

Final Report on

Legal system of the Philippines and
Legal Information related to Trade and Investment of the Philippines

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Table of Content

	Page
Chapter 1 Overall Picture of the Philippines' Legal System	1-1
1.1 Brief history of Filipino legal system	1-2
1.2 Legal system	1-5
1.3 Sources of Law	1-8
1.4 Hierarchy of Laws	1-10
1.5 Court System and Legal Interpretation.....	1-13
1.6 Law enforcement and practical problems.....	1-18
Conclusion.....	1-19
Chapter 2 Laws Related to Trade and Investment of the Philippines	2-1
2.1 Goods and services laws	2-2
2.2 Foreign Investment	2-56
2.3 Immigration (Entry and Residency)	2-67
2.4 Laws related to business administration in the Philippines	2-72
2.5 Land and Land Utilization Laws	2-92
2.6 Labor Laws	2-107
2.7 Intellectual Property Law	2-115
2.8 Dispute Resolution System	2-132
Conclusion.....	2-139

Table of Content

	Page
Chapter 3 State agencies with relevant authority	3-1
3.1 Bureau of Customs, Department of Finance (BC).....	3-2
3.2 Bureau of Internal Revenue (BIR).....	3-3
3.3 Construction Industry Arbitration Commission (CIAC).....	3-4
3.4 Department of Trade and Industry (DTI)	3-5
3.5 Intellectual Property Office of the Philippines	3-6
3.6 Land Registration Authority (LRA)	3-7
3.7 Central Bank of the Philippines or Banko Sentral Pilipinas (BSP).....	3-8
3.8 Securities and Exchange Commission.....	3-9
3.9 The National Economic and Development Authority.....	3-9
3.10 Bureau of Immigration (BI).....	3-11
3.11 Department of Labor and Employment (DOLE)	3-13
3.12 The National Labor Relations Commission (NLRC)	3-14
Conclusion.....	3-15
Reference	R-1
ANNEX.....	A-1

Table of Figure

	Page
Table 2.1 Sectors with Most Favored Nation Exemptions	2-19
Table 2.2 Summary of Qualifications and Requirements for Each Engineering Services in the Philippines	2-36
Table 2.3 Comparison of MRA Benefits for Each Engineering Field.....	2-37
Table 2.4 Incentives for registering with BOI and PEZA	2-65
Table 2.5 Conditions for Formation of Enterprise	2-73
Table 2.6 Summary of Enterprises with Ceiling for Foreign Equity Holding	2-75
Table 2.7 Income tax rate in the Philippines.....	2-78
Table 2.8 Real Property Tax Rate per Purpose of Land Use	2-104
Table 2.9 Tax Rate on Buildings, Machineries and Other Improvements per Market Value	2-104
Table 2.10 Tax Rate on Special Classes of Land per Purpose of Land Use.....	2-104
Table 2.11 Minimum Wages in the National Capital Region (NCR)	2-111

Chapter 1

Overall Picture of the Philippines' Legal System

The Philippines or Republic of the Philippines has land area of around 298,170 square meters comprising of 7,107 islands,¹ and a population of more than 107 million with high ethnic diversity.² This results in more than 100 dialects spoken all over the islands, with English and Tagalog serving as the official languages. According to the latest census, the literacy rate among 15 years old and above population is 95.4%.³ In 2014, The Philippines' labor force was numbered greater than 41 million, over half of which was in the service sector.⁴ The Philippines is a democratic country, with the President as the Head of State. There are elections at every level of government, beginning from the President, Vice President, Senators, down to the local level called Barangay, which is the smallest government unit equivalent to a village in Thailand. Local government has the right to self-governance under supervision of Department of Interior and Local Government.⁵ The capital city of Philippines is Manila.

Service sector is the most important sector in the Philippines, accounting for over half of the country's Gross Domestic Products (GDP).⁶ The fastest growing service industry in the Philippines is Business Process Outsourcing (BPO), especially IT related services such as contact centers.⁷ With regard to foreign trade, the Philippines is Thailand's 6th largest trade partner in ASEAN, with average annual trade value of 6,933.21 million USD⁸

¹ Central Intelligence Agency, "The World Factbook: Philippines," <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html> (Retrieved on 17 February 2014).

² Ibid. As of July 2013.

³ United Nations Children's Fund (UNICEF), "Statistics," http://www.unicef.org/infobycountry/philippines_statistics.html (Retrieved on 9 October 2013).

⁴ Philippines Statistics Authority, "Employment Situation in July 2014," <http://census.gov.ph/content/employment-situation-july-2014%C2%B9-final-results>, (Retrieved on 9 October 2013).

⁵ ASEAN Law, "Law, Rules, Regulations, Systems, and Guidelines of Ministry of Justice and relevant agencies in ASEAN countries," <http://asean.moj.go.th/mini110/wp-content/uploads/2013/04/law.pdf> (Retrieved on 15 August 2014)

⁶ Central Intelligence Agency, "The World Factbook: Philippines,"

⁷ Nedelyn Magtibay-Ramos, Gemma Estrada, and Jesus Felipe, "An Analysis of the Philippine Business Process Outsourcing Industry," *ADB ERD Working Paper Series* 93, March 2007, <http://www.adb.org/sites/default/files/publication/28359/wp093.pdf> (Retrieved on 17 February 2014).

⁸ Department of Trade Negotiation, Ministry of Commerce, "ข้อมูลการค้าไทย-ฟิลิปปินส์ [Trade between Thailand and the Philippines]," http://www.thaifta.com/trade/aec/tradedata_th-phmar57.pdf (Retrieved on 9 October 2014).

There are at least four factors which make the Philippines attractive to foreign investment. Firstly, the Philippines is one of the largest markets in South East Asia, with a population of over 100 million. The continual economic growth has encouraged the middle class with spending power and increasing consumption demands. Secondly, the country is an important pool of human resources as Filipino people are well educated and have quite high level of English language proficiency. Thirdly the country is abundant with natural resources, with some of the world's crucial minerals such as nickel and copper. The Philippines is also the largest gold producer in South East Asia. Moreover, the country has fertile soil. The Philippines is the world's number one producer of coconut, and comes second and fifth in sugarcane and tobacco production respectively. Lastly, the government employs a policy of foreign investment promotion. Therefore, the Philippines is an interesting investment destination for Thailand. Thai industries with the potential to invest in the Philippines include agricultural processing industry. Successful companies include Alliance Tuna International Inc. and Charoen Pokphand Group (CP). There is also electronics industry, which is supported by the Philippines' government by a number of science parks across the country. The areas with investment potential include Manila and neighboring provinces, Central Luzon, and Southern Tagalog.

As the Philippines was colonized by Spain and U.S.A for more than four centuries, its culture and legal system had been influenced by the two colonizers. Chapter 1 presents the overall picture of the Philippines' legal system. A brief history of the Philippines will be provided a basis for understanding the country's trade and investment laws presented in the following chapter. This chapter is divided into six sections, namely brief history of Filipino legal system, legal system, source of law, hierarchy of laws, court system and interpretation of law, and law enforcement and practical problems.

1.1 Brief history of Filipino legal system

Philippine legal history may be categorized according to the various periods in the political history of the country, namely the Spanish regime (1521-1901); and the American Era (1901-1946);

1.1.1 The Spanish Colonization Era (1521-1901)

Before the arrival of Spain, historians mutually agreed that local Filipinos had lived in community-based settlements called Barangays under various native rules which were largely customary and unwritten. The then customary laws governed family relations, inheritance, divorce, usury, partnerships, loans, property rights, barter and sale, and crime and punishment. The penal law distinguished between felonies and misdemeanors, recognizing distinctions between principal and accomplice in matters of criminal liability, and had an idea of the existence of qualifying and mitigating circumstances, as well as recidivism as an aggravating circumstance.

The arrival of Ferdinand Magellan on 16th March 1521 presaged the new era of the legal history in the Philippines. Spanish laws and codes were extended to the Philippines either expressly by royal decrees or by implication through the issuance of special laws for the islands, such as Codigo Penal de 1870, and Ley Provisional para la Aplicaciones de les Disposiciones del Codigo penal en las Islas Filipnas.

By 1872, the Filipinos had revolted against Spain because of the abuses committed by the Spanish authorities and friars. The revolution spread so rapidly that on 1898 the independence of the Philippines was proclaimed by General Emilio Aguinaldo, who later became the President and created the National Assembly (or Malolos Congress) in the same year. On 20th January 1899, the Malolos Constitution was approved.⁹ This Constitution proclaimed the state sovereignty and enumerated the fundamental civil and political rights of the individual. At the time, the Philippines was considered a *de facto* Republic. This period is often referred to as The First Philippines Republic or the Malolos Republic, which came to an end when the United States took control in 1901.

1.1.2 The American Era (1901-1946)

The end of the Spanish - American War resulted in the signing of the Treaty of Paris on 10th December 1898, Article 3 of which paved the way for the cession of the Philippines to the United States. However, the Philippines people formed a resistance which led to the Philippine - American War that ended when President Aguinaldo was

⁹ T Agoncillo, *Malolos, The Crisis of the Republic* (1960), p. 306.

captured by the US Army and declared official surrender. This marked the end of The First Philippines Republic in 1901.

As the United States took control, the Spanish laws, customs, and property rights which were inconsistent with the US Constitution were superseded and replaced with American principles and agencies. The Philippines government operated under various organic laws such as The Spooner Amendment of 1901, which transferred the power from US military to civilian government, and the Philippine Bill of 1902 which founded the Philippine Assembly.¹⁰ Pursuant to the Tydings - MacDuffie Law signed by US President Franklin D. Roosevelt in 1934, a Commonwealth government was to be established for a transitional period of ten years, i.e. by 1946, before independence could be granted. The Tydings - MacDuffie Law also granted the Legislative Assembly of the Philippines the right to draft its own constitution.¹¹

Soon afterwards, the Constitution of the Philippines was approved by the Parliament on 8th February 1935 and signed by US President Franklin D Roosevelt on 23rd March 1935, before it was ratified at a plebiscite held on 14th May in the same year.¹² The first general election under the new Constitution was won by President Manuel L. Quezon and Vice President Sergio Osmena.

During the Second World War, the Philippines fell under the Japanese occupation from 1941 to 1944. During this period, the KALIBAPI party (Association for Service to the New Philippines), which was created by Japan to support the Japanese government in the Philippines, drafted a new Constitution in 1943 as a preparation to declare independence from the United States.¹³ Nevertheless, the Constitution had never been enforced as Japan surrendered in 1945, the same year the KALIBAPI was abolished. The Philippines shortly declared official independence on 4th July 1946 and employed the 1935 Constitution. During the initial period, the government focused on fixing economic problems and maintaining internal order.

¹⁰ V Sinco Philippine Political law (11th edn, 1962) p. 85.

¹¹ Christine N. Halili, Philippine History (Manila: Rex Book Store Inc., 2004), 187.

¹² Ibid.

¹³ Agoncillio & Guerrero, p. 456.

Subsequently, President Ferdinand Marcos came into power in 1965. Using his authority under the 1935 Constitution, he seized the power from the people and declared military rules until 1981.¹⁴ Afterwards, the Constitution was amended three times amidst political conflicts and economic downturn. The assassination of Senator Benigno S. Aquino triggered a country-wide protest called the People Power Revolution in 1986, which led to a general election in the same year. Corazon C. Aquino, the widow of the late Senator Aquino, won the election and became the President. The current 1987 Constitution which was drafted in 1987 was signed by President Aquino herself.

1.2 Legal system

To understand the structure of the Philippines' legal system, it is necessary to understand the country's government system. The Philippines is divided into 14 regions, 79 provinces, and 117 cities. The Constitution divides power into three branches; (1) Executive power is headed by an elected President who serves as both the Head of State and Head of Government. The term of office for president is six years and re-election is not allowed; (2) Legislative power lies within Congress, whose responsibilities include, but not limit to, issuing statutes, investigating vital matters, as well as approving budget and taxes. The Congress comprises of House of Representatives and Senate. The House of Representatives consists of no more than 250 members, with 200 directly elected and 50 elected through a list of various professions. Each member is elected for a 3-year term and eligible to serve for three consecutive terms. The Senate has 24 members who are directly elected for a term of 6-year and can be reelected for no more than two executive terms. Reelection of half of the Senators occurs every three years;¹⁵ and (3) Judiciary power is exercised through the Supreme Court and other Courts.

This section presents the overall picture and examples of laws in the Philippines which were influenced by or originated from Common Law and Civil Law.

1.2.1 Overall picture of Common law system

The influence of Common Law in the Philippines is evident in the courts' decisions over previous comparable cases, or the doctrine of *stare decisis*. Moreover,

¹⁴ Proclamation No. 1081, s 1972, 68 OG 7624 (September 1972).

¹⁵ Senate's International Information Center, "ASEAN Information Center," http://thai.senate.go.th/about/asean/asean_parliament_2.power_parliament.php, (Retrieved on 15 August 2014).

the legislative power in the Philippines is unique in that Article VIII Section 5(5) of the Constitution outlines the power of the Supreme Court to issue laws for the purposes of protecting and enforcing the Constitution, court procedures, law enforcement, and legal assistance for the underprivileged.¹⁶ Such provision provides the Supreme Court legislative power.

Moreover, Common Law appears in several aspects of laws in the Philippines, for instance:

(1) The doctrine of separation of powers which divides powers into three branches, namely the executive branch, the legislative branch, and the judicial branch. The court's jurisdiction under the judicial branch employs the principle of Common Law in revising statutes under the Constitution.

(2) Principles in trade-related laws such as Negotiable Instruments evolve from a court's decision which deemed such instrument negotiable. In *Clerke V Martin*, the court ruled that promissory note related to purchasing order was not a bill of exchange, and therefore was not negotiable.¹⁷

(3) The key principle of Tax law which originated from Common Law is that tax collection is a sovereignty exercised by the legislative branch through tax legislation under its jurisdiction in the interests of legitimate function of the government.

(4) Insurance law, of which principle was drawn from Common Law, is reflected in *San Miguel Brewery vs. Law Union and Rock Insurance Co.*, 40 Phil., 674. The court denied the right to pay debt under legal contract in the case where the contract is violated and where time is a key element of the said contract.¹⁸

(5) The principles of Common Law in Labor Relations include the principle on bonuses or extra payment. The High Court ruled in *Metro Transit Organization, Inc. v.*

¹⁶ Article VIII, Section 5 (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

¹⁷ Lexoterica, "August 2013 Philippines Supreme Court Decisions on Commercial Law,"

<http://lexoterica.wordpress.com/2013/09/04/august-2013-philippine-supreme-court-decisions-on-commercial-law/> (Retrieved on 26 August 2014)

¹⁸ The LawPhil Project, "Application of Max Shoop for admission to practice law,"

http://www.lawphil.net/judjuris/juri1920/nov1920/maxshoop_1920.html (Retrieved on 26 August 2014)

National Labor Relations Commission (G.R. No. 116008, July 11, 1995) that even though the bonuses or extra payment may be an expression of gratitude and that the receiver may not claim that they are entitled, the bonuses or extra payment may be obligated if they are compensation with no condition attached. Such principle is the basic principle in the Philippines' Labor Relations.¹⁹

(6) General Banking Law has a generally-accepted principle that purchaser in an foreclosure sale is entitled to the possession of the property and may demand that he be placed in possession of the same either during (with bond) or after the expiration (without bond) of the redemption period therefore.²⁰

1.2.2 Overall picture of Civil Law

Since statutes in the Philippines are legislated by Congress, the Philippines is sometimes considered a Civil Law country, which is different from a Common Law system whose laws are drawn from court rulings. Nevertheless, there has been no definite conclusion on whether the legal system of the Philippines is a Common Law or Civil Law.

The laws legislated by Congress are called "Republic Acts" followed by appropriate number. Under President Marcos, laws legislated by Congress were called "Batas Pambansa", while those issued by the President called "Presidential Decree". During the time, President Marcos exercised his legislative authority to the fullest. Before the 1987 Constitution (the current Constitution) was enforced, President Aquino was the only one who exercised legislative power. Such laws are called "Executive Order".

Examples of statutes include the laws related to investment, contracts, and criminal law. For instance, the Omnibus Investments Code 1987 regulates the process and conditions for foreign investment and business in the Philippines. Under Foreign Investments Act 1991, foreign nationals are allowed to hold 100% of share in businesses not included in the Negative List at the end of the law. Contract laws are included in Book IV Obligations and Contracts of Civil Code of the Philippines, such as Article 1159 of Civil Code states that obligations arising from contracts have the force of law between

¹⁹ Philippines Labor Law, "Labor Cases," <http://www.laborlaw.usc-law.org/category/labor-cases/> (Retrieved on 26 August 2014)

²⁰ *China Banking Corp. v. Sps. Lozada* (579 Phil 454 [2008]), (Retrieved on 26 August 2014)

the contracting parties and should be complied with in good faith.²¹ Lastly, the Penal Code of the Philippines outlines criminal charges such as serious criminal offense including felonies committed not only by means of deceit (dolo) but also by means of fault (culpa)²²

To conclude, the legal system of the Philippines begins with the Common Law system which is an influence from both Spain and the United States. When the country developed into an independent Republic, Civil Law had also influenced the legal system of the Philippines. Thus, it could be said that the legal system of the Philippines is a mixed system between Common Law and Civil Law.

1.3 Sources of Law

The main sources of laws in the Philippines are the Constitution, statutes, Treaties and relationship between international conventions and domestic laws, Customary Law and Precedent and judicial decisions.

1.3.1 Constitution

The Constitution is the absolute law of state. Any law that contradicts the Constitution is void, and any activity of state agency is legitimate only under the Constitution.

The Constitution of the Republic of the Philippines was drafted and proposed on 15th October 1986 by the Constitutional Commission which composed of 48 members. It was ratified by the people in a plebiscite in 1987. The Constitution is divided into 18 Chapters. Its key content defines the Philippines as "...a democratic and republican State," of which sovereignty resides in the people.²³ Power shall be divided among the Executive, the Legislative and the Judiciary.

²¹"Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." Source: Chan Robles Virtual Law Library, "Philippine Civil Law," <http://www.chanrobles.com/civilcodeofthephilippinesbook4.htm>, (Retrieved on 26 August 2014).

²² "Felonies are committed not only by means of deceit (dolo) but also by means of fault (culpa)." United Nations, "An Act Revising the Penal Code and Other Penal Laws," http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf, (Retrieved on 26 August 2014).

²³ Article II Section 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them. The Official Gazette of Government of Philippines, "The Constitution of the Republic of the Philippines," <http://www.gov.ph/constitutions/1987-constitution/> (Retrieved on 17 February 2014).

1.3.2 Statute

The statutes of the Philippines can be found in the various laws issued by the Legislative since 1900. There are over 29 codes in force today, such as Civil Code, Election Code, Revised Forestry Code, and Labor Code. The Code of Commerce, which became effective in 1888, is largely taken from the Spanish Code of Commerce of 1885, with some modifications to suit local conditions.

1.3.3 Treaties and relationship between international conventions and domestic laws

International treaties and conventions ratified by the Senate become a part of the Philippines' law under Article 21 of the current Constitution, which states that treaties and conventions will become effective after having been ratified by a two-third majority of the Senate.²⁴ Moreover, the Supreme Court clarified the relationship between international law and domestic law as follows. "Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation. The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law"²⁵

Moreover, in *Philip Morris vs. Court of Appeals*, 22 SCRA 576, the Supreme Court states that "the fact that international law has been made part of the law of the land does not by any means imply the primacy of international law over national law in the municipal sphere. Under the doctrine of incorporation as applied in most countries, rules of international law are given a standing equal, not superior, to national legislative enactments".²⁶

²⁴ Article VII Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate. *Ibid*.

²⁵ (*Pharmaceutical and Health Care Association of the Philippines vs. Health Secretary Francisco Duque, III, et. Al*) (G.R. No. 173034, October 9, 2007) "Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation. The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law"

²⁶ *Philip Morris vs. Court of Appeals*, 22 SCRA 576, "the fact that international law has been made part of the law of the land does not by any means imply the primacy of international law over national law in the municipal

1.3.4 Customary Law and Precedent

Philippine law is also derived from cases because the Civil Code provides that "judicial decisions applying to or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines".²⁷ Only decisions of the Supreme Court establish jurisprudence and are binding on all other courts.²⁸ Thus, these decisions assume the same level of authority as the statutes to which they apply or interpret and until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria which must control the actuations not only of those called upon to abide thereby but also of those duty-bound to enforce obedience thereto.²⁹

Customary law forms part of the Filipino legal heritage because the current Constitution provides that "the State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions".³⁰ It is believed that the judge may still apply the custom of the place or, in its default, the general principles of law in the absence of any statute governing the point in controversy. This reflects the fact that the Civil Code also provides that "customs which are contrary to law, public order or public policy shall not be countenanced", and "a custom must be proved as a fact according to the rules of evidence".³¹ Thus, Philippine law takes cognizance of customs which may be considered as supplementary sources of the law.

1.4 Hierarchy of Laws

As previously mentioned in 1.3, the Philippines have a statute legal system. The hierarchy of laws varies according to their code category. In this section, an order of

sphere. Under the doctrine of incorporation as applied in most countries, rules of international law are given a standing equal, not superior, to national legislative enactments".

²⁷ The Civil Code Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. Source: The Official Gazette of Government of Philippines, "Republic Act no. 386," <http://www.gov.ph/downloads/1949/06jun/19490618-RA-0386-JPL.pdf> (Retrieved on 15 August 2014).

²⁸ *Miranda v Imperial*, 77 Phil 1066 (1947).

²⁹ *Caltex (Phil) Inc v Palomar*, GR No 19650, 29 September 1966, 18 SCRA 247, 257 (1966).

³⁰ Article XIV Section 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies. Source: The Official Gazette of Government of Philippines, "The Constitution."

³¹ The Civil Code, Article 11. Customs which are contrary to law, public order or public policy shall not be countenanced. Article 12. A custom must be proved as a fact, according to the rules of evidence. Source: The Official Gazette of Government of Philippines, "Republic Act no. 386."

hierarchy of laws are presented, starting from the Constitution, Republic Act, treaties and conventions, Administrative Orders and Circulars, and Ordinances by Local Government Units.

1.4.1 Constitution

The Philippines' Constitution composes of a Preamble and 18 Articles.

Article I - National Territory states that the national territory comprises the Philippine archipelago, with all the islands and waters embraced therein. Article II - Declaration of Principles and State Policies dictates that the Philippines is a democratic and republican state, of which sovereignty resides in the people, as well as all government authorities created by sovereignty of state. Article III - Bill of Rights states that no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. Article IV – Citizenship defines citizens as those who are citizens of the Philippines at the time of the adoption of this Constitution; those whose fathers or mothers are citizens of the Philippines; those born before 17th January 1973, of Filipino mothers, who chose Philippine citizenship upon reaching the age of majority; and those who are naturalized in accordance with law. Article V – Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year, and in the place wherein they propose to vote, for at least six months immediately preceding the election

Article VI - The Legislative Department states that the legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum. Article VII - Executive Department states that the executive power shall be vested in the President of the Philippines. Article VIII - Judicial Department states that the judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Article IX - Constitutional Commission, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

Article X - Local Government states that the territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao. Article XI - Accountability of Public Officers states that public office is a public trust. Public officers

and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency. Article XII - National Economy and Patrimony states that the goals of the national economy are a more equitable distribution of opportunities, income, and wealth. Article XIII - Social Justice and Human Rights states that the Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities.

Article XIV - Education, Science and Technology, Arts, Culture and Sports stipulates that the state shall protect and promote the right of all citizens to education. Article XV - The Family states that the state recognizes the Filipino family as the foundation of the nation. Article XVI - General Provisions states that the flag of the Philippines shall be red, white, and blue, with a sun and three stars, as consecrated and honored by the people and recognized by law. Article XVII - Amendments or Revisions, states that any amendment to, or revision of, this Constitution may be proposed by: (1) The Congress, upon a vote of three-fourths of all its Members; or (2) A constitutional convention. Article XVIII - Transitory Provisions states that the first elections of Members of the Congress under this Constitution shall be held on the second Monday of May, 1987.

1.4.2 Republic Acts

Republic Act is the secondary law after the Constitution. This may be compared to an Act of Parliament under Thai law. Even though the Constitution provides that the legislative power shall be exercised by the Philippines' legislative branch, i.e. the Congress, Presidents in the past had also exercised the power; for instance, the laws issued by President Marcos are called Presidential Decree and are of the same hierarchy as Republic Acts. Presidential Decree No. 735 issued by President Marcos, commonly known as "the Forestry Reform Code of the Philippines" is still in effect at present. Moreover, before the 1987 Constitution is enforced, the legislative power was solely exercised by President Aquino and statutes issued by President Aquino are called Executive Orders, many which are still in effect today and are equal to Republic Acts in status.

The orders of other Presidents issued after the 1986 Constitution, apart from those of President Marcos and President Aquino, are considered regular regulations required under the Constitution or ones which allowed by Republic Acts.

1.4.3 International Treaties and Conventions

Section VII, Article XXI of the 1987 Constitution which dictates that treaties and conventions can become effective only when being ratified by a two-third majority of the Senate.³² A treaty has been defined by the Court as a compact made between two or more independent nations with a view to promote public welfare.³³

1.4.4 Administrative Orders and Circulars

Administrative Orders are issued for agencies, officials, or employees to follow on the specific matters. Circulars are issued to set out policies, rules and regulations, including the procedure which individual, non-government persons and agencies are required to follow. Administrative Orders and Circulars are designed to supplement Republic Acts, or to outline direction and guidance to enforce Republic Acts.

1.4.5 Ordinances by Local Government Units

Ordinances are written laws issued by *sanggunian* (council) of local government units (LGU). The authority of local government units are stated in Local Government Code (RA 7160). Even though Ordinances issued by local government units cannot contradict any Acts of Congress, the Ordinances may deal with local issues which national statutes are incapable of, especially problems at provincial or district levels. Such Ordinances are, therefore, important for an archipelago country full of small separate islands and is divided into several units of government, as the Ordinance can fill in the gap between the Republic Acts or Orders which cannot respond to problems in provinces or cities.

1.5 Court System and Legal Interpretation

Article VIII 8 of the Constitution states that the judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. The judicial power includes "[T]he duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction

³² Article VII Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

³³ *Adolfo v Court of First Instance*, GR No 30650, July 1970, 34 SCRA 169 (1970)

on the part of any branch or instrumentality of the Government."³⁴ Under Judiciary Reorganization Act of 1980, the court system of the Philippines comprises of Municipal Trial Courts, Metropolitan Trial Courts, Regional Trial Courts, and Supreme Court. The mandates of each court are briefly discussed below.

1.5.1 Lower courts

Lower courts include Municipal Trial Courts, and Municipal Circuit Trial Court which are courts of first instance. In general, every municipality has one Municipal Courts. The Municipal Circuit Trial Court which covers at least two municipalities. It considers minor cases such as traffic laws, and violation of local rules and regulations.³⁵

1.5.2 Regional trial courts

There are 13 Regional Trial Courts established in each of the 13 regions in the Philippines. The regions are divided according to The Judiciary Reorganization Act of 1980. For instance, the First Judicial Region consisting of Abra, Benguet, Ilocos Norte, Ilocos Sur, La Union, Mountain Province, and Pangasinan, and cities of Baguio, Dagupan, Laog and San Carlos.³⁶

Regional Trial Courts shall exercise exclusive original jurisdictions as dictated in Article 19 of The Judiciary Reorganization Act of 1980, which include: (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation such as annulment of judgment;³⁷ (2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds 20,000 pesos or for civil actions in Metro Manila, where such the value exceeds 50,000 pesos; (3) In all actions in admiralty and maritime jurisdiction where the demand or claim exceeds 100,000 pesos or, in Metro Manila, where such demand or claim exceeds 200,000 pesos; (4) In all matters of probate, both testate and intestate,

³⁴ Article VIII Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. The duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

³⁵ Chan Robles Virtual Law Library, "1985 Rules of Criminal Procedure," <http://www.chanrobles.com/criminalprocedure.htm#RULE%20123> (Retrieved on 16 February 2014).

³⁶ Philippines Laws and Jurisprudence Databank, "The Judiciary Reorganization Act of 1980," http://www.lawphil.net/statutes/bataspam/bp1994/bp_129_1994.html (Retrieved on 10 October 2014).

³⁷ *Amorganda v. Court of Appeals*, 166 SCRA 203; *De Jesus v. Garcia*, 19 SCRA 554, <http://sc.judiciary.gov.ph/jurisprudence/1999/mar99/119347.htm> (Retrieved on 12 May 2015).

where the gross value of the estate exceeds 100,000 pesos or, in probate matters in Metro Manila, where such gross value exceeds 200,000 pesos; (5) In all actions involving the contract of marriage and marital relations. Regional Trial Court has the power to review cases as court of first instance and court of appeal. An appeal to Regional Trial Court, either civil or criminal, may be referred from lower courts.³⁸

1.5.3 National courts

National courts compose of Courts of Appeal and special courts. Court of appeal consists of one Chief Justice and 17 judges appointed by the President. The Court may consider cases with all the judges working collectively, or separately in one of the six divisions. The Court of Appeal has the power to review all appeals, bar those clearly stating reservation to the Supreme Court. In most cases, the Court of Appeal accepts appeals related to taxes, civil servants, and grafts.

Special courts cover the following areas.

(a) Special Agrarian Court: in 1955, the Congress legislated a statute to form Special Agrarian Court to resolve conflicts between land lords and tenants in agricultural sector. Moreover, and enforce laws concerning the relationship between land lords and

³⁸ Section 19. *Jurisdiction in civil cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (P20,000.00) or for civil actions in Metro Manila, where such the value exceeds Fifty thousand pesos (50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;

(3) In all actions in admiralty and maritime jurisdiction where the demand or claim exceeds One hundred thousand pesos (P100,000.00) or, in Metro Manila, where such demand or claim exceeds Two hundred thousand pesos (200,000.00);

(4) In all matters of probate, both testate and intestate, where the gross value of the estate exceeds One hundred thousand pesos (P100,000.00) or, in probate matters in Metro Manila, where such gross value exceeds Two hundred thousand pesos (200,000.00);

(5) In all actions involving the contract of marriage and marital relations;

(6) In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising jurisdiction or any court, tribunal, person or body exercising judicial or quasi-judicial functions;

(7) In all civil actions and special proceedings falling within the exclusive original jurisdiction of a Juvenile and Domestic Relations Court and of the Courts of Agrarian Relations as now provided by law; and

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds One hundred thousand pesos (100,000.00) or, in such other abovementioned items exceeds Two hundred thousand pesos (200,000.00). (as amended by R.A. No. 7691*)

agriculturalist tenants. The Court is under the supervision of the Department of Justice, and consists of nine judges³⁹.

(b) Court of Industrial Relations: this Court comprises of five judges who have the power to resolve disputes between employers and employees in industrial sector. Moreover, the Court also has the power to settle industrial disputes which lead to strikes or termination of employment.

(c) Shari'a Courts are created by Presidential Order No. 1083, by which they were provided with limited jurisdiction over settlement of issues, controversies or disputes pertaining to the civil relations between and among Muslim Filipinos. Specifically, the controversies require interpretation of laws on persons, family relations, succession, contracts, and similar laws applicable only to Muslims.⁴⁰

(d) Court of Tax Appeal composes of one presiding judge and eight associate judges appointed by the President. The court has power to consider the appeals against Internal Revenue officers' orders about evaluation, tax returns, fees and penalties related to taxes orders issued by Internal Revenue officials and land tax official.

(e) Special court for corruption cases composes of a Presiding Justice and eight Associate Justices. The Court has the power to consider cases which violate Anti-Graft and Corrupt Practices Act (Republic Act No. 3019), Unexplained Wealth Act (Republic Act No. 1379), and other cases involving government officials or employees, including employees of companies owned or controlled by the government when the violation occurred.

1.5.4 Supreme Court

The Supreme Court consists of one Chief Justice and 14 Associate Justices. The Court considers political cases and appeals, and can order an appeal to be heard or consider the appeals in the following cases.⁴¹

- a) Cases concerning treaties, laws, regulations or executive orders that contradict the Constitution.

³⁹ *Ibid.*

⁴⁰ Chan Robles Virtual Law Library, "The Shari'a District Courts," http://www.chanrobles.com/shariadistrictcourtsofthephilippines.htm#.VOQQM_mUeak (Retrieved on 16 August 2014).

⁴¹ <http://www.library.coj.go.th/indexarticle2.php?ldmain=42&&Title=33++%C3%D0%BA%BA%A1%AE%CB%C1%D2%C2%B5%E8%D2%A7%BB%C3%D0%E0%B7%C8&&page=>, (Retrieved on 16 August 2014).

- b) Tax - related cases
- c) Cases concerning the authority of lower courts
- d) Criminal cases with life imprisonment or death sentences
- e) Civil cases with value more than 50,000 Pesos
- f) Appeal cases with disputes over points of law

Moreover, the Supreme Court can consider cases sent by the Court of Appeal and has the authority to issue regulations on the national bar exam, as well as to approve the admission of members who passed the exam for Integrated Bar of the Philippines, of which members are law professors, retired justices, and one representative from each private sector.

The retirement age for Judges of the Supreme Court is 70, but Judges may be removed from office if he or she is found guilty of corruption charges, or lacks of confidence from the people.

1.5.5 Legal Interpretation

As mentioned earlier, decisions of the Supreme Court are considered as legal principle and are binding to other courts. Thus, the decision of the Supreme Court is equivalent to the law, to which that particular decision is applied or interpreted and is enforced until it is neglected or is enforced upon the fact that that condition is not only to be followed but is obliged to be enforced. The interpretation is, thus, based upon precedent cases and the interpretation of the Supreme Court.

With regard to cases with precedent, the cases shall be considered on the principle of *stare decisis*, i.e. interpretation shall follow the previous ruling of higher courts. For instance, lower courts has to follow interpretation of similar cases ruled by regional trial courts, or the past rulings of lower courts in order to ensure that similar cases are treated in a comparable manner.

In civil cases, it shall begin with appointing a lawyer and initiating the legal proceeding at the court of first instance. However, if it is a joint case by which the joint plaintiff is from a different jurisdiction, he or she shall initiate the legal proceeding at the

regional trial court which has the jurisdiction. The provision of the legal proceeding of such case is outlined in the Civil Code.⁴²

1.6 Law enforcement and practical problems

The Philippines has problems with law enforcement, which are largely due to corruption. This is evident in the 2014 Corruption Perception Index (CPI) prepared by Transparency International, in which the Philippines was placed at 85th from 175 countries with a score of 38 points out of 100, which was below the global average level of 43 points.⁴³

This section presents cases of corruption by law enforcement agencies in the Philippines, namely (a) The Philippine National Police (PNP) and The National Bureau of Investigation (NBI).

a) The Philippine National Police (PNP)

According to the survey done by Transparency International, 69% of Filipino participating in the survey felt that the police are corrupt.⁴⁴ Such survey reflects the integrity of law and confidence on the law enforcement agencies. Moreover, in 2011 there were over 2,000 administrative cases filed against the Philippine National Police for various complaints of misconduct.⁴⁵

b) The National Bureau of Investigation (NBI)

On 18th August 2013, a large number of corruption cases were filed to the Office of the Ombudsman against at least 53 persons for their alleged involvement in projects of the National Irrigation Administration (NIA) in Caraga since 2012. Apart from NIA

⁴² Philippine Laws and Jurisdiction Databank, "1997 Rules of Civil Procedure"
http://www.lawphil.net/courts/rulesrc_1371civil.html#3 (retrieved on 9 October 2014)

⁴³ Transparency International, "Corruption Perception Index 2013," <http://cpi.transparency.org/cpi2013/results/>
(Retrieved on 16 August 2014).

⁴⁴ Alexis Romero, "PNP most corrupt agency – survey," <http://www.philstar.com/headlines/2013/07/11/964084/pnp-most-corrupt-agency-survey> (Retrieved on 25 August 2014)

⁴⁵ Joel D Adriano, "Cops as criminals in the Philippines," http://atimes.com/atimes/Southeast_Asia/MB05Ae02.html,
(Retrieved on 15 August 2014)

officials being charged for negligence, some NBI officials were said to be involved in the scandal.⁴⁶

The above cases are examples of corruption among public officials who are responsible for law enforcement in the Philippines. Nonetheless, it is widely recognized that the Philippines is trying to solve corruption problem and, in many cases, has been successful. The lessons Thailand can learn from the Philippines is that in a case where public sector has a significant role in the economy through public ownership in the form of State-Owned Enterprises, corruption can be limited by creating a check-and-balance system against the politicians who may have interests in the SOEs. The Philippines established the Governance Committee to directly oversee the work of SOEs. The Governance Committee nominates a list of people to be appointed as members of SOE's board of director to be appointed by the President. The appointed SOE's board of directors must then formulate clear strategies and business plans for the SOEs, and enter into Performance Contract with the Governance Committee. The Governance Committee then evaluates the performance of SOE's board of director per the agreed Contract to determine the appropriate remuneration for the board members. Such arrangement is encourage SOEs to work with effectiveness and transparency, leading to accountability and independent from political influence.⁴⁷

Conclusion

Overall, the Philippines' legal system is a mixed between Civil Law and Common Law. The courts refer to previous ruling of comparable cases in the past, according to the doctrine of *stare decisis*. Moreover, as the Philippines was a colony under Spain and the United States for over four centuries, the Philippines' legal system was influenced by the two colonizers. After World War II, the Philippines became an independent Republic with President acting as the Head of State. The current 1987 Constitution, which was influenced by the US Constitution, states that the Philippines is a "democratic and republican State" of which sovereignty resides in the people. State sovereignty is

⁴⁶ Elias O. Baquero, "NIA workers expose 'corruption' in agency," <http://www.rappler.com/newsbreak/investigative/66155-corruption-national-irrigation-administration-ombudsman>, (Retrieved on 25 August 2014)

⁴⁷ Organization for Economic Co-operation and Development (OECD), "Policy Brief on Corporate Governance of State-Owned Enterprises in Asia: Recommendations for Reform," <http://www.oecd.org/countries/philippines/45639683.pdf> (Retrieved on 15 February 2015).

divided into three branches, namely executive branch, legislative branch, and judiciary branch.

The Philippines is one of the largest market in South East Asia, with a population over 100 million. Moreover, the Filipinos are well-educated and have good command of English language skills. The country is also endowed with abundant natural resources, making it an attractive destination for trade and investment. Nevertheless, there remain problems with effective enforcement of the law, mainly caused by corruption among law-enforcement agency. Nevertheless, the Philippines' government is making efforts to tackle the issue.

Chapter 2

Laws Related to Trade and Investment of the Philippines

Between 2008 and 2012, the average growth rate in the Philippines was around 5.0%, which is considered quite high comparing to 3.5% in Thailand).⁴⁸ Moreover, the Asian Development Bank (ADB) forecasted that economic growth rate of the Philippines will continue to grow to 6.7% in 2015,⁴⁹ the year in which the ASEAN Economic Community (AEC) will come into effect. This regional economic integration is expected to lead to an increase in trade and investment in South East Asia. This therefore presents a good opportunity for Thai investors and workers to set up businesses or work in the Philippines.

In 2014, the Philippines have a population of over 100 million people which makes it the second most populous country in ASEAN after Indonesia. It also has second highest population density in ASEAN, after Singapore⁵⁰. These statistics reflect the fact that the Philippines have a sizable workforce. At the same time, the country has geographical limitations due to its archipelagic shape of over 7,000 islands, two thirds of which are not habitable. Therefore, there is a high level of population density in large islands and big cities. In economic terms, labor and land are key production factors, similar to technology which is vital to economic development in the globalized era with increasing competition. For these reasons, the Philippines' laws related to labor, land, and intellectual property all reflect the effort and need to fully utilize these factors of production.

Chapter 2 presents the laws related to trade and investment in the Philippines by dividing the presentation into eight topics namely 2.1 Goods and services laws, 2.2

⁴⁸ ASEAN Secretariat, *ASEAN Statistical Yearbook 2013* (Jakarta: ASEAN Secretariat, 2014), 37.

⁴⁹ Asian Development Bank (ADB), "Philippines: Economy," <http://www.adb.org/countries/philippines/economy> (Retrieved on 15 September 2014).

⁵⁰ ASEAN Secretariat, "Table 1 Selected Basic ASEAN Indicators: As of 15 August 2014," http://www.asean.org/images/resources/Statistics/2014/SelectedKeyIndicatorAsOfApril/UpdatedAug/table1_as%20of%20August%2014_R.pdf (Retrieved on 9 October 2014).

Foreign investment laws, 2.3 Immigration laws, 2.4 business laws, 2.5 Land and land utilization laws, 2.6 labor laws, 2.7 intellectual property law, and 2.8 dispute settlement system.

2.1 Goods and services laws

This section presents the laws related to goods and services by foreigners in the Philippines under four sub-topics, namely import and export procedures, anti-dumping and non-tariff measures, special treatments the Philippines offers to ASEAN and Thai entrepreneurs, and foreign employment laws.

2.1.1 Laws and Procedure for Import and Export of Goods

This section presents three subtopics: import duty and taxes, import procedure and prohibited imported goods, and export procedure and prohibited exported goods.

A. Import Duty and Taxes

In the Philippines, there are three types of import duty and taxes as follows.

(1) Import Duty

Every imported goods is subjected to import duty, unless it is exempted as per Section 105 of the Tariff and Customs Code of the Philippines as amended by Executive Order no. 206. The exemption is contingent on the status of the importer. That is, if the importer (1) is a Filipino national and has a permanent residence in the Philippines or a former Filipino national who desires to return to the country on a permanent basis, and (2) has lived in a foreign country for no less than 6 months consecutively prior to their return to the Philippines, he/she is exempted from paying import duty when entering the Philippines.⁵¹

⁵¹ Bureau of Customs, "Chapter II Privileges," <http://customs.gov.ph/faqs/privileges/> (Retrieved on 15 February 2015). Section 105 of the Tariff and Customs Code of the Philippines as amended by Executive Order No. 206 provides duty and tax free privileges to the following individuals, the extent of which depends on their particular status:

1. Returning Resident. A Returning Resident is a Filipino national who has gone abroad and is now returning. Only those Returning Residents who have an uninterrupted stay abroad for at least six (6) months prior to their return to the Philippines are entitled to duty and tax free privileges.

(2) Value Added Tax (VAT)

VAT is collected whenever goods and services are bought, traded or rented in the Philippines, including when importing goods. VAT is an indirect tax and therefore paid primarily by the consumers of the goods and services by adding to the selling prices. The seller is responsible for declaring and filing the tax to the Bureau of Internal Revenue (BIR). The VAT rate in the Philippines is currently at 10% of the selling price.⁵²

(3) Excise Tax

Excise tax in the Philippines is classified into two types, Specific Tax and Ad Valorem Tax. Specific Tax is calculated based on the weight or capacity of the goods while the Ad Valorem Tax is calculated based on the selling price or the price per unit of the goods. Examples of goods that are subjected to excise tax are personal cars, alcoholic beverage, jewelry, cigarettes, and so on. These are all charged for excise tax on top of import duty.⁵³

The tax rate varies depending on the type of commodity imported, ranging from 3% to 50%. The schedule of rates is listed under Section 104 of the Tariff and Customs Code of the Philippines (TCCP).⁵⁴ Since 1997, tariff structure of imported commodities has been revised to bring down the rates by several Executive Orders (EO).⁵⁵ It should be noted that the Philippines has decreased the import duty of goods from ASEAN

2. Overseas Filipino Worker (OFW) is a Filipino national who worked in a foreign country under an employment contract. Only OFWs who have an uninterrupted stay abroad for more than six (6) months are entitled to duty and tax free privileges.

3. Former Filipino. A Filipino national who has acquired foreign citizenship abroad and is now returning. Only former Filipinos who are coming to settle permanently in the Philippines and have stayed abroad for at least six months are entitled to the duty and tax exemption privileges.

⁵² As of May 2016, the VAT rate is increased to 12%. Bureau of Internal Revenue, "Value-Added Tax," <http://www.bir.gov.ph/index.php/tax-information/value-added-tax.html> (Retrieved on May 16, 2016).

⁵³ Bureau of Internal Revenue, "Excise Tax," <http://www.bir.gov.ph/index.php/tax-information/excise-tax.html> (Retrieved on 15 February 2015).

⁵⁴ For more information, go to The Official Gazette of the Government of Philippines, "Republic Act no. 1937," <http://www.gov.ph/1957/06/22/republic-act-no-1937/> (Retrieved on 3 February 2015).

⁵⁵ For more information about each EO, go to Tariff Commission, "Executive Orders," <http://www.tariffcommission.gov.ph/all-executive-orders> (Retrieved on 3 February 2015).

member countries to 0-5% for 9,821 goods as per the ASEAN Trade in Goods Agreement (ATIGA).⁵⁶

B. Import Procedure and Prohibited Imported Goods

Import procedure can be divided into three steps as follows.

(1) Payment of Duties

Duty must be paid prior to the release of the goods for consumption. Payments can be made through banks that are electronically connected to the Bureau of Customs under the Automated On-line Release System (OLRS). Upon receiving the payment, OLRs will relay information to the Bureau of Customs, of which officers will then input the payment information and release the goods to the importer or his/her representative.

(2) Product Valuation

Product valuation is calculated on the Fair Market Value of the Philippines (FMV). The basic principle of the FMV is that the dutiable value of an imported item is the value of SAME, LIKE or SIMILAR item bought and sold or offered for sale freely in the usual wholesale quantities on the date of export. In the case where the value is not available on the date of export, the value shall be determined based on the price in the exporting country or the manufacturing country respectively, on the date nearest to the date of export.⁵⁷

If the dutiable value of the goods cannot be ascertained or there exists a reasonable doubt as to the wholesale price, the following principles may be used.

- SGS-CRF (Societe Generale de Surveillance-Clean Report of Findings)⁵⁸

⁵⁶ ASEAN Secretariat, "Annex 2 (Tariff Schedule)," <http://www.asean.org/images/2013/economic/Annex%20%20%28Tariff%20Schedule%29%20-%20Philippines%20%28AHTN%202012%29.pdf> (Retrieved on 3 February 2015).

⁵⁷ ASEAN Secretariat, "Philippines: Tariff and Duty Rates," <http://www.asean.org/communities/asean-economic-community/item/philippines-5> (Retrieved on 16 February 2015).

⁵⁸ A Clean Report of Findings (CRF) is a report made by Societe Generale de Surveillance (SGS) which certifies that the price is confirmed and checked as per rules and regulations before the goods is imported. Customers of CRF will

- Published value
- Domestic wholesale price of such or similar article in Manila or other principal markets in the Philippines

(3) Clearing Imports

Goods imported into the Philippines by air and sea must be declared by the carrier. Upon arrival to the Philippines, the carrier must submit an inward foreign manifest to the Bureau of Customs, and follow the following four steps.

- Filling the form
- Examining and appraising
- Paying the duty
- Releasing the goods from the Customs zone

The Bureau of Customs has two forms of import documentation: Formal Entry and Informal Entry. Imported goods for commercial purposes with a value of less than USD500 and import for personal and household use, i.e. with non-commercial purpose, such as goods brought into the Philippines by passengers baggage or by post for personal use will be cleared by Informal Entry. Other shipments will be cleared by Formal Entry.

Moreover, all imported goods are required to undergo pre-shipment inspection (PSI), as specified under RA 7650, conducted by the government contracted inspection company at the port of importation. The goods must receive a Clean Report of Findings (CRF) after passing the PSI, and present the CRF for import clearance.

Section 102 of the Republic Act No. 1937 prohibits the following commodities from importation:⁵⁹

receive permission when SGS receives the Import Advise Note (IAN) and final documents concerning import procedure, i.e. final invoice and packing list.

⁵⁹ Prohibited Importations. — The importation into the Philippines of the following articles is prohibited:

- a. Dynamite, gunpowder, ammunitions and other explosives, firearm and weapons of war, and detached parts thereof, except when authorized by law.
- b. Written or printed article in any form containing any matter advocating or inciting treason, rebellion, insurrection or sedition against the Government of the Philippines, of forcible resistance to any law of the

- Dynamite, gunpowder, ammunition and other explosives, and parts thereof
- Written or printed articles in any form containing any matter advocating or inciting treason, or rebellion, insurrection, sedition or subversion against the government of the Philippines, or forcible resistance to any law of the Philippines;
- Written or printed articles, or cinematographic film of an obscene character;
- Articles, instruments, drugs, substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises or describes or gives directly or indirectly information regarding where, how or by whom unlawful abortion is produced;
- Roulette wheels, gambling outfits, marked cards,
- Lottery and sweepstakes tickets except those authorized by the Philippines government,
- Any article manufactured in whole or in part of gold, silver or other precious metals or alloys thereof;

Philippines, or containing any threat to take the life of or inflict bodily harm upon any person in the Philippines.

- c. Written or printed articles, photographs, engravings, lithographs, objects, paintings, drawings or other representation of an obscene or immoral character.
- d. Articles, instruments, drugs and substances designed, intended or adapted for preventing human conception or producing unlawful abortion, or any printed matter which advertises or describes or gives directly or indirectly information where, how or by whom human conception is prevented or unlawful abortion produced.
- e. Roulette wheels, gambling outfits, loaded dice, marked cards, machines, apparatus or mechanical devices used in gambling, or in the distribution of money, cigars, cigarettes or other articles when such distribution is dependent upon chance, including jackpot and pinball machines or similar contrivances.
- f. Lottery and sweepstakes tickets except those authorized by the Philippine Government, advertisements thereof and lists of drawings therein.
- g. Any article manufactured in whole or in part of gold silver or other precious metal, or alloys thereof, the stamps brands or marks of which do not indicate the actual fineness or quality of said metals or alloys.
- h. Any adulterated or misbranded article of food or any adulterated or misbranded drug in violation of the provisions of the "Food and Drugs Act."
- i. Marihuana, opium poppies, coca leaves, or any other narcotics or synthetic drugs which are or may hereafter be declared habit forming by the President of the Philippines, any compound, manufactured salt, derivative, or preparation thereof, except when imported by the Government of the Philippines or any person duly authorized by the Collector of Internal Revenue, for medicinal purposes only.
- j. Opium pipes and parts thereof, of whatever material.
- k. All other articles the importation of which is prohibited by law.

- Marijuana, opium or any other narcotics or synthetic drugs except those authorized by the Philippines government;
- All other articles or part thereof, the importation of which is prohibited by law or rules and regulation issued by competent authority (as amended by Presidential Decree no. 34).

In addition, there are other prohibited importations under other laws as follows.

- Onions, potatoes, garlic and cabbages, except for seeding purposes; (Republic Act no. 296)
- Coffee (Republic Act no. 2712)
- Used clothing and rags (Republic Act no. 4653)
- Toy guns (Letter of Instruction no. 1264)
- Used vehicles (Executive Order 156 (2002))

The ban on imported used cars was issued to help the domestic automobile industry, which has been challenged in court many times. The latest happened on 21 February 2014, when the Bureau of Customs seized 38 imported used vehicles at Port Irene. The Bureau of Customs argued that it followed the ban under Executive Order 156 issued by President Arroyo in 2002 which prohibits the importation of all used cars except for light trucks, buses and special-purpose vehicles such as ambulances, fire trucks and light hoe.

Bureau of Customs Commissioner cited a 2006 Supreme Court ruling in *Executive Secretary v. Southwing Heavy Industries Inc.* which stated that imported used cars cannot be taken out of the Cagayan Special Economic Zone and Freeport (CSEZF) and sold in the local market. The Commissioner also cited another Supreme Court ruling in 2013 in *Executive Secretary, et al. v. Forerunner Multi Resources, Inc.* which also bans used car importations, despite the issuance of Executive Order 418 in 2005 to revise the tariff rates of import duty on used motor vehicles. The Supreme Court ruled that Executive Order 418 did not repeal Executive Order 156, but simply added the import duties on used motor vehicles, and that the Executive Order 418 "did not alter the policy of the executive department to prohibit the importation" of used vehicles. The

Supreme Court further noted that "[T]here is nothing in the text of Executive Order No. 418 which expressly repeals Executive Order No. 156."⁶⁰

C. Export Procedure and Prohibited Exported Goods

Exporters or their authorized agents must complete the Export Declaration (ED) form which can be obtained from any Authorized Agent Bank (AAB) of the Banko Sentral ng Pilipinas (BSP), the Philippines' central bank. Documents needed for export procedure are invoice and list of items for export. The price disclosed on the ED shall be the fair market price on the date of sale.

The following articles require export clearances from relevant government agencies before export.⁶¹

- Exports to the following socialist and centrally planned economies: Albania, Laos People's Democratic Republic, Ethiopia, Mozambique, Angola, Mongolia People's Republic, Democratic Republic of Korea (North Korea), Nicaragua, Libya, and Myanmar require export clearances from Philippine International Trading Corporation (PITC).
- Plants require export clearances from Bureau of Plant Industry (BPI).
- Animal and animal products require export clearances from Bureau of Animal Industry (BAI).
- Antiques, cultural artifacts require export clearances from National Museum (NM).

⁶⁰ Bureau of Customs, "BoC seizes 38 used cars imported via Cagayan EcoZone,"

<http://customs.gov.ph/news/2014/02/21/boc-seizes-38-used-cars-imported-via-cagayan-ecozone/> (Retrieved on 15 February, 2015).

⁶¹ Department of International Trade Promotion, Ministry of Commerce, "คู่มือส่งเสริมการค้าและการลงทุน สาธารณรัฐฟิลิปปินส์ [Guideline for trade and investment in the Philippines],"

<http://aec.ditp.go.th/attachments/article/318/Philippine%20Trade%20and%20Investment%20Handbook.pdf> (Retrieved on 21 September 2014).

- Coffee beans require export clearances from International Coffee Organization Certifying Agency (ICO-CA), or Department of Trade and Industry (DTI).
- Copper concentrates require export clearances from Board of Investments (BOIX).
- Firearms ammunition and explosives require export clearances from Firearms and Explosives Office (PNP-DILG).
- Garment, textiles, carpets polyester staple fiber, filament yarns, fabrics, and other natural and synthetic fibers and all products made up in whole or in part of the fiber require export clearances from Garments and Textile Export Board (GTEB).
- Gold require export clearances from Bangko Sentral ng Pilipinas (BSP).
- Grains and grain-by-products require export clearances from National Food Authority (NIFA).
- Logs, poles and piles require export clearances from Forest Management Bureau (FMB), or Department of Environment and National Resources (DENR).
- Movies and equipment require export clearances from Movie and Television Review and Clarification (MTRCB).
- Local currency - amounts exceeding 10,000 of Philippine Pesos require export clearances from Bangko Sentral ng Pilipinas (BSP).
- Radioactive materials require export clearances from Philippine Nuclear Research Institute (PNRI).
- Sugar and molasses require export clearances from Sugar Regulatory Administration (SRA).
- All animal require export clearances from Protected Areas and Wildlife Bureau (PAWB).

2.1.2 Anti-dumping and non-tariff measures

This part present three laws related to anti-dumping and non-tariff measures, as well as trade and competition laws.

A. Republic Act no. 7843

The Philippines has an anti-dumping law which was issued in 1994, namely the Republic Act no. 7843, of which Part 2 states that "Whenever the Secretary of Finance or the Secretary of Trade and Industry...receives an anti-dumping petition from the domestic industry or the Secretary has reason to believe, from any invoice or other document or newspaper, magazine or information or translation thereof by any reputable language translator made available by any government agency or interested party, that a specific kind or class of foreign article, is being imported into, or sold or is likely to be sold in the Philippines, at a price less than its normal value, the importation or sale of which might injure, or retard the establishment of, or is likely to injure an industry producing like articles in the Philippines, the Secretary shall, within twenty (20) days from receipt of such petition or information, determine a prima facie case of dumping. Within five (5) days from such receipt, he will notify the protestee-importer and require him to submit within ten (10) days from such notice evidence from the producer of the imported article...If no such evidence is submitted within the prescribed period, the Secretary shall base his decision on the available pertinent data."⁶²

The criteria for considering the normal value of an article to determine whether dumping has occurred shall be based on the price of like articles destined for domestic consumption in the "exporting country", which for the purposes of this section means the country of production or manufacture.

If the Secretary determine or believe that dumping has occurred, he/she shall relay the issue to the Tariff Commission to consider whether the import prices will have any significant effect on domestic prices. Also, in determining whether the establishment of a domestic firm that produces like articles will be delayed, there must be evidence of the forthcoming commercial operation of the industry. In determining injury, the following shall also be considered.

⁶² Chan Robles Virtual Law Library, "Republic Act no. 7843," http://www.chanrobles.com/republicactno7843.htm#.VOSk_S6yl3A (Retrieved on 15 February, 2015).

- (1) Whether or not the imported articles under consideration are identical or alike in all respect to articles produced by the domestic industry, or although of different composition or material but nevertheless serves the same or similar purpose, e.g. a substitute of the articles produced in the Philippines in quantities at least 10% of local consumption (arrived at by taking the sum of the average local production and average importation and then subtracting from average exportation for the preceding three months prior to the filing of the dumping protest).
- (2) The volume of dumped imports and their effects on prices in domestic market for like articles. The Commission shall determine the impact of imported items on local producers by considering the following factors:
 - 5% decline in sales volume or 2% decline in sales prices compared to average monthly sales during the preceding three months; or
 - 5% decline in volume of production compared to average monthly volume of production during the preceding three months; or
 - Actual and potential negative effects on employment.

Section 301 (3) of Republic Act no. 7843 further states that if there is reason to believe that the volume of dumped imports is negligible or the estimated margin of dumping is less than 2% of export price, the Tariff Commission will terminate the investigation. If such condition is not satisfied, the Commission shall notify the Special Committee to investigate and to order the collection of "dumping duty" which is equal to the difference between the actual export price and the normal price determined by such investigation.

B. Republic Act no. 7581 or The Price Act

In 1992, another law on anti-competition was issued, namely the Price Act (RA 7581). Although the Act was issued primarily to control prices in times of war or emergencies, many parts are related to anti-competition, especially Section 5 which prohibits price manipulation behaviors as follows: (1) hoarding, (2) profiteering, and (3)

cartel formation through various means such as by limiting production.⁶³ Punishment for violating Section 5 is considerably severe, i.e. imprisonment of 5-10 years and a fine between 5,000 to 2 million Pesos (around 3,600 to 1.4 million Baht).⁶⁴

It should be noted that prohibitions under Republic Act no. 7581 or The Price Act are only enforced upon basic necessities, specifically defined by Section 3 of Republic

⁶³ Sec. 5. Illegal Acts of Price Manipulation. - Without prejudice to the provisions of existing laws on goods not covered by this Act, it shall be unlawful for any person habitually engaged in the production, manufacture, importation, storage, transport, distribution, sale or other methods of disposition of goods to engage in the following acts of price manipulation of the price of any basic necessity or prime commodity:

- (1) Hoarding, which is the undue accumulation by a person or combination of persons of any basic commodity beyond his or their normal inventory levels or the unreasonable limitation or refusal to dispose of, sell or distribute the stocks of any basic necessity or prime commodity to the general public or the unjustified taking out of any basic necessity or prime commodity from the channels of reproduction, trade, commerce and industry. There shall be prima facie evidence of hoarding when a person has stocks of any basic necessity or prime commodity fifty percent (50%) higher than his usual inventory and unreasonably limits, refuses or fails to sell the same to the general public at the time of discovery of the excess. The determination of a person's usual inventory shall be reckoned from the third month immediately preceding before the discovery of the stocks in case the person has been engaged in the business for at least three (3) months; otherwise, it shall be reckoned from the time he started his business.
- (2) Profiteering, which is the sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth. There shall be prima facie evidence of profiteering whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month: Provided, That, in the case of agricultural crops, fresh fish, fresh marine products, and other seasonal products covered by this Act and as determined by the implementing agency, the prima facie provisions shall not apply; and
- (3) Cartel, which is any combination of or agreement between two (2) or more persons engaged in the production, manufacture, processing, storage, supply, distribution, marketing, sale or disposition of any basic necessity or prime commodity designed to artificially and unreasonably increase or manipulate its price. There shall be prima facie evidence of engaging in a cartel whenever two (2) or more persons or business enterprises competing for the same market and dealing in the same basic necessity or prime commodity, perform uniform or complementary acts among themselves which tend to bring about artificial and unreasonable increase in the price of any basic necessity or prime commodity or when they simultaneously and unreasonably increase prices on their competing products thereby lessening competition among themselves.

⁶⁴ Sec. 15. Penalty for Acts of Illegal Price Manipulation. - Any person who commits any act of illegal price manipulation of any basic necessity or prime commodity under Section 5 hereof shall suffer the penalty of imprisonment for a period of not less than five (5) years nor more than Fifteen (15) years, and shall be imposed a fine of not less than Five thousand pesos (P 5,000) nor more than Two million pesos (P 2,000,000).

Act no. 10623.⁶⁵ Examples of basic necessities include rice, corn, bread and beef. Nevertheless, this Act has never been practically enforced.

C. An Act to Prohibit Monopolies and Combination in Restraint of Trade (Act no. 3247)

Although there is no specific trade law in the Philippines, there are laws aiming to control monopolistic or anti-competition behavior. These include the Revised Penal Code or Act no. 3815 and in various other laws. Some of the key points are as follows.⁶⁶

An Act to Prohibit Monopolies and Combination in Restraint of Trade (Act no. 3247) was issued in 1925. The Act prohibits monopolistic behavior and collusion to restrain competition, but it lacks details about the kind of behavior considered monopolistic or collusive to limit competition. Therefore, the Act is not enforceable in practice. Nevertheless, this Act provides opportunity for people who suffer from any violation of this Act to file a civil lawsuit against the perpetrators. The amount of compensation for damage can be as high as three times of the actual damage, or the so-called "treble damages" as used in the U.S.

⁶⁵ Basic necessities' are goods vital to the needs of consumers for their sustenance and existence in times of any of the cases provided under Section 6 or 7 of this Act such as, but not limited to, rice, corn, root crops, bread; fresh, dried or canned fish and other marine products; fresh pork, beef and poultry meat; fresh eggs; potable water in bottles and containers; fresh and processed milk; fresh vegetables and fruits; locally manufactured instant noodles; coffee; sugar; cooking oil; salt; laundry soap and detergents; firewood; charcoal; household liquefied petroleum gas (LPG) and kerosene; candles; drugs classified as essential by the Department of Health and such other goods as may be included under Section 4 of this Act;"

⁶⁶ Other laws concerning trade competition in the Philippines are:

1. The 1987 Constitution (Section 12)
2. The New Civil Code or Republic Act no. 386
3. Executive Order no. 45 (2011) concerning the appointment of Department of Justice (DOJ) as supervisory body over trade competition.

For more information, go to "Philippines Legislation and Jurisdiction". <http://mycc.gov.my/wp-content/uploads/2014/05/Philippines-Legislation-and-Jurisdiction.pdf>; ASEAN Competition Policy and Law. <http://www.aseancompetition.org/aegc/aegc-members/philippines> (Retrieved on 28 August 2015).

Later in 1932, a provision to prevent monopoly was added into Article 186 of the Revised Penal Code (Act no. 3815),⁶⁷ which prohibits the following actions:

- Contract or agreement to restrain competition in the market.
- Monopolization or collusion with others to monopolize in order to manipulate the price of goods in the market.
- Local or foreign manufacturers, producers or importers collaborate to restrain competition in order to raise the market price of goods in the Philippines.

The penalty for violating this Article is imprisonment of 6 months to 2 years and 4 months, and a fine between 15 – 150 US Dollars, which is the rate set in 1932 or over 80 years ago. The Philippines' legal system only sets penalty for natural persons such as company executives, but not for legal persons, which is different from many countries such as the U.S., European countries, South Korea and Singapore, all of which have

⁶⁷ "The Revised Penal Code (Act no. 3815) of 01 January 1932, article 186 provides that

"The penalty of prison correctional in its minimum period or a fine ranging from 200 to 6,000 pesos, or both, shall be imposed upon:

1. Any person who shall enter into any contract or agreement or shall take any part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce to prevent by artificial means free competition in the market.
2. Any person who shall monopolize any merchandise or object of trade or commerce, or shall combine with any other person or persons to monopolize said merchandise or object on order to alter the price thereof by spreading false rumors or making use of any other article to restrain free competition in the market.
3. Any person who, being a manufacturer, producer, or processor of any merchandise or object of any commerce or an importer of any merchandise or object of commerce from any foreign country, either as principal or agent, wholesaler or retailer, shall combine, conspire or agree in any manner with any person likewise engaged in the manufacture, production, processing, assembling or importation of such merchandise or object of commerce or with any other persons not so similarly engaged for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippines, or any such merchandise or object of commerce manufactured, produced, processed, assembled in or imported into the Philippines, or of any article in the manufacture of which such manufactured, produced, processed, or imported merchandise or object of commerce is used."

severe penalties for legal persons. Nevertheless, this Act has never been enforced because it has no clear practical guidelines for considering the prohibited behavior.

Apart from the laws mentioned above, the Philippines' laws have provisions on competition in individual sectors, such as telecommunication, energy, and maritime transport.

The Philippines realizes that it needs a comprehensive competition law that meets international standards, and hence a new law has been drafted since 1990. The law has been in the pipeline under many governments but never been passed. As such, the Philippines currently have no competition law. However, in 2010, President Aquino introduced the Executive Order 45 in order to establish an agency to oversee trade competition, and hence the Office of Competition (OFC)⁶⁸ was created under the Department of Justice as a result. The OFC is responsible for investigation and enforcement of the laws related to competition in the Philippines.⁶⁹ Establishing this agency does not undermine the legal authority of existing agencies that oversee individual sectors or other government departments that enforce other relevant laws. For instance, the Department of Trade and Industry still enforces the laws on pricing. The newly-founded OFC only takes the lead in areas where there is no clear responsible agency to enforce the law.

It should be noted that, as OFC does not have an Act that underwrites its power and duty, its scope of authority is relatively limited. It is therefore still unclear how effective the OFC will be in enforcing trade competition laws in the Philippines.

⁶⁸ Department of Justice, "Office for Competition," <http://www.doj.gov.ph/office-for-competition.html> (Retrieved on 3 February 2015).

⁶⁹ ASEAN Competition Policy and Law, "OFC Policy Paper no. 1," http://www.aseancompetition.org/files/documents/content/articles_publications/165-ofc-policy-paper-no1_1382871579.pdf, (Retrieved on 3 February 2015).

2.1.3 Special treatments the Philippines offers to ASEAN and Thai entrepreneurs

The AEC aims to encourage investors from all ASEAN member countries to invest in the service sectors of other member countries, with the right to hold at least 70% of equity share in the service sectors. To reach such goal, nine rounds of negotiations under the ASEAN Framework Agreement on Services (AFAS) were conducted to allow member countries to negotiate and make proposals on opening up the service sector gradually. As the outcome of the 9th negotiation round of the Philippines is not yet made public, this study presents here the details under the 8th package instead.

AFAS negotiation is divided into two parts. The first part concerns Horizontal Commitment, i.e. the commitment that the Philippines made for every service sectors. The second part is Most Favoured Nation Treatment Exemptions or MFN Exemptions, most of which resulted from reciprocal liberalization.

A. Limitations in the Horizontal Commitment

The Schedule of Horizontal Commitment which was the result of the 8th Package of service trade liberalization negotiation under AFAS includes two types of limitations to market access in the Philippines,⁷⁰ namely commercial presence⁷¹ and the movement of natural persons.

⁷⁰ ASEAN Secretariat, "Philippines – Schedule of specific commitments," <http://www.asean.org/archive/19339.pdf>. (Retrieved on 4 February 2015).

⁷¹ It refers here as Mode 3 Commercial Presence, which means service providers may establish a business in another member country where the service will be delivered. This is one of the four modes of supply following the definition under Article I:2 of the General Agreement on Trade and Services or GATS. For more information, go to World Trade Organization, "Basic Purpose and Concepts," http://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s3p1_e.htm (Retrieved on 4 February 2015).

- Commercial Presence

The Philippines lists out commercial activities allowed only to Filipinos. Foreigners are restricted to hold majority of ownership in such activities. Moreover, executives and managers must be Filipino nationals only.

The Corporation Code of the Philippines sets the requirements for registration, licensure, and supervision of companies and partnerships established in the Philippines. There are two main types of business entities in the Philippines as follows.⁷²

Entities under Filipino Law

- Sole Proprietorship
- Partnerships⁷³
- Corporations⁷⁴

Entities under Foreign Law

- Branch Office
- Representative Office
- Regional Headquarters (RHQ)/ Regional Operating Headquarters (ROHQ)

For more information about each type of entity, please refer to subtopic 2.4.1 and Table 2.5.

It should be noted that all public lands are solely owned by the state. Only Filipino persons or corporations and associations of which at least 60% of shares are owned by Filipino citizens may own and rent lands other than public lands. Corporations

⁷² The Official Gazette of the Government of Philippines, "Registering a Business,"

<http://investphilippines.gov.ph/setting-up/registering-a-business/> (Retrieved on 4 February 2015).

⁷³ Partnership is a legal entity whose legal status separates from its members. It can be ordinary partnership or limited partnership, depending on the scope of responsibility of partners. Registration with the Securities and Exchange Commission (SEC) is required, with no less than 3 million Peso of registered capital (around 2.2 million Baht).

⁷⁴ Corporations are a legal entities under the Corporation Code and are regulated by the SEC. Its status is separated from the stakeholders and it must comprise of 5 to 15 persons, each one must hold at least one share. Registration with the Securities and Exchange Commission (SEC) is required, with no less than 5 million Peso of registered capital (around 3.7 million Baht).

and partnerships which have no more than 40% of foreign ownership may acquire private lands. Therefore, Thai investors who desire to establish businesses in the Philippines are advised to check the status of the particular piece of land and ensure that it conforms to their companies' ownership ratio.

In addition, the Philippines also enforce the principle of National Treatment⁷⁵ by limiting access to domestic credit for foreign non-manufacturing enterprises. In order to access credit in the Philippines, foreign businesses must have a debt to equity ratio at 50:50, i.e. the debt cannot exceed more than half of the company's capital.

- Movement of Natural Persons

Entry and temporary stay of foreign natural persons who have no residency in the Philippines may be allowed to supply a particular type of service, if the government determines that the Philippines requires competent persons in such service and that such service should be encouraged. Nevertheless, the entry and employment in the Philippines must conform to the domestic laws.

(B) Most Favoured Nation Exemptions (MFN Exemptions)⁷⁶

In general, liberalization commitment prescribed in the Schedule refers to the privilege given equally to all ASEAN member countries. Some countries may reserve certain service sectors for bilateral negotiation with trading partners, which are mostly reciprocal liberalization negotiations. In the case of the Philippines, reserved service sectors are presented in Table 2.1 below.

⁷⁵ Joint WTO Committee, "Glossary of Terms," http://www.wtothailand.or.th/glossary.php?glossary_flag=n (Retrieved on 4 February 2015).

⁷⁶ Ibid.

Table 2.1 Sectors with Most Favored Nation Exemptions

Sector	Description of exemption	Reason for exemptions	Intended duration
All Sector	A special visa category is provided for traders and investors of countries with which the Philippines has concluded treaties on entry rights for traders and investors. Under this special category, the labor market test is waived and simplified entry procedures are provided	To facilitate entry into the Philippines, on the basis of reciprocity, of foreign nationals for purposes of trade, investment and related activities.	Expiry date or termination of bilateral treaties on entry rights for traders and investors.
Maritime Transport Services (Liner cargo trade)	Executive Order 769 provides for a preferential cargo sharing arrangement with countries which are parties to the UNCTAD Liner Code. Under the above-mentioned arrangement, a Party to the UNCTAD Liner Code effectively implementing the Code is assured of at least 40% share of its bilateral export and import liner cargo trade with the Philippines.	Ensure effective and speedy participation of Philippine ocean-going fleet in Philippine liner cargo trade.	Indefinite.
Cabotage transport	Access to domestic shipping is reserved for Philippine owned or registered vessels. However, limited access to domestic shipping is granted to countries with which the Philippines has concluded agreements on Amity, Commerce and Navigation.	Allow limited access to cabotage transport on a reciprocal basis.	Expiry date or termination of bilateral agreements on Amity, Commerce and Navigation.
Banking and Other Financial Services (including insurance)	With respect to the granting of authorization for the establishment of commercial presence or expansion of existing operations in Financial Services in the Philippines, favorable treatment would be accorded, on a discretionary basis, to financial service suppliers of another Member that accords favorable treatment to financial service suppliers of the Philippines.	To promote greater liberalization in financial services between the Philippines and other Members in a manner that would contribute to the attainment of Philippine development objectives in the financial sector.	Indefinite.

2.1.4 Foreign Employment Laws

As of 2012, the Philippines has the second largest population in ASEAN.⁷⁷ At the same time, however, it also has the highest unemployment rate in ASEAN.⁷⁸ Such statistics indicate that the Philippines' labor market is not very attractive to foreign workers. The high domestic unemployment rate has also pushed a large number of Filipino workers to seek work overseas. Nonetheless, the Filipino economy is showing positive sign of improvement, as reflected in the rising economic growth rate during the past few years and the ADB's forecast, as previously mentioned. Hence, it is possible that domestic employment, especially for skilled workers and professionals, may increase, which is a good opportunity for Thai professionals to work in the Philippines.

This section presents the laws which regulate professionals in seven sectors namely engineering services, architectural services, surveying services, medical practitioners, dental practitioners, nursing services, and accounting services. These are the sectors which the Philippines has Mutual Recognition Arrangements (MRAs)⁷⁹ with ASEAN member countries to facilitate international movement of professionals in these sectors by recognizing qualifications such as educational qualification (curriculum and educational degrees), professional qualification (professional license and certificate of experience), and so on.

⁷⁷ ASEAN Secretariat, ASEAN Statistical Yearbook, 13.

⁷⁸ *Ibid.*, 22.

⁷⁹ Information about MRAs is provided in Article V Mutual Recognition of ASEAN Framework Agreement on Services (AFAS), signed by ASEAN Economic Ministers on 15 December 1995 in Bangkok, Thailand. MRAs aim to facilitate the movement of professionals in professional service sectors by exchanging information and experience, increasing employment opportunity among professionals, and creating recognition of skills in each sector in order to make ASEAN market efficient, competent, and competitive through the mutual recognition of skills under MRAs. The details of each professional service sectors are based on the objective, fairness, and reciprocal basis. The authority responsible for facilitating the measures under MRAs in the Philippines is Professional Regulatory Commission (PRC) and Department of Labor and Employment (DOLE). For more information about the overall qualifications, conditions, documents, and process for each professional service, please visit Rafaelita M. Aldaba, "ASEAN Economic Community 2015: Labor Mobility and Mutual Recognition Arrangements on Professional Services," <http://dirp3.pids.gov.ph/ris/dps/pidsdps1304.pdf> (Retrieved on 16 February 2015).

A. Engineering Services

Engineering services that are regulated in the Philippines and are likely to be attractive for Thai professionals are Civil Engineering, Electrical Engineering, Agricultural Engineering, and Mechanical Engineering.⁸⁰ This part presents qualifications for those who wish to perform the above four engineering fields according to the Filipino laws.

Civil Engineer

The law which regulates the civil engineering profession in the Philippines is the Republic Act No. 544 - An Act to Regulate the Practice of Civil Engineering in the Philippines. The Act was issued in 1950, or four years after the country gained independence from the U.S. This indicates the importance of civil engineering and construction industry to the national infrastructure development during the country's early years. The Act has several key provisions regulating civil engineering profession, one of which is the requirement that all who wish to become civil engineers in the Philippines must pass a technical examination administered by the Board for Civil Engineers,⁸¹ which is held annually in Manila.

Section 12 specifies key qualifications for persons applying for admission to the civil engineering examination as follows.⁸²

- a. Be at least 21 years of age

⁸⁰ Other fields of engineering such as Aeronautical engineering and Naval architecture and marine engineering are strictly applicable to the Philippines which is an archaeological country and thus highly depends on air and sea transport within the country.

⁸¹ Section 8. Examination Requirement." All applicants for registration for the practice of civil engineering shall be required to pass a technical examination as hereinafter provided.

⁸² Section 12. Qualifications for Examination." Any person applying for admission to the civil engineering examination as herein provided shall, prior to the date of the examination, establish to the satisfaction of the Board that he has the following qualifications:

- a. Be at least twenty-one years of age;
- b. Be a citizen of the Philippines;
- c. Be of good reputation and moral character; and d. Be a graduate of a four-year course in civil engineering from a school, institute, college or university recognized by the Government or the State wherein it is established.

- b. Be a citizen of the Philippines
- c. Have good reputation and moral character
- d. Graduated from a four-year course in civil engineering from a school, institute, college or university recognized by the Government or the State wherein it is established.

Section 12 is therefore a significant limitation for foreign civil engineers who want to work in the Philippines as registration is reserved to citizens of the Philippines only. However, Filipino nationals who graduate from overseas are allowed to apply for registration, which implies that educational institutes in the Philippines do not have capacity to produce sufficient civil engineers to meet the market demand. This is therefore a good opportunity for Thai engineers who meet the following exemptions from registration as specified under Section 15 (1).⁸³

(1) Officers or enlisted men of the United States and Philippine Armed Forces, and civilian employees of the Government of the United States stationed in the Philippines while rendering civil engineering services for the United States and/or Philippines.

(2) Civil engineers or experts called in by the Philippine Government for consultation, or specific design and construction.

Thus, even though foreign civil engineers cannot normally work as civil engineers in the Philippines due to the citizenship constraint under Section 12 (b), the law still provides some room for foreign engineers to work with the government in the Philippines under Section 15 (1). This is likely due to the demand for civil engineers in construction industry to develop national infrastructure as mentioned previously.

⁸³ Section 15. Exemption from Registration."

1. Registration shall not be required of the following persons:

- a. Officers or enlisted men of the United States and Philippine Armed Forces, and civilian employees of the Government of the United States stationed in the Philippines while rendering civil engineering services for the United States and/or Philippines.
- b. Civil engineers or experts called in by the Philippine Government for consultation, or specific design and construction of fixed structures as defined under this Act, provided that their practice shall be limited to such work.

Moreover, this Section reflects the close relationship between the Philippines and the U.S. by providing special treatment for U.S. government employees.

Electronics Engineer

The law which regulates electronics engineering profession in the Philippines is the Republic Act No. 9292 – Electronics and Communications Engineering Act of the Philippines, or Electronics Engineering Law of 2004. The Act was introduced in 2004 in order to regulate the registration and licensure of electronics engineers and technicians. Key provision of the law is the requirement that every person seeking to be registered and licensed as Professional Electronics Engineer (PECE) or Electronics Engineers (ECE) and Electronics Technicians (ECT), must pass the required examinations given by the Professional Regulation Commission (PRC).⁸⁴

Section 14 specifies qualifications for an applicant for Electronics Engineer or Electronics Technician as follows.⁸⁵

⁸⁴ Section 13. Licensure Examination. - Except as otherwise specifically provided in this Act, all applicants seeking to be registered and licensed as Electronics Engineers and Electronics Technicians, shall undergo the required examinations to be given by the Board in such places and dates as the Commission may designate in accordance with the provisions of Republic Act no. 8981.

Professional Regulation Commission (PRC) is a government agency endorsed with power to administrate, process, and enforce the laws, regulations, and licenses concerning 43 professions in the Philippines, which include the 7 professions with ASEAN MRAs. Under PRC, there are 43 Professional Regulatory Boards (PRB) governing individual profession. For more information, please visit Professional Regulation Commission, "About Us," <http://www.prc.gov.ph/about/default.aspx?id=11> (Retrieved on 5 June 2015).

⁸⁵ SEC. 14. Qualifications for Examinations. - In order to be allowed to take the examination for Electronics Engineer or Electronics Technician, an applicant must, at the time of the filing of his/her application, establish to the satisfaction of the Board that:

(a) He/She is a citizen of the Philippines or of a foreign country qualified to take the examination as provided for in Section 33 of this Act;

(b) He/She is of good moral character and had not been convicted by a court of law of a criminal offense involving moral turpitude;

(c) For the Electronics Engineering examinations, he/she is a holder of a degree of Bachelor of Science in Electronics and Communications Engineering or Electronics Engineering, or subject to compliance with minimum requirements to be prescribed by the Board, such equivalent and/or related engineering course or program from any

(a) Be a citizen of the Philippines or of a foreign country qualified to take the examination as provided for in Section 33 (Foreign reciprocity), which states that foreign applicants may be admitted for registration as PECE, ECE or ECT in the Philippines, if the country of which the applicant is a citizen allows Filipino citizens to practice as PECE, ECE or ECT on equal terms, including the recognition of professional licenses issued by the Board or the Commission and degrees/diplomas issued by educational institutions recognized by the government of the Philippines.⁸⁶

(b) Have good moral character and had not been convicted by a court of law of a criminal offense.

(c) For the Electronics Engineering examinations, the applicant must hold a degree of Bachelor of Science in Electronics and Communications Engineering or Electronics Engineering, or course equivalent to that of a full baccalaureate degree;

(d) For the Electronics Technician examinations:

school, institute, college, or university recognized by the Government or the State where it is established, after completing a resident collegiate course equivalent to that of a full baccalaureate degree;

(d) For the Electronics Technician examinations:

(1) is a graduate of an Associate, Technician, Trade or Vocational course in electronics or, subject to the evaluation of the Board, such equivalent and/or related formal or non-formal course or program from any school, college, university or training institution recognized by the Government or the State where it is established, after completing a resident course or program of not less than two (2) years, or

(2) has completed at least the minimum third-year equivalent of a Bachelor of Science program in Electronics and Communications Engineering or Electronics Engineering program according to CHED guidelines, or, subject to the evaluation of the Board such equivalent and/or related engineering course or program from any school, institute, college or university recognized by the Government or State where it is established;

⁸⁶ SEC. 33. Foreign Reciprocity. - No foreigner shall be admitted for registration as Professional Electronics Engineer, Electronics Engineer or Electronics Technician with or without examination under this Act unless he/she proves in the manner as provided by the Board that, by specific provisions of law, the country, state or province of which he/she is a citizen, subject or national, or in accordance with international treaties, agreements and/or covenants to which their country, state or province is a signatory, admits Filipino citizens to practice as Professional Electronics Engineer, Electronics Engineer or Electronics Technician after an examination or registration process on terms of strict and absolute equality with the citizens, subjects or nationals of said country, including the unconditional recognition of professional licenses issued by the Board and/or the Commission and prerequisite degrees/diplomas issued by institutions of learning duly recognized by the government of the Philippines.

- Graduated from a course in electronics or program from any educational institution recognized by the Government in the country where it is established. The duration of the course or program must not be less than 2 years.
- Has completed at least the minimum third-year equivalent of a Bachelor of Science program in Electronics and Communications Engineering or Electronics Engineering program according to CHED⁸⁷ guidelines, or, subject to the evaluation of the PRB⁸⁸ Board such equivalent and/or related engineering course or program from any school, institute, college or university recognized by the Government or State where it is established.

Section 18 specifies the qualifications and schedule of registration for Professional Electronics Engineer as follows.⁸⁹

⁸⁷ Commission on Higher Education (CHED) was founded on 18 May 1994 by the Republic Act no. 7722, also known as The Higher Education Act of 1994. CHED is a government agency which plans and makes decision on higher education policy and strategy. For more information, please see Commission on Higher Education, "About CHED," <http://www.ched.gov.ph/index.php/home/about-ched/background/> (Retrieved on 2 May 2015).

⁸⁸ See Footnote 36.

⁸⁹ SEC. 18. Qualifications and Schedule of Registration for Professional Electronics Engineer. - For application for registration as a Professional Electronics Engineer, the following shall be required:

- (a) Valid Certificate of Registration and Professional Identification Card as Electronics Engineer;
- (b) Valid/current membership identification card from the Accredited Professional Organization;
- (c) Certified experience record of active self-practice and/or employment either in government service or in the private sector, in the format to be prescribed by