喚?

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.

需要。在考量許可於菲律賓經營業務，外資企業應向證券管理委員會行使並提出協議或約定，同意在任何時間應停止在菲律賓之交易，或在菲律賓無任命居住代理人得為傳喚或其他法律程序之送達；而後任何在菲律賓發生之交易或經營之任何行為及訴訟，SEC對該企業作出傳喚或其他法律訴訟決定，應有對外資企業負責人辦公處所所為之決定具同等效力。

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

未任命或維持當地代理人之效力為何？

The failure to appoint or maintain a resident agent in the Philippines or failure, after change of its resident agent or his address, 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.

未任命或維持菲律賓居住代理人或未向SEC提出變更居住代理人或其住所之聲明，得以該情事為由據以撤銷在菲律賓進行交易之執照許可。

12. Is there any Reciprocity Compliance?

是否有任何互惠遵循？

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.

有。申請書須檢附授權人員之宣誓或外資企業設立管轄官員之作成正式證明，證明該申請人所在國家或州之法律有允許菲律賓公民及法人在其中經營之情事。

13. Is there a need to deposit Securities?

是否需存放有價證券？

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.

需要。自營業執照發出起六十(60)日內，為確保現有及未來債權人之權益，外資企業應依實際市場價值存放至少10萬披索有價證券於SEC，每年財務年度終了後6個月內，就各該年度毛所得超過500萬披索部份之2%換算為約當實際市場價值之有價證券，存放額外有價證券。

14. What is the effect of being issued a license to do business?

營業執照發出效力為何？

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.

當外資企業於菲律賓被核發營業執照，即獲得於菲國進行商業行為並持續之，且保有該權力至該外資企業依該國或州法下而設立，除非該執照很快被繳回、撤銷、停權或廢除。

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

未獲得執照而營業之後果為何？

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.

外資企業未獲得許可執照在菲律賓營業者 (a) 應否准其持續或以任何行為干預、起訴，或在任何法院或菲律賓行政機關之訴訟；(b) 惟該外資企業於菲律賓法院或行政法庭在意識到菲律賓法下之任何行為有效條款前，可能被起訴或提起訴訟。

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

是否有任何外資企業投資菲律賓稅務獎勵?

Yes. A corporation investing in the Philippines may avail of tax breaks and incentives by registering with the BOI - Board of Investments. The company must operate a business, which has been recognized as a preferred area of investment in the Philippines Investment Priority Plan (IPP).

有。企業投資菲律賓得向菲律賓投資署(Board of Investments, BOI)註冊以利用租稅假期及獎勵。該營業須被認定係在菲律賓投資優先計畫(IPP)中之投資優先區域經營。

17. Can business activities not covered by the IPP avail of tax incentives?

是否有商業活動不涵蓋於利用IPP租稅獎勵?

Yes, provided the following requirements are met:

1. at least 50% of production/service is for export, if Filipino-owned enterprise,; and
2. at least 70% of production/service is for export, if majority foreign-owned enterprise (more than 40% foreign equity),

是的，需符合以下要件：

1. 倘企業為菲律賓人擁有，至少50%為外銷貨物/勞務；及
2. 倘企業主要為外資擁有(外資股權超過40%)，至少70%為外銷貨物/勞務。

18. What are the available fiscal incentives for foreign corporations operating businesses covered by the IPP?

- Income Tax Holiday
- Exemption from Taxes and Duties on Imported Spare Parts
- Exemption from Wharfage Dues and Export Tax, Duty, Impost and Fees
- Tax Exemption on Breeding Stocks and Genetic Materials
- Tax Credits
- Additional Deductions from Taxable Income.

外資企業經營業務由IPP所涵蓋之可得財務獎勵為何?

- 所得稅租稅假期
- 進口零組件免進口稅捐
- 港工捐、出口稅捐及進口稅費豁免
- 育種家畜和遺傳材料稅捐豁免
- 稅額扣抵
- 應稅所得額外扣除額

19. What are the advantages of an Income Tax Holiday?

所得稅租稅假期之優點為何?

Companies registered with the BOI are eligible for income tax holidays, which range from 3-8 years. 4 years for new projects without pioneer status and 6 years for projects with pioneer status.

A 100% foreign owned corporation may be entitled to incentives if their business has been categorized as a pioneer project and at least 70% of production/service is exported or the project is in one of the less-developed areas mentioned in the IPP. Companies not exporting 100% of their production/services are obliged to have 60% Filipino ownership within a period of 30 years from time of registration with the BOI. Foreign ownership of corporations in non-pioneer projects is limited to 40% except if the company exports more than 70% of its production/service.

公司於BOI註冊有資格享有3-8年之所得稅租稅假期。不具先鋒地位之公司為4年，具有先鋒地位之公司為6年。

100%外資企業有權享有獎勵，如已被歸類為先鋒計劃及至少70%為外銷貨物或勞務，或為IPP所述之低度開發區域計劃之一。外資企業非100%外銷貨物或勞務，自向BOI註冊時起得由菲律賓人持有60%股權30年。不具先鋒計劃之外資企業股權有40%之限制，除公司出口貨物或勞務超過70%。

20. How does a foreign corporation apply for BOI incentives?

外資企業如何申請BOI獎勵?

Submission of a notarized application specifying the nature of the projects, its inclusion in the IPP or not, percentage of production for export, the investors details and a 5 year feasibility study.

