

**DOING BUSINESS  
IN THE  
PHILIPPINES**

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## COMPANY PROFILE

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<b>Company</b>	-	<b>BANARIA, BANARIA AND COMPANY, CPA's (BBCpas)</b> organized in 1975. Predecessor firm is TULIO EVANGELISTA BANARIA MAPA (TEBM) from years 1955 to 1975.
<b>Registered</b>	-	Securities and Exchange Commission (SEC) and Professional Regulation Commission (PRC) as "General Professional Partnership" in public accountancy.
<b>Affiliation</b>	-	The Firm is a member of The International Accounting Group (TIAG) for the Philippines.
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### MISSION STATEMENT

1. To be one of the country's top public accountancy Firm;
2. Provide clients efficient professional services;
3. Provide new CPAs a venue to acquire on-the-job training and work experience.

### CORE VALUES

1. Integrity
2. Professional Excellence
3. Harmonious business relationship

## **PROFESSIONAL SERVICES OFFERED**

1. Audits and Assurance
2. Tax advisory and compliance
3. Estate accounting
4. Management services and Advisory
5. Receivership and liquidation
6. Other related services

## **ACCREDITATIONS**

1. PRC – Board of Accountancy
2. Securities and Exchange Commission (General)
3. Bangko Sentral ng Pilipinas (Rural Banks & NSSLAI's)
4. Bureau of Internal Revenue
5. Cooperative Development Authority
6. Office of Insurance Commission

## **CODE OF GOOD GOVERNANCE**

As required by the Securities and Exchange Commission (SEC) the Firm submitted its Code of Good Governance which refers to a system whereby the Partners, management and staff of B&B ensure the enhancement of the Mission of the Firm as it competes in an increasingly global market place.

## **PARTNERS AND ASSOCIATES**

Chairman Emeritus	- Dean Pascasio S. Banaria (died Jan. 3/05)
Principal Partner	- Ernesto A. Banaria
Partner	- Reina Clara B. Magtoto
Partner	- Pascasio A. Banaria, Jr.
Senior Partner – Audit Dept. & Tax Advisory	- Myra T. Roman
Partner – Management Services	- Romulo R. Sison
Partner – Audit and Assurance	- Kim Nestor S. Mangada, Jr.
Partner – Chief Operating Officer (COO); Concurrently, OIC – Admin. & Personnel Services	- Alfredo O. Banaria
Associate – Audit and Assurance	- Shena O. Matira

## **CONSULTANTS**

Legal Services	- Atty. Roberto T. Neri
Management	- Panfilo A. Banaria
Tax	- Atty. Raineer Chu

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# **INTRODUCTION**

## **The Philippines**

### ***Geography***

The Philippines is ideally located at the heart of Southeast Asia. With 300,000 sq km. total land area, the Philippines is one of the largest archipelagos in the world. It has about 7,100 island and islets grouped into three main islands – Luzon, Visayas and Mindanao. The national capital is Manila, located on the island of Luzon.

The Philippines has tropical climate, with an average temperature of 27 degrees centigrade. Tropical storms and typhoons are common between July and October. Dry season is between October and February.

### ***Demographics***

The Philippines is the world's 12<sup>th</sup> populous country, with a population of over 85 million as of 2005, roughly half reside on the island of Luzon. As of 2007, 8% of Filipinos are living abroad as migrant workers. The population density is estimated at 255 persons per square kilometer of land. The literacy rate (94.6%) is among the highest in the region and around 350,000 highly trainable graduates add to the professional pool every year.

The Philippines' ethnic profile is composed of 91.5% Christian Malay, 4% Muslim Malay, 1.5% Chinese and 3% other ethnic group. More than 80% of the total population is Roman Catholic. The remaining 10% are Protestant, Muslim, Buddhist and other religion. Filipino culture is a fusion of pre-Hispanic indigenous Austronesian civilizations of the Philippines mixed with Hispanic and American. It has also been influenced by Chinese, Hindu-Malayan and Islamic culture.

The country's national language is Filipino, although English is widely used and is the medium of communication in business, school and government, making the Philippines the world's third largest English-speaking country.

### ***Politics and Government***

The Philippines has a presidential, unitary form of government with a bicameral parliament and three equal branches – executive, legislative and judiciary. The Philippine government has been working on the proposal to change the present presidential system to a parliamentary-federal form of government through the charter change, in order to fast track the enactment of legislative measures and the delivery of public services to the provinces.

### ***Business Hours and Time Zone***

Normal business hours are for eight hours, generally from 8:00 a.m. to 5:00 p.m., Monday to Friday, with lunch break from noon to 1:00 p.m. Some private enterprises are open on Saturdays. Commercial banks are generally open for client transactions from 9:00 a.m. to 3:00 p.m., and savings banks from 9:00 a.m. to 5:00 p.m. (Monday to Friday), although technology has enabled certain services to be available 24 hours a day, seven days a week. Philippine time is eight hours ahead of the Greenwich Mean Time (GMT) and 12 hours ahead of the U.S. Eastern Standard Time (EST).

### ***Public Holidays***

The Philippines observe the following public holidays:

New Year's Day	January 1
Araw ng Kagitingan	April 9
Maundy Thursday	Variable
Good Friday	Variable
Labor Day	May 1
Independence Day	June 12
Ninoy Aquino Day	August 12
National Heroes Day	Last day of August
All Saints Day	November 1
Bonifacio Day	November 30
End of Ramadan	Variable
Christmas Day	December 25
Rizal Day	December 30
Last Day of the Year	December 31

In August 2007, a new law went into effect requiring that the celebration of national holidays be moved to the nearest Monday. The resulting longer weekend are intended to promote domestic tourism and strengthen family ties. This law, however, will not affect religious holidays such as Christmas Day, Maundy Thursday, Good Friday, All Saints' Day and the end of Ramadan, as well as New Year's Day and the last day of the year.

### ***Economy***

The Philippine economy continued to expand at a rapid pace in 2007. The 7.3% Gross Domestic Product (GDP) in 2007 exceeded market expectations and is so far the strongest since the economy registered its last peak growth of 8.8% in 1976. Remittances by Overseas Filipinos remain as the largest source of foreign income propping up domestic travel, property market and trade in the country. The government plans to further accelerate the country's GDP growth include improvements of infrastructure, more efficient tax systems to bolster government revenues, furthering deregulation and privatization of the economy, and increasing trade integration within the region and across the world.

An open economy allows 100% foreign ownership in almost all sectors and supports a Build-Operate-Transfer (BOT) investment scheme that other Asian countries emulate. Government corporations are being privatized and the banking, insurance, shipping telecommunications and power industries have been deregulated. Incentive packages include the corporate income tax, reduced to a current 32%, with companies in the Special Economic Zones are subject to only 5% overall tax rates. Multinationals looking for regional headquarters are entitled to incentives such as tax exemptions and tax and duty-free importation of specific equipment and materials

The country's major industries include: electronic components manufacturing, apparel and clothing accessories, woodcraft and furniture making, food processing, IT-enabled services, financial services and retail trade. The major exports include: semi-conductors and electronic microcircuits; finished electrical machinery and crude coconut oil.

The Philippine' top 10 export markets are the United States, Japan, Hong Kong, Netherlands, Singapore, Taiwan, Malaysia, China, South Korea and Germany.

### ***Why Do Business in the Philippines?***

In the Philippines there are quality manpower resources, strategic business location, liberalized and business friendly economy, hospitable lifestyle and unlimited opportunities.

Wages are typically less than a fifth of that in the U.S. Local communication, electricity and housing costs are also 50% lower compared to the U.S. rates. Foreign companies that are now outsourcing programming and business processes to the Philippines estimate 30 to 40% business cost savings, 15 to 30% call center services and application systems and 35 to 50% software development.

As Asian economies integrate within the vast framework of the ASEAN Free Trade Agreement (AFTA), the Philippines is the natural and most strategic location for firms that want access to the large ASEAN market and its vast trade opportunities. The Philippines has enhanced and primed up various areas for investors and offers a dynamic consumer market accustomed to an array of product choices created by a competitive domestic economy.

A well-developed communication, transportation, business and economic infrastructure link the three major islands and distinguish the Philippine economy. Highly accessible by air, water and cyberspace, liberalization of inter-island shipping and domestic aviation further sparked improved facilities and services. The container terminals are suited to handle cargo traffic at the highest levels of efficiency.

Communication provides redundant international connectivity 24/7 with fiber optic cable as primary backbone network and satellite as backup. Economic reforms

emphasize regional growth, converting remote areas into business centers. The landmark BOT legislation allows private investors to build and operate infrastructure, then turn it over to the Philippine government after a set period of time.

## **BUSINESS REGISTRATION**

There are several types of business enterprises an investor can choose from in establishing operations in the Philippines.

### ***Organized under Philippine Laws***

#### **Sole Proprietorship**

Sole Proprietorship is a business structure owned by an individual who has full control/authority of its own and owns all the assets, personally owes and answers all liabilities or suffers all losses but enjoys all the profits to the exclusion of others. A Sole Proprietorship must apply for a Business Name and be registered with the Department of Trade and Industry- National Capital Region (DTI-NCR). In the provinces, application may be filed with the extension offices of the DTI.

#### **Partnership**

Under the Civil Code of the Philippines, a partnership is treated as juridical person, having a separate legal personality from that of its members. Partnerships may either be general partnerships, where the partners have unlimited liability for the debts and obligation of the partnership, or limited partnerships, where one or more general partners have unlimited liability and the limited partners have liability only up to the amount of their capital contributions. It consists of two (2) or more partners. A partnership with more than three thousand pesos (P3,000.00) capital must register with Securities and Exchange Commission (SEC).

#### **Corporation**

Corporations are juridical persons established under the Corporation Code and regulated by the Securities and Exchange Commission with a personality separate and distinct from that of its stockholders. The liability of the shareholders of a corporation is limited to the amount of their share capital. It consists of at least five (5) to fifteen (15) incorporators each of whom must hold at least one share and must be registered with the Securities and Exchange Commission (SEC). Minimum paid up capital: five thousand pesos (P5,000.00).

A corporation can either be stock or non-stock company regardless of nationality. Such company, if 60% Filipino-40% foreign-owned, is considered a Filipino corporation; If more than 40% foreign-owned, it is considered a domestic foreign-owned corporation.

#### **Stock Corporation**

This is a corporation with capital stock divided into shares and authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held.

**Non-stock Corporation**

It is a corporation organized principally for public purposes such as charitable, educational, cultural or similar purposes and does not issue shares of stock to its members.

***Organized under Foreign Laws*****Branch Office**

A Branch office is a foreign corporation organized and existing under foreign laws that carries out business activities of the head office and derives income from the host country. It is required to put up a minimum paid up capital of US\$200,000.00, which can be reduced to US\$100,000.00 if (a) activity involves advanced technology, or (b) company employs at least 50 direct employees. Registration with the SEC is mandatory.

**Representative Office**

A Representative Office is foreign corporation organized and existing under foreign laws. It does not derive income from the host country and is fully subsidized by its head office. It deals directly with clients of the parent company as it undertakes such activities as information dissemination, acts as a communication center and promote company products, as well as quality control of products for export. It is required to have an initial minimum inward remittance in the amount of US\$30,000.00 to cover its operating expenses and must be registered with SEC.

Under RA 8756, any multinational company may establish an RHQ or ROHQ as long as they are existing under laws other than the Philippines, with branches, affiliates and subsidiaries in the Asia Pacific Region and other foreign markets.

**Regional Headquarters (RHQs)**

An RHQ undertakes activities that shall be limited to acting as supervisory, communication and coordinating center for its subsidiaries, affiliates and branches in the Asia-Pacific region.

It acts as an administrative branch of a multinational company engaged in international trade.

It does not derive income from sources within the Philippines and does not participate in any manner in the management of any subsidiary or branch office it might have in the Philippines.

Required capital: US\$50,000.00 annually to cover operating expenses.

## **Regional Operating Headquarters (ROHQs)**

An ROHQ performs the following qualifying services to its affiliates, subsidiaries, and branches in the Philippines.

- a. General administration and planning
- b. Business planning and coordination
- c. Sourcing/procurement of raw materials components
- d. Corporate finance advisory services
- e. Marketing Control and sales promotion
- f. Training and personnel management
- g. Logistic services
- h. Research and development services and product development
- i. Technical support and communications
- j. Business development
- k. Derives income in the Philippines

Required capital: US\$200,000.00 one time remittance.

## **INCENTIVES UNDER SPECIAL REGISTRATION**

Qualified enterprises may register with the Board of Investments ("BOI") under the Omnibus Investments Code or with the Philippine Economic Zone Authority ("PEZA") to avail of incentives. Investment opportunities in the Philippines have also been created by the Philippine Government's conversion plan covering the Clark Air Base, Subic, Naval Base, Camp John Hay in Baguio City and other former US military reservations and their extensions into special economic zones.

### ***Enterprises Registered Under the Omnibus Investments Code ("OIC")***

The OIC, through tax exemption and other benefits, encourages investments in preferred areas of economic activity specified by the BOI in the Investment Priorities Plan ("IPP").

Although the incentives under the OIC are generally available only to citizens of the Philippines or to domestic corporations owned and controlled by Philippine nationals, the nationality requirement is waived if the applicant will either export at least 70 percent of its total production or engage in a pioneer project.

A pioneer enterprise either manufactures goods that have not been produced in the Philippines on a commercial scale, or employs a formula, process or production scheme which has not yet been tried in the Philippines.

Agricultural activities or services (especially food processing) contributing to national self-sufficiency, the production of non-conventional fuels, or manufacturing of equipment which utilizes non-conventional sources of energy are similarly classified as pioneer projects. The final product or process should involve substantial use of domestic raw materials, whenever possible.

When the BOI waives the nationality requirement, the applicant should attain the status of a Philippine national within 30 years from the date of its registration or such longer periods as may be determined by the BOI. However, a registered enterprise exporting 100 percent of its production need not comply with this divestment requirement.

A foreign investor is guaranteed repatriation of investments, remittance of profits, freedom from expropriation and requisition of investment, protection of patents, and other proprietary rights.

An enterprise registered with the BOI enjoys the following incentives:

### **Fiscal Incentives**

Fiscal incentives includes the following:

1. Income Tax Holiday
2. Exemption From Taxes And Duties On Imported Spare Parts
3. Exemption From Wharfage Dues And Export Tax, Duty, Impost And Fees
4. Tax Exemption On Breeding Stocks And Genetic Materials  
Tax Credits

Additional Deductions from Taxable Income.

#### **A. Income Tax Holiday (ITH)**

1. BOI-registered enterprise shall be exempt from the payment of income taxes reckoned from the scheduled start of commercial operations, as follows:
  - a. New projects with a pioneer status for six (6) years
  - b. New projects with a non-pioneer status for four (4) years;
  - c. Expansion projects for three (3) years. As a general rule, exemption is limited to incremental sales revenue/volume;
  - d. New or expansion projects in less developed areas (LDAs) for six (6) years, regardless of status;
  - e. Modernization projects for three (3) years. As a general rule, exemption is limited to incremental sales revenue/volume.
2. The ITH is limited in the following cases:

Export traders may be entitled to the ITH only on their income derived from the following:

- a. Export of new products, i.e. those which have not been exported in excess of US\$100,000 in any of the two (2) years preceding the filing of application for registration, or

- b. Export to new markets, i.e., to a country where there has been no recorded import of a specific export product in any of the two (2) years preceding the filing of the application for registration.

#### Mining Activities

- a. The exploration and development of mineral resources are not entitled to an ITH;
  - b. Mining and/or quarrying without mineral processing is not entitled to an ITH;
  - c. Mining and processing of aggregates is not entitled to ITH.
3. New registered pioneer and non-pioneer enterprises and those located in LDAs may avail themselves of a bonus year in each of the following cases:
- a. the indigenous raw materials used in the manufacture of the registered product must at least be fifty percent (50%) of the total cost of raw materials for the preceding years prior to the extension unless the Board prescribes a higher percentage; or
  - b. the ratio of total imported and domestic capital equipment to the number of workers for the project does not exceed US\$10,000 to one (1) worker; or
  - c. the net foreign exchange savings or earnings amount to at least US\$500,000 annually during the first three (3) years of operation. In no case shall the registered pioneer firm avail of the ITH for a period exceeding eight (8) years.

#### **B. Exemption From Taxes And Duties On Imported Spare Parts**

A registered enterprise with a bonded manufacturing warehouse shall be exempt from customs duties and national internal revenue taxes on its importation of required supplies/ spare parts for consigned equipment or those imported with incentives

#### **C. Exemption From Wharfage Dues And Export Tax, Duty, Impost And Fees**

All enterprises registered under the IPP will be given a ten (10) year period from the date of registration to avail of the exemption from wharfage dues and any export tax, impost and fees on its non-traditional export products.

#### **D. Tax Exemption On Breeding Stocks And Genetic Materials**

Agricultural producers will be exempted from the payment of all taxes and duties on their importation of breeding stocks and genetic materials within ten (10) years from the date of registration or commercial operation.

#### **E. Tax Credits**

- 1. Tax credit on tax and duty portion of domestic breeding stocks and genetic materials - A tax credit equivalent to one hundred percent (100%) of the value of national internal revenue taxes and customs duties on local breeding stocks

within ten (10) years from date of registration or commercial operation for agricultural producers.

2. Tax credit on raw materials and supplies A tax credit equivalent to the national internal revenue taxes and duties paid on raw materials, supplies and semi-manufacture of export products and forming part thereof shall be granted to a registered enterprise.

#### **F. Additional Deductions from Taxable Income.**

1. Additional deduction for labor expense (ADLE) For the first five (5) years from registration, a registered enterprise shall be allowed an additional deduction from taxable income equivalent to fifty percent (50%) of the wages of additional skilled and unskilled workers in the direct labor force. The incentive shall be granted only if the enterprise meets a prescribed capital to labor ratio and shall not be availed simultaneously with ITH. This additional deduction shall be doubled if the activity is located in an LDA.
2. Additional deduction for necessary and major infrastructure works. Registered enterprises locating in LDAs or in areas deficient in infrastructure, public utilities and other facilities may deduct from taxable income an amount equivalent to the expenses incurred in the development of necessary and major infrastructure works. The privilege, however, is not granted to mining and forestry-related projects as they would naturally be located in certain areas to be near their sources of raw materials.

#### **Non-Fiscal Incentives**

Non-fiscal incentives are as follows:

##### **1) Employment Of Foreign Nationals**

A registered enterprise may be allowed to employ foreign nationals in supervisory, technical or advisory positions for five (5) years from date of registration. The position of President, General Manager and Treasurer of foreign-owned registered enterprises or their equivalent shall however not be subject to the foregoing limitations.

**2) Simplification of customs procedures** for the importation of equipment, spare parts, raw materials and supplies and exports of processed products.

**3) Importation of consigned equipment** for a period of 10 years from date of registration, subject to posting of a re-export bond.

**4) The privilege to operate a bonded manufacturing/trading warehouse** subject to Customs rules and regulations.

## **Incentives for Regional Headquarters (RHQ) and Regional Operating Headquarters (ROHQ) in the Philippines.**

### **RHQ are entitled to the following incentives:**

- 1) **Exemption on the Payment of Corporate Income Tax.** An annual information return of a tax-exempt corporation shall be filed with the Bureau of Internal Revenue (BIR) to effect exemption.
- 2) **Exemption on the Payment of Value-Added Tax.** The exemption includes the sale or lease of goods and property including the rendition of services to RHQ.

### **ROHQ can avail of the following incentives:**

- 3) **Payment of Corporate Income Tax.** Income derived by the ROHQ from performing qualifying activities shall be subject to a preferential rate of 10% on taxable income.
- 4) **Payment of Branch Profit Remittance Tax.** Any income derived from the Philippines when remitted to the parent company shall be subject to the tax on branch profit remittances.
- 5) **On the Payment of Value-Added Tax.** ROHQ shall be subject to the ten percent (10%) value-added tax unless otherwise provided under the National Internal Revenue Code.

### **Exemptions common for both RHQ and ROHQ:**

- 1) **Exemption on the Payment of All Kinds of Local Taxes, Fees, or Charges.** Payment however, shall be made for real property tax on land improvements and equipment.
- 2) **Tax and Duty Free Importation of Training Materials and Equipment.** Applicable to materials not locally available, subject to prior approval from the Board of Investments (BOI).

The sale or disposition of equipment within two years after importation, entered tax and duty free, shall require prior approval from the BOI and prior payment of applicable taxes and duties.

- 3) **Entitlement to the Importation of New Motor Vehicles.** The importation shall be subjected to the payment of the corresponding taxes and duties.

**Under RA 8756, the following incentives are given to the expatriates of a registered RHQ/ROHQ in the Philippines:**

- 1) **Multiple Entry Visa.** Issued to the expatriates, their respective spouses and unmarried children under 21 years old. A non-immigrant visa shall be issued within 72 hours upon submission of all required documents.

The multiple entry visa is be valid for a period of three (3) years and extendible for another three years upon submission to the Bureau of Immigration of a sworn certification by a responsible officer of the RHQ/ROHQ that its license to operate remains valid and that it complied with all requirements stipulated under relevant Philippine laws.

- 2) **Withholding Tax of 15% on Compensation Income.** Applied to both alien and Filipino executives holding managerial or technical positions.
- 3) **Tax and Duty Free Importation of Personal and Household Effects.** Applicable on imports made within ninety (90) days before or after conversion of the alien executive's admission category to multiple entry visa.
- 4) **Travel Tax Exemption.** Issued by the Philippine Tourism Authority (PTA) upon recommendation by the BOI during the period of the expatriate's assignment in the country.

***Enterprises Registered with the Philippine Economic Zone Authority ("PEZA")***

To disperse industry and generate employment in non-urban areas, the government has established several special economic zones (Ecozones).

Enterprises may establish their businesses within an Ecozone and register with the PEZA as any of the following:

- ECQZONE Export Enterprises
- ECOZONE Domestic Market Enterprise
- ECOZONE Pioneer Enterprise
- ECOZONE Free Trade Enterprise
- ECOZONE Facilities Enterprise
- ECOZONE Developer/Operator
- ECOZONE Tourism Enterprise
- ECOZONE IT Enterprise

An ECOZONE Export Enterprise is an entity engaged in a manufacturing, assembling or processing activity and which exports 100 percent of its production, unless a lower percentage of its production for export is prescribed by the PEZA.

An ECOZONE Free Trade Enterprise is one engaged in the importation of goods or merchandise within the restricted or free trade area in the ECOZONE tax- and duty-free for immediate transshipment or for storage, repacking, sorting, mixing or manipulation and subsequent exportation.

An ECOZONE IT Enterprise is a company operating or offering IT services, which are defined as activities which involve the use of any information technology software or system for value addition. An IT Enterprise is also considered an export enterprise.

### *2.1 Tax and other Incentives*

As a general rule, an ECOZONE Enterprise is entitled to the income tax holiday which may be for duration of four years for new registered non-pioneer firms or six years for new registered pioneer firms. Expanding firms may be entitled to an income tax holiday of three years from the start of commercial operation of the expansion.

Upon the expiry of the income tax holiday, an ECOZONE Enterprise is subject to a preferential rate of 5 percent of gross income. This is in lieu of all national and local taxes.

ECOZONE Export and Free Trade Enterprises are further entitled to the following incentives:

- a. Zero-rate VAT on sales;
- b. Exemption from duties and taxes on importation of merchandise, raw materials, supplies of equipment and machineries, including importation of capital equipment, construction materials, specialized office equipment and furniture, specialized vehicles and other transportation equipment, professional instruments and household effects;
- c. Tax credit for import substitution;
- d. Exemption from wharfage dues, export tax, impost or fee;
- e. Additional deduction for training expenses;
- f. Tax credit on domestic capital equipment, breeding stocks and genetic materials;
- g. Additional deduction for labor expense;
- h. Unrestricted use of consigned equipment; and Employment of foreign nationals in executive, supervisory, technical and advisory positions, provided, the total number of foreign nationals employed by an ECOZONE Enterprise shall not at any time exceed 5 percent of its work force.

### ***Enterprises Registered with the Subic Bay Metropolitan Authority ("SBMA")***

The Subic Special Economic and Free Port Zone ("Subic Bay Freeport" or "SBF") was established by the Philippine Government with the aim of developing the area into a self-sustaining industrial, commercial, financial and investment center in the Philippines.

The territory of the SBF includes the City of Olongapo and the Municipality of Subic, the former US Naval Base at Subic Bay and its extensions located in the municipalities of Hermosa and Morong in the Bataan province.

A business enterprise may register as an SBF Enterprise, and a natural person as an SBF Resident, with the SBMA.

### **3.1 SBF Enterprises**

An SBF Enterprise is any business entity or concern within the SBF, duly registered with and/ or licensed by the SBMA to operate any lawful economic activity within the SBE Registration as an SBF Enterprise is open to any business enterprise in any area of economic activity, subject only to limitations in the Philippine Constitution.

The incentives offered to an SBF Enterprises include:

- a. Right to freely engage in any business, trade, manufacturing, financial *or* service activity, and to import and export freely all types of goods into and out of the SBF, subject to certain laws and regulations;
- b. Right to employ foreign nationals subject to evidence of unavailability of comparably skilled Filipinos within the Philippines; and
- c. Exemption from all national and local taxes, in lieu of which a final tax of 5 percent of gross income must be paid.

An SBF Enterprise which operates facilities or services within the SBF (SBF Facilities Operator) is entitled to additional incentives, including:

- a. Right to manage facilities on real property it owns, has acquired, or has leased within the SBF;
- b. Right to lease out real property it owns or has leased within the SBF, and to acquire and lease land and sell or lease out facilities to SBF Enterprises, subject to certain guidelines; and
- c. Right to make improvements on buildings and other facilities, and develop infrastructure necessary to enhance the SBF's efficient operation, or grant contracts or concessions to other private or public parties for the construction or provision of any of the said facilities, subject to certain guidelines.

### 3.2 SBF Residents

Generally, registration as an SBF Resident is available to:

- a. Any Filipino actually residing within the SBF who is an employee or owner of an SBF Enterprise, and the immediate members of his family, or any Filipino who has leased or has secured living premises in the SBF;
- b. A foreign national who is a permanent resident of the Philippines and who is employed or has invested in the SBF; and
- c. A foreign national without prior permanent residency status in the Philippines, subject to certain immigration regulations.

The incentives offered to SBF residents include the following:

- a. Right to import directly, free of customs duties and control, foreign articles in non-commercial quantities, subject to certain regulations; and
- b. Right to purchase, lease or otherwise acquire articles from other SBF residents or Enterprises, and maintain, utilize or otherwise consume such goods within the SBF free of national internal revenue taxes and customs duties.

#### ***Enterprises registered with the Clark Development Corporation ("CDC")***

Prior to the Philippine Supreme Court's ruling in *Coconut Oil Refiners, Inc., et. al. vs. Torres, et. al.*, G.R. No. 132527 dated 29 July 2005, enterprises located within the Clark Special Economic Zone ("CSEZ") and registered with the CDC enjoy the incentives entitled to Subic Special Economic Zone ("SSEZ") Enterprises pursuant to Section 5 of Executive Order No. 80 ("E.O. No. 80"). E.O. 80 is a presidential order which granted tax and duty free incentives to enterprises located at CSEZ and registered with the CDC. Section 5 of E. O. 80 states that CSEZ shall have all the applicable incentives which were granted to enterprises located at and registered with the SSEZ pursuant to Republic Act No. 7227 ("R.A. 7227").

However, on 13 December 2005, the Supreme Court decided the *Coconut Oil Refiners* case with finality and declared Section 5 of E.O. No. 80 to be unconstitutional and void. The Supreme Court held that while R.A. 7227 expressly provides for the grant of incentives to enterprises registered with SSEZ, it fails to make a similar grant of incentives to enterprises registered with other economic zones, including the CSEZ.

To address the uncertainty on the tax incentives currently being enjoyed by enterprises located at the CSEZ, several bills are currently pending before Congress. These bills aim to confirm the legislative intent of RA 7227 to grant tax and duty free incentives not only to SSEZ registered enterprises but also to

enterprises registered with the CSEZ and other special economic zones created under said law.

As a more immediate measure to protect investors located at CSEZ, President Gloria Macapagal-Arroyo issued Presidential Proclamation No. 1035 ("PP 1035") on 10 March 2006 which declared as a PEZA zone, all land areas that were previously declared as part of CSEZ under relevant presidential proclamations issued pursuant to RA 7227. The President's power to declare certain areas as special economic zones is found in Republic Act No. 7916, otherwise known as the

Special Economic Zone Act of 1995 ("RA 7916") and its implementing rules and regulations ("IRR") (hereinafter collectively referred to as the "PEZA Law").

In light of the recent declaration of CSEZ as a PEZA zone under PP 1035, the PEZA is currently drafting such guidelines that specifically deal with the registration of CSEZ enterprises and the specific incentives to which they may be entitled under the PEZA law.

## **PRE-INCORPORATION REQUIREMENTS**

### ***SECURITIES AND EXCHANGE COMMISSION***

#### **STOCK CORPORATIONS**

##### ***I Paid-up – Cash***

##### **A. Corporation with 100% Filipino Equity**

1. Name Verification Slip.
2. Articles of Incorporation (3 copies)
3. Treasurer's Affidavit (3 copies)
4. Statement of assets & Liabilities executed under oath by the Treasurer of the corporation (if paid up capital consists of cash and properties, 3 copies)
5. Bank certificate of deposit (3 copies) notarized before a notary public the place where bank signatory is assigned.
6. Authority to verify Bank Account (3 copies)
7. Written Undertaking to change corporate name signed by incorporator/director (3 copies)
8. Registration Data sheet (3 copies)
9. Undertaking to comply with SEC requirements
10. Audited financial statements of the subscribing domestic corporation for the last fiscal/calendar year only if subscriptions of such domestic corporations are partially paid. (if subscriber/stockholder is a corporation)
11. Customs Brokerage – at least two directors must be customs brokers, who must submit their respective licenses to act as a custom broker and PTR

12. Management Consultancy – Personal Information Sheet of the Directors

**B. Corporation with 60 – 40 % Filipino Foreign Equity**

In addition to the above, also submit the following:

1. Proof of Inward remittance by non-resident Filipinos and foreign corporations.
2. Affidavit of Assumption of unpaid subscriptions of non-resident aliens and non-resident Filipinos by any of the resident Filipino subscribers (accompanied by the guarantor's audited financial statements for the last fiscal year or certified true copy of the original/transfer certificate of title (OCT/TCT) and tax declaration sheet covering real estate property registered in the name of the guarantor) if subscriptions are not fully paid.
3. Immigrant Certificate of Residence of resident alien incorporator/subscriber(s), Special Investors residents' Visa (SIRV), Philippine Retirement Authority (PRA) membership or any visa valid for at least one year.

If the document is signed outside the Philippines, the same must be duly authenticated by the Philippine Consular Office in the place where it is executed.

**C. Corporations with more than 40% Foreign Equity**

In addition to (A) and (B) also submit applicable application form:

1. Form F – 100 – For new corporations with more than 40% foreign equity.
2. Form F – 101 – For registered corporations increasing its foreign equity to more than 40%.
3. Form F – 102 – For registered corporations with more than 40% foreign equity increasing further the percentage of such equity.
4. Form F – 103 – For branch office of a foreign corporation.
5. Form F – 104 – For representative office of a foreign corporation.
6. Form F – 105 – For new partnership with more than 40% foreign equity.
7. Form F – 106 – Registered partnership increasing capital to more than 40%.
8. Form F – 107 – Registered partnership with more than 40% foreign equity increasing further the percentage of foreign equity.

**D. Foreign Corporations**

1. Application form
2. Name verification slip

3. Certified copy of the Board Resolution authorizing the establishment of an office in the Philippines; designating the resident agent to whom summons and other legal processes may be served to SEC as if the same is made upon the corporation at its home office.
4. Financial statements of the applicant as of a date not exceeding one year immediately prior to filing of the application, certified by an independent Certified Public Accountant of the home country and authenticated before the Philippine Consulate/Embassy.
5. Certified copies of the Articles of incorporation/partnership with an English translation thereof if in a foreign language.
6. Proof of inward remittance such as bank certificate of inward remittance or credit advises.

**E. Regional and Area Headquarters**

1. Application form
2. A certification from the Philippine Foreign Trade Senior Officer or in his absence, the Philippine Consul in the foreign firm's country that said foreign firm is an entity engaged in international trade with affiliates, subsidiaries or branch offices in the Asia-Pacific region.
3. A certification from the principal officer of the foreign entity to the effect that the said foreign entity has been authorized by its board of directors or governing body to establish its regional headquarters in the Philippines.

***II. Paid – up: Cash and Property (ies)***

In addition to (A) also submit the following:

**Real Estate Properties**

1. Deed of Assignment duly presented to the Register of Deeds for primary entry where the properties are located.
2. Written consent of the mortgagee/creditor on the assignment of the property, together with a certification on the outstanding loan balance.
3. Certified true copy/ies of original/transfer certificate of title (OCT/TCT).
4. Xerox copy/ies of tax declaration sheets(s) and official receipts(s) of real estate tax payment/s for the current year to be checked against original copy/ies thereof.
5. Appraisal report to be rendered by an independent real estate appraiser if the transfer value of the property is based on current fair market value.

**Motor Vehicles, Machinery and Equipment.**

1. Detailed inventory of the properties duly certified by company accountant.

2. Deed of assignment executed by the owner in favor of the corporation.
3. Appraisal report to be rendered by an independent and licensed mechanical engineer if the transfer value of property is based on current fair market value
4. Copy/ies of the corresponding bill of lading, CB release certificates, and customs declaration, if the machineries and equipment are purchased abroad
5. Xerox copy/ies of the certificate of registration and official receipt of annual registration fee for motor vehicles for the current year to be checked against original copy/ies thereof.

### **Shares of Stock**

1. Detailed schedule of the shares of stock showing the registered owner, name of issuer, number or shares, certificate number, par value per share, transfer value and market and/or book value, duly certified by the corporate secretary.
2. Deed of Assignment
3. Xerox copy/ies of the certificate of stock duly endorsed in favor of the applicant company, to be verified against original copy/ies thereof.
4. Audited financial statement as of the last fiscal/calendar year of the investor company/ies.

### **Inventories and Furniture**

1. Detailed physical inventory of the properties showing the quantity description unit price, as well as the total value of each item duly certified by the Treasurer.
2. Deed of Assignment
3. Special audit report by an independent CPA on the verification made on the properties.

### **NON-STOCK CORPORATIONS**

#### **For Ordinary Non-Stock Corporation**

1. Name Verification Slip
2. Articles of Incorporation (3 copies)
3. Written Undertaking to change corporate name (3 copies)
4. Resolution of the Board of Directors that the Corporation will comply with SEC Requirements for non-stock Corporations (3 copies)
5. List of members certified by the Secretary (3 copies) and undertaking to submit list of additional members to the securities and Exchange Commission (SEC) from time to time
6. Undertaking to comply with SEC reportorial Requirements (3 copies)
7. List of contributions and amount contributed certified by the Treasurer (3 copies)

**For Foundation**, notarized Certificate of Bank deposit amounting to at least P1,000,000.00 representing initial capital contribution.

Registration Data Sheet

### **For Religious Corporations**

Refer to Section 109-116 of the Corporation Code of the Philippines (CCP).

In addition to requirements enumerated in (A) in the previous page, the following should also be submitted except No. 8.

1. Statement of Faith or Rules and Discipline of the Church (3 copies)
2. Certificate of election or letter of appointment of the chief priest, minister, rabbi or presiding elder, duly certified to be correct by the notary public (for corporation sale only).
3. List of properties to be administered.
4. Affidavit of affirmation or verification by the chief priest, minister, rabbi or presiding elder.

### ***NOTE: Corporations Requiring Clearances from other Government agencies.***

1. Air Transport Firm – Civil Aeronautics Board (CAB)
2. Banking Finance Companies, pawnshops and Lending Institutions and other Financial Intermediaries – Bangko Sentral ng Pilipinas
3. Professional Boxing – games and Amusement Board (GAB)
4. Cockfighting – Philippine Game fowl Commission
5. Educational Institutions – Department of Education, Culture and Sports (DECS)
6. Electric, Power Plants and Distribution of Cylinder Gas – Department of Energy
7. Hospitals – Bureau of Licensing and Regulation – Department of Health
8. Insurance Companies – Insurance Commission
9. Land Transport Firms – Land Transportation Franchising and Regulatory Board (LTFRB)
10. Operation of radio, television and Telephone - National Telecommunications Commission (NTC)
11. Recruiting firms for overseas job placements Philippine Overseas employment Administration (POEA)
12. Security Agencies – Philippine national Police and Mayor of the place where the principal office is located.
13. Travel Agencies – Mayor of the place where the principal office is located
14. Water Transport Firms and Construction and Building of Vessels – Maritime Industry Authority (MARINA).

***LOCAL GOVERNMENT***

Permits or licenses are required to ensure that standards are met and that businesses comply with the specific requirements of the business locale. Registration procedures vary across cities and municipalities.

***BUREAU OF INTERNAL REVENUE (BIR)***

Every business enterprise has to register with the Bureau of Internal Revenue (BIR) for taxation purposes. The Bureau will furnish your business with its own tax identification number and the authority to print receipt, invoices and others.

***SOCIAL SECURITY SYSTEM (SSS)***

The Social Security System offers many benefits for your employees. Employers also benefit in cases of employee’s disability or death.

***DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE)***

Business establishment with five or more employees are encourage to register with the Department of Labor and Employment. (DOLE) for the purpose of monitoring the firms’ compliance with labor regulations. Registration is obligatory for bigger firms of 50 or more workers.

The Bureau of Local Employment administers the registration of establishments.

**POST INCORPORATION REQUIREMENTS**

**STOCK CORPORATIONS**

<u>Requirements</u>	<u>Period/Due Date</u>
1. Registration/stamping of Stock and Transfer Book	Within 30 days from receipt of Certificate of Incorporation
2. General Information Sheet (3) copies (as of date of meeting)	Within 30 days from date of actual meeting
3. Three (3) copies of audited financial statements duly stamped “Received” by the BIR	
a. For corporations whose securities are registered under the Securities Act (old/revised)	Within 105 days after the end of the fiscal year as specified in the By-laws.
b. For corporations whose	

<p style="text-align: center;">securities are not registered</p> <p>c. For securities brokers</p>	<p>Within 120 days after the end of the fiscal year as specified in the By-laws.</p> <p>Within 60 days after the end of the fiscal year as specified in the By-laws.</p>
<p>4. Affidavit of non-operation/Board Resolution of Affidavit of Cessation statements of business operations</p>	<p>Within the prescribed period for filing the financial in 3-a.b.c. above.</p>
<p>5. Notice of Postponement of Annual Meeting (3 copies)</p>	<p>At least 10 days before the date of the annual meeting as specified in the By-laws.</p>
<p>6. Affidavit of non-holding of annual meeting together with the General Information Sheet.</p>	<p>Within 30 days from the date of the annual meeting as specified in the By-laws.</p>

## **NON-STOCK CORPORATIONS**

<u>Requirements</u>	<u>Period/Due Date</u>
<p>1. Registration/stamping of Membership Book</p>	<p>Within 30 days from the date of receipts of certificate of incorporation</p>
<p>2. General Information Sheet (3 copies)</p>	<p>Within 30 days from the date of the actual meeting</p>
<p>3. Three (3) copies of audited financial statements duly stamped "Received" by the BIR.</p>	<p>Within 120 days after the end of the fiscal year</p>
<p>4. Affidavit of non-operation/Board Resolution or Affidavit of Cessation of business operation (3 copies)</p>	<p>Within the prescribed period for filing the financial statements.</p>
<p>5. Notice of postponement of annual meeting (3 copies)</p>	<p>At least 10 days before the date of the annual meeting as specified in the By-laws</p>
<p>6. Affidavit of non-holding of annual meeting together with the General Information Sheet (3 copies)</p>	<p>Within 30 days from the date of the annual meeting as specified in the By-laws</p>
<p>7. Report on the death, registration or cessation to hold office of a director, trustee or officer</p>	<p>Immediately after the occurrence of aforesaid event</p>

## TAXATION IN THE PHILIPPINES

The country's taxation system is governed by the Tax Reform Act 1997, passed into law on December 11, 1997 and became effective on 01 January 1998. The law was aimed at the expanding the country's tax base and maintaining the healthy fiscal standing of the government.

<b>Corporate Income Tax Rates</b>		
	<b>Domestic/Resident Foreign Corporation</b>	<b>Non-resident Foreign Corporation</b>
Taxable income not subject to special tax rates	35%	35%
Interest from deposits and yield from deposit substitutes/trust funds and royalties	20%	35%
Interest on foreign loans	N/A	20%
Interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system	7.5%	N/A
Dividends from domestic corporations	0	15% / 35%
Gains on sales of shares of stock not traded in the Stock Exchange	5% / 10%	5% / 10%

### NOTES:

The rates of tax applicable for corporations entitled to special tax privileges are set out below:

The corporate tax rate was increased from 32% to 35% with effect from 1 July 2005 but will be reduced to 30% effective 1 January 2009.

The rate is reduced to 7.5% for interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system.

The rate of 15% applies if the host country exempts the dividend from tax or permits a 20% or greater credit for underlying corporation tax paid by the company paying the dividend.

The 5% rate applies to the first P100,000 of gains annually, with the 10% rate applying to the excess. Stocks of shares in listed companies are subject to a 0.5% tax on the sale proceeds.

<b>ENTITY</b>	<b>RATES</b>	<b>TAX BASE</b>
Proprietary educational institutions and non-profit hospitals	10%	Taxable income
Certain enterprises registered with the Philippine Economic Zone Authority	5%	Gross income
Non-resident owner or lessor of aircraft, machinery and other equipment	7.5%	Gross Philippine rentals, lease, charter fees
Non-resident owners of vessels chartered by Philippine nationals and approved by the Maritime Industry Authority	4.5%	Gross Philippine rentals, lease, charter fees
Non-resident cinematographic film owners, lessors or distributors	25%	Gross Philippine source income
Foreign international carriers (air and sea)	2.5%	Gross Philippine billings
Offshore banking units (OBUs) and foreign currency deposit units (FCDUs) authorized by the Bangko Sentral ng Pilipinas	10%	Income from foreign currency transactions with residents
Regional operating headquarters	10%	Taxable income

<b>Income Tax Rates as Passive Income of Domestic/Resident Corporation</b>	
Dividends received from domestic corporations	Not subject to tax
Interest on any currency bank deposit and yield or other monetary benefit from deposit substitutes and from trust fund and similar arrangements	20% of final tax
Interest from foreign currency deposits with foreign currency deposit units (FCDUs)	7 1/2% of final tax
gains from sale or exchange of shares of stock not listed and traded in the local stock exchange	5% capital gains tax (CGT) on net gains not exceeding P 100,000 and 10% on the excess.
Gains from sale or exchange of land or buildings not actually used in business and treated as capital issue	6% CGT on gross selling price or fair market value, whichever is higher
Royalties	20% final tax

## **New Taxes for Corporation Under the Tax Reform Act of 1997**

**Minimum Corporate Income Tax (MCIT)** - A 2% MCIT on gross income on an annual basis is imposed on corporations whose regular corporate income tax liability is less than the MCIT beginning the fourth taxable year following the year they commenced business operation. Any excess of the MCIT over the normal tax shall be carried forward and credited against the normal tax for the three (3) immediately succeeding taxable years.

**Fringe Benefits Tax** - Fringe benefits granted to supervisory and managerial employees are subject to 32% tax on the grossed-up monetary value of the fringe benefit. Fringe benefits given by OBUs regional operating headquarters of multinational companies, petroleum contractors and subcontractors to qualified alien employees and in certain cases, to Filipino employees, are taxed at 15% of the grossed-up monetary value of the fringed benefit.

**Improperly Accumulated Earnings Tax** - a 10% tax is imposed on the improperly accumulated earnings of a corporation, except in the case of publicly held corporations, banks, and other non-bank financial intermediaries and insurance companies. When a corporation allows its earnings or profits to accumulate beyond its reasonable needs, it shall be assumed that the purpose is to avoid tax on stockholders, unless proven to the contrary.

### **Individual Taxation**

Non-resident aliens not engaged in trade and business flat income tax rate 25%

Resident citizens/aliens (gainfully employed) Graduated income tax rates 0%-35%

### **Who Shall File:**

1. An individual whose gross compensation income does not exceed his total personal and additional exemptions;
2. An individual whose compensation derived from one year employer does not exceed P60,000 and the income tax on which has been correctly withheld;
3. An individual whose income has been subjected to final withholding tax (alien employee as well as Filipino employee occupying the same position as that of the alien employee of regional or area headquarters and regional operating headquarters of multinational companies, petroleum service contractors and sub-contractors, and offshore banking units, non-resident alien not engaged in trade or business), and
4. An individual who is exempt from income tax.

Married individuals shall file single return for the taxable year to include the income of both spouses, separately computing their individual income tax based on their respective taxable income. Where it is impracticable for the spouses to file one return, each spouse may file a separate return.

<b>Tax Table for individuals earning purely compensation income and individuals engaged in business and practice of profession</b>			
<b>If Taxable Income is:</b>	<b>Tax Due is:</b>	<b>If Taxable Income is:</b>	<b>Tax Due is:</b>
Not over P10,000	5%		
Over P10,000 but not over P30,000	P500+10% of the excess over P10,000	Over P140,000 but not over P250,000	P22,500+25% of the excess over P140,000
Over P30,000 but not over P70,000	P2,500+15% of the excess over P30,000	Over P250,000 but not over P500,000	P50,000+30% of the excess over P250,000
Over P70,000 but not over P140,000	P8,500+20% of the excess over P70,000	Over 500,000	P125,000+34% of the excess over P500,000

*Note: Effective January 1, 1999, the maximum rate shall be thirty-three percent (33%) and thirty-two percent (32%) on January 1, 2000.*

*Note: When the tax due exceeds P2,000.00, the taxpayer may elect to pay in two equal installments, the first installment to be paid at the time the return is filed and the second installment on or before July 15 of the same year at the Authorized Agent Bank (AAB) within the jurisdiction of the Revenue District Office (RDO) where the taxpayer is registered.*

### **Value Added Tax (VAT)**

Sale of goods, other properties, and services in the Philippines, as well as importation of goods to the Philippines, are subject to the 12% VAT. VAT is imposed on the gross selling price (in case of sale of goods) and gross receipts (in case of sale of services).

### **Stock Transaction Tax**

1/2 of 1% of gross selling price is imposed on the sale, barter, exchange or other disposition of shares through the facilities of stock exchange.

**Excise Taxes** - apply to goods produced in the Philippines for domestic sale or consumption or for any other disposition, and to things imported.

Excise taxes which are based on the weight or volume capacity or any other physical unit of measurement of the goods are called specific taxes.

Excise taxes which are imposed and based on the selling price or other specified value of the goods are referred to as ad valorem taxes.

The following are subject to excise taxes:

- distilled spirits, wines,

- saccharine
- tobacco products, cigars and cigarettes
- manufactured oils and other fuels
- fireworks
- cinematography
- saccharine
- automobiles
- non-essential goods (such as jewelry, perfumes and toilet water)
- yachts and other vessels intended for pleasure or sports, mineral

Excise taxes paid on locally produced goods which are exported without return to the Philippines, whether in their original state or as ingredients or parts of any manufactured goods or products, are credited or refunded upon submission of proof of actual exportation and receipt of the corresponding foreign exchange payment.

### **Percentage Taxes**

Certain persons are subject to percentage taxes at rates ranging from 1 percent to 30 percent. Percentage taxes are normally imposed on gross receipts.

Among those subject to percentage taxes are the following:

- keepers of garages and common carriers by land, air, or water for the transport of passengers
- entities engaged in the life insurance business
- overseas dispatches, messages or conversations transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services
- banks and non-bank financial intermediaries

Business establishments whose gross annual sales or receipts do not exceed PhP1.5 million are exempt from VAT, but are subject to percentage tax of 3 percent, unless they elect to pay the 12 percent VAT.

### **Documentary Stamp Taxes**

Documentary stamp taxes must be affixed on certain documents, instruments and papers evidencing business transactions, such as:

- |   |   |
|---|---|
| • bonds                                   | • annuity policies                        |
| • debentures                              | • indemnity bonds                         |
| • certificates of indebtedness            | • certificates issued by certain officers |
| • certificates of stock                   | • warehousing receipts                    |
| • certificates of profits or of interests |   |

in property or accumulations

- bank checks
- drafts
- certificates of deposit
- promissory notes
- bills of exchange
- letters of credit
- insurance policies
- fidelity bonds
- Jai-alai and horse race tickets
- Bills of lading
- Proxies
- Powers of attorney
- Leases of real property
- Mortgages
- Pledges
- Deeds of sale of real property and charter parties

### **Other Imposts of the National Government**

In addition to the 12 percent VAT and any applicable excise tax, importations are generally subject to customs duties.

The Tariff and Customs Code provides for the imposition of anti-dumping duty, countervailing duty, marking duty and discriminating duty under special circumstances.

### **Local and Real Property Taxes**

Local government units such as provinces, cities, municipalities and barangays may levy taxes and impose local license fees pursuant to the Local Government Code.

Furthermore, real property tax applied solely to the lands, buildings and other improvements is levied on the assessed value of the real property.

## **FOREIGN EXCHANGE REGULATIONS**

### **1. Purchase and Sale of Foreign Exchange**

Generally, foreign exchange may be freely bought and sold in the Philippines.

By way of exception, the Bangko Sentral ng Pilipinas regulates the purchase and sale of foreign exchange by authorized agent banks, non-bank BSP-supervised entities, their subsidiary / affiliate foreign exchange corporations and independent foreign exchange dealers and money changers (collectively "BSP Regulated Entities"). The BSP, with the approval of the President of the Philippines, may exercise its general emergency powers and temporarily suspend or restrict the purchase and sale of foreign exchange.

## **2. Foreign Trade Transactions**

Foreign trade includes import and export trade transactions.

As a rule, a wide variety of merchandise may be imported into and exported from the Philippines. However, the importation or exportation of certain commodities is regulated or prohibited for reasons of public health and safety, national security, international commitments, and the development and rationalization of local industry.

Without prior BSP approval, but subject to reporting requirements and other conditions, universal and commercial banks may sell foreign exchange to service payments for imports under the arrangements prescribed by the BSP. The requirements include letters of credit, documents against payment, and documents against acceptance, open account arrangements, and direct remittance.

Payments for exports may be made without prior BSP approval under the arrangements prescribed by the BSP such as letters of credit, documents against payment/ cash against documents, documents against acceptance, open account arrangement, inter-company open account offset arrangements with the parent company or affiliates abroad, consignment and export advances.

## **3. Non-Trade Transactions**

Non-trade transactions refer to all other foreign exchange transactions that are not import or export trade transactions. These transactions include foreign inward and outward investments, and foreign currency denominated loans and guarantees.

Generally, all BSP Regulated Entities may sell foreign exchange to Philippine residents to fund payments of non-trade transactions without having to obtain prior BSP approval. However, if the sale of foreign exchange exceeds US\$ 5,000 or its equivalent in other foreign currency, the BSP Regulated Entity selling the foreign exchange must require the purchaser to present the documentary requirements prescribed by the BSP. These requirements may include documents showing that the purchaser has obtained prior BSP approval or registration of the transaction.

### *3.1 Foreign Inward Investments*

Foreign investments must be registered with the BSP or, in certain instances, with a custodian bank, so that foreign exchange may be sourced from a BSP Regulated Entity to fund the repatriation of the investment and the remittance of profits and dividends. If a foreign investment is not registered with the BSP a BSP Regulated Entity is not allowed to sell foreign exchange to fund the repatriation of such investment and the remittance of profits and dividends relating to such investment.

### *3.2 Outward Investments*

Prior BSP approval and registration is required for outward investments, if foreign exchange exceeding US\$ 6,000,000 per investor per year will be sourced from BSP Regulated Entities.

### *3.3 Foreign Loans and Guarantees*

Foreign currency denominated loans and guarantees must be registered with the BSP so that foreign exchange may be purchased from a BSP Regulated Entity to service payments. If a foreign loan or guarantee is not registered with the BSP, a BSP Regulated Entity is not allowed to sell foreign exchange to fund payments of such foreign loan or guarantee.

### *3.4 Other Financing Schemes/Arrangements*

Financing schemes or arrangements, which involve an option to purchase or a transfer of ownership after a certain period of time, as in the case of a Build-Operate- Transfer arrangement, must be registered with the BSP to be eligible for servicing using foreign exchange that will be purchased from BSP Regulated Entities.

## **MANPOWER COST**

### **Manpower Resources (Labor):**

The laws on labor standards and employment relations are consolidated in the Labor Code of the Philippines. The salient points of employment conditions and employee benefits under the Philippine labor laws are as follows:

<b>Hours of Work</b>	Eight (8) hours per day or 48 hours per week. Rest periods of short duration during work hours shall be counted as hours worked.
<b>Work Day</b>	A day is the 24-hour period which commences from the time the employee regularly starts to work.
<b>Minimum Wage (Manufacturing Sector)</b>	The minimum wage rate for agricultural and non-agricultural workers in every region are determined by the Regional Tripartite Wages and Productivity Board.

**Fringe Benefits** This refers to goods, services, or other benefits furnished by an employer in cash or kind, in addition to basic salaries; to managerial or supervisory employees such as but not limited to the following:

- Housing
- Expense Account
- Vehicle of Any Kind
- Household personnel, such as maid, driver and others
- Interest on loans at less than market rate to the extent of the difference between the market rate and actual rate granted;
- Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;
- Holiday and vacation expenses
- Educational assistance to the employee or his dependents; and
- Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows

Managerial employees refer to those who are given powers or prerogatives to lie down and execute managerial policies and or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees.

Supervisory employees are those who effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment.

<b>Overtime (OT) Remuneration</b>	Overtime premium is allotted for work exceeding the maximum prescribed period. The OT rates per hour for overtime work rendered on the specified days:
<b>Category</b>	<b>Computation(in Pesos)</b>
OT Work on Regular Day	125% * Rate/Hour
OT work during Rest Day or Special Public Holiday	130% * Rate/Hour
First 8 hours	130% * Rate/Hour+30% of(130% of Rate/Hour)
In excess of the 1st 8 hours	
OT work on Special Public Holiday falling on employee’s rest day	
First 8 hours	150% * Rate/Hour
In excess of the 1st 8 hours	150% * Rate/Hour+30% of(150% of Rate/Hour)
OT work on Regular Holiday	

First 8 hours In excess of the 1st 8 hours	200% of Rate/Hour 200% of Rate/Hour + 30% of (200% of Rate/Hour)
OT work on Rest Day falling on a Regular Holiday First 8 hours In excess of the 1st 8 hours	260% of Rate/Hour 260% of Rate/Hour + 30% of (260% of Rate/Hour)

- Night-Shift Differential Pay** Night-shift employees must be paid a differential of not less than 10% of the regular wage for each hour of work performed between 10:00 p.m. and 6:00 a.m.
- Service Incentive Leave** Every employee who has rendered at least one year of service is entitled to a yearly service incentive leave of five days with pay.
- Meal and Rest Periods** One-hour time-off for regular meals.

**MANDATORY EMPLOYMENT CONTRIBUTION**

- 13th Month Pay** By law, companies are required to give its employees a 13th pay equivalent to one (1) month salary.
- Social Security Systems (SSS) Contributions** As mandated by law, both employer and employees are to contribute for the social security benefits of the employees.
- Contribution to Home Development and Mutual Fund** Companies/employers are also required to contribute at least P100 per month to HDMF for employee benefits. Companies/employers remit this contribution plus that of the employees' which will be deducted from their payroll, in accordance with the periodic remittance schedule provided by HDMF.
- Contribution to National Health Insurance Program (NHIP)** As mandated by R.A. 7835 on Medicare Program which is administered by the Philippine Health Insurance Corporation (Philhealth), both employers and employees are to contribute for the medical insurance/benefits of the employees.

## **FINANCE-RELATED REGULATIONS**

### **1. Banking**

A foreign bank may operate in the Philippines through any of the following modes of entry subject to prior approval of the Monetary Board of the BSP:

- a. On or before 12 June 2007, by owning up to 100% of the voting stock of an existing domestic bank;
- b. After 12 June 2007, by owning up to 60% of the voting stock of an existing domestic bank.

At present, the BSP has imposed an indefinite moratorium on the establishment of new banks except in cities and municipalities where there are no existing banking offices. Thus, a foreign bank cannot invest in the voting stock of a new banking subsidiary. Until such moratorium is lifted, the only mode for foreign banks to enter the Philippine banking industry will be to invest into existing domestic banks.

If the moratorium is lifted, in addition to the foregoing, a foreign bank may also operate in the Philippines through any of the following additional modes of entry, subject to prior approval of the Monetary Board of the BSP:

- a. On or before 12 June 2007, by investing in up to 100% of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines;
- b. After 12 June 2007, by investing in up to 60% of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines.

### **2. Financing Companies**

Financing companies are corporations that are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial or agricultural enterprises by:

- direct lending;
- discounting or factoring commercial papers
- buying and selling contracts, leases, chattel mortgages or other evidences of indebtedness; or
- financial-leasing of movable as well as immovable property.

The term "financing companies" excludes banks, investment houses, savings and loan associations, insurance companies, cooperatives and other financial institutions organized or operating under other special laws.

A financing company must be organized as a stock corporation, at least 40% of the voting stock of which is owned by citizens of the Philippines. A foreign national may own stock in any financing company if the country of which he is a national accords the same reciprocal rights to Filipinos.

A financing company must have a paid-up capital ranging from at least PhP2.5 million to PhP10 million depending on where the financing companies will set-up its office in the Philippines.

Financing companies providing financial leases in connection with any purchase, importation, acquisition or other transaction are entitled to the same incentives, exemptions, benefits or privileges that are available to lenders, importers, purchasers or other eligible person in such transactions. In addition, financing companies that provide medium and long-term credit to small and medium enterprises are entitled to the same rights, powers, benefits and privileges that are granted to other non-bank financial institutions providing similar credit.

### **3. Securitization Act of 2004**

The Securitization Act took effect on 10 April 2004. The Act establishes the legal and regulatory framework for asset securitization and grants tax exemptions and other incentives in favor of securitization transactions.

In order to promote the development of the Philippine capital market, the Act seeks to create a favorable environment for the establishment of Special Purpose Entities ("SPE") and the issuance by such entities of a wide range of asset-backed securities. The Act also prescribes the rules for the creation and operation of Secondary Mortgage Institutions to develop a secondary market for the asset-backed securities, particularly for residential mortgage-backed securities and other housing-related financial instruments.

In securitization, loans, receivables or similar financial assets with an expected cash payment stream ('Assets') are sold, on a "without recourse" basis, by a seller to a special purpose entity. The SPE then issues to investors' asset-backed securities ("ABS") that depend for their payment on the cash flow from the Assets. The issuance of the ABS must be in accordance with the securitization plan approved by the SEC.

Prior endorsement of the BSP must be obtained in the following cases:

- a. if the original obligee of the Assets is a bank, or any other entity subject to the supervision of the BSP or is controlled by such bank or entity; or,
- b. if the SPE is constituted in the form of a special purpose trust.

Subject to certain conditions, the Securitization Act grants various tax and fiscal incentives.

#### **4. Special Purpose Vehicle Act of 2002**

The Special Purpose Vehicle Act of 2002 ("SPV Act") provides the framework for the creation and regulation of Special Purpose Vehicles ("SPVs" \_ s") that acquire or invest in non-performing assets ("NPA") of financial institutions ("FI"). The SPV Act granted tax and fiscal incentives and exemption privileges to transactions involving the transfer of NPAs from an FI to an SPV and, subject to certain conditions, from an SPV to a third party.

The SPV Act prescribed a period within which the application to organize and register a SPV must be filed with the SEC. This period expired *on* 18 September 2004.

There appears to be a growing clamor from the banking sectors to allow additional time within which interested parties may register an SPV, thus paving the way *for* the filing *of* Senate Bill 1830, which seeks to allow registration *of* SPVs *for* another five years. The bill is currently pending in the Philippine Senate.

### **INSURANCE-RELATED REGULATIONS**

#### **Entry of Foreign Insurance Companies**

Subject to the approval *of* the Insurance Commission, a foreign insurance company may be allowed to do business in the Philippines under anyone *of* the following modes *of* entry:

- a. ownership *of* the voting stock *of* an existing domestic insurance company;
- b. investment in a new insurance company incorporated in the Philippines (i.e., a subsidiary); *or*,
- c. establishment *of* a branch.

To be allowed entry, the foreign insurance company must be among:

- a. the top 200 foreign insurance corporations globally; *or*,
- b. the top 10 in their country *of* origin; and,
- c. has been doing business *for* the last 10 years as *of* the date *of* the application.

To qualify as a branch *or* a new company incorporated in the Philippines, the applicant must be:

- a. widely-owned and/ *or* publicly-listed in its country *of* origin; *or*,
- b. majority-owned by the government *of* the country *of* origin.

Depending *on* the extent *of* foreign equity, an applicant foreign insurance corporation must comply with certain capitalization requirements pertaining to minimum paid-up capital and contributed surplus fund.

## **FINANCIAL REPORTING**

### **Statutory requirements**

#### **Books and records**

Under the National Internal Revenue Code (NIRC), all business entities paying internal revenue taxes must maintain books of account. These consist of a journal, a ledger and subsidiary records required for the business. Enterprises subject to VAT are also required to keep a subsidiary sales journal and a subsidiary purchase journal.

In addition to maintaining accounts, the Corporation Code requires a corporation to keep at its principal place of business the following items: records of all business transactions, minutes of meetings of shareholders and directors, and a stock and transfer book. These records may be inspected by shareholders during regular office hours.

#### **Method of accounting**

Companies should use the accrual basis of accounting, except for cash flow information preparing financial statements presented in accordance with Philippine Financial Reporting Standards (PFRS). Entities that qualify as non-publicly accountable entities (NPAEs) are given the option not to adopt PFRS fully.

#### **Financial statements**

All companies must file their financial statements with the tax authorities along with their corporate income tax returns. In addition, companies are required to submit audited financial statements to the SEC. Regulated companies, including banks, finance companies, insurance companies, investment houses, and public utilities must also submit monthly, quarterly, or annual reports to the appropriate agencies such as the ESP and the PSE.

#### **Sources of accounting principles**

#### **Governing statutes**

Legal requirements governing accounting and reporting practices of businesses in the Philippines are set forth in the NIRC, the Corporation Code, and the Securities Regulation Code (SRC). In addition, special regulations on accounting and reporting apply to certain businesses, such as banks, insurance companies, finance companies, and public utilities.

## **Standards of professional associations**

Accounting pronouncements adopted by the Financial Reporting Standards Council (FRSC), formerly the Accounting Standards Council, from the pronouncements issued by the International Accounting Standards Board (IASB), are the primary source of accounting principles in the Philippines.

These accounting pronouncements consist of the following:

PFRS - corresponding to International Financial Reporting Standards

Philippine Accounting Standards (PAS), including amendments there to corresponding to International Accounting Standards

Interpretations of existing standards - representing interpretations issued by the

International Financial Reporting Interpretations Committee (IFRIC), formerly the Standing Interpretations Committee, of the IASB

The PFRS, PAS and interpretations adopted by the FRSC are endorsed and approved by the Board of Accountancy and the Professional Regulation Commission, and form part of the rules and regulations followed by all certified public accountants in the Philippines. These pronouncements are also adopted by the SEC as part of its rules and regulations. Further, these pronouncements apply to all business enterprises; some also apply to not-for-profit organizations.

## **International standards**

For matters not covered by PFRS, PAS and interpretations, the accounting pronouncements issued by other standard-setting bodies, such as the U.S. Financial Accounting Standards Board, are persuasive in determining PFRS in the Philippines.

## **Government regulatory agencies**

Government agencies such as the SEC, the BSP, and the Insurance Commission issue regulation manuals and memorandum circulars covering businesses under their supervision. These regulations prescribe the accounting treatment for certain transactions and additional disclosure requirements.