遞交之詳細之原計劃公證文件，不論是否包括於IPP中，外銷貨物百分比、投資者詳細資料及5年可行性研究。

21. What are other tax incentive schemes available for foreign corporations?

是否有其他外資企業可得之稅務獎勵措施?

Companies that register and locate within an area that is under the Philippine Economic Zone Authority (PEZA) are entitled to various tax incentives and other advantages.

NOTE: Usually, enterprises located in a PEZA approved eco-zone are required to export 100% of their production.

公司註冊並坐落於菲律賓經濟特區管理署(Philippine Economic Zone Authority, PEZA)有權享有各項稅務獎勵及其他利益。

註：通常企業座落於PEZA核准之經濟區，被要求100%出口所生產之貨物。

22. What is the percentage of foreign ownership allowed in enterprises located in a PEZA approved eco-zone?

核准座落於PEZA經濟區內之外資股權允許百分比為何?

100% foreign ownership is allowed except in activities, which are limited by the Foreign Investment Negative List.

100%外資股權是被允許的，惟受限於外國投資負面表列。

23. What are the incentives provided by PEZA?

PEZA提供之獎勵為何?

Income Tax Holiday (ITH) or exemption from corporate income tax for 4 years, extendable to a maximum of 8 years; after which a special 5% tax on gross income (sales less direct costs) shall be paid in lieu of all national and local taxes. The income tax holiday is not available for locators in the Subic Bay Metropolitan Authority (SBMA) and Clark Freeport Zone; they are entitled to the special 5% tax on gross income as described above.

Exemption from duties and taxes on imported capital equipment, spare parts, supplies, and raw materials. Tax credits will be issued on breeding stocks or genetic material when they are sourced locally.

所得稅免稅假期(Income Tax Holiday, ITH)或4年公司所得稅豁免，最高可展延到8年；隨後有5%特別毛所得稅(銷售減直接成本)代替所有國稅及地方稅。所得稅免稅假期不適用於座落於蘇比克灣都會圈管理署(Subic Bay Metropolitan Authority, SBMA)及克拉克自由港區(Clark Freeport Zone)；其有權享有如上所述之5%特別毛所得稅。

進口資本設備、零組件、供應及原料稅捐豁免。源自當地之育種家畜和遺傳材料稅額可扣抵。

24. What are the other available incentives?

- PEZA may grant the right to the locator on a case-to-case basis the sale of up to 30% of production to the domestic market.
- Exemption from wharfage dues and export taxes, imposts and fees.
- Permanent resident status for foreign investors and immediate family members.
- Employment of foreign nationals.
- Simplified import and export procedures.

其他可得之獎勵為何？

- 於個案基礎上PEZA有權核准座落者其產製貨物最高30%內銷
- 港工捐、出口稅捐及進口稅捐豁免
- 外國投資者及直屬家庭成員永久居住資格
- 外籍人員雇用
- 簡易進出口手續

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

外資企業可否購買或擁有菲律賓境內土地？

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%).

可以，如符合下列要件：(a) 必須為私人土地，其意指任何私有土地所有權；(b) 企業外資股權未超過百分之四十(40%)。

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

倘企業外資股權超過40%會發生什麼事？

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.

外資企業將會失去持有私人土地之權。或可能被同意如租賃契約之憲法未禁止之暫時權力。

27. 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

外國投資者及企業土地所有權例外情況為何？

- a. 透過世襲繼承收購；
- b. 過去為菲律賓自然出生之公民購買，依雙重國籍法規定過去為菲律賓自然出生之公民重新獲得其菲律賓國籍應被視為不失去他的菲律賓國籍，從而使他們能夠享受菲律賓一切權利和特權；
- c. 倘菲律賓自然出生之公民人已成為另一個國家入籍公民選擇不按照雙重國籍法重新獲得菲律賓

賓國籍，仍然可以擁有土地，惟根據BP185和RA8179所規定之限制如下：

- i. 住宅用途：
 - 1. 住宅用地最高1,000平方公尺
 - 2. 農業用地最1公頃
- ii. 經營或商業用途：
 - 1. 都市用地最高5,000平方公尺
 - 2. 農村用地最高3公頃

d. 購買住宅案不超過40%權益；

e. 所有權透過菲律賓人與保留菲律賓籍之外國人結婚取得

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

外資企業可否擁有菲律賓土地以外之不動產？

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

可以。外資企業得收購其他固定或不動產如建物及其他地上改良物。

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

外國人或外資企業是否被允許在菲律賓租用土地？

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.

可以。外國投資人投資菲律賓可允許租用私人土地最高75年。依據R.A. No. 7652 "投資者之租賃法"，得與菲律賓地主訂定租賃契約，租賃期限為50年，得續約一次25年。對於旅遊項目，租賃應僅限於不低於美金500萬之投資項目，其中70%應自租賃合約簽訂時起3年內注入。

30. Are arbitration clauses accepted in the Philippines?

仲裁條款在菲律賓是否被接受？

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.

可以。最近頒布符合聯合國國際貿易法委員會示範法之2004涉外爭端解決條款(Alternative Dispute Resolution, ADR)。為迅速和公平正義判決，該法提倡使用不同模式之ADR。ADR明確地採用聯合國國際貿易法委員會示範法第19條為菲律賓國際商事仲裁準據法。總之，ADR現已為菲律賓開啟國際商業仲裁和調解判決窗口

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

外資企業可否參與菲律賓政府項目標案？

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.

可以。在"2003政府採購改革法案"下，所有採購必須通過競標完成，採購方法開放給任何有興趣各方參與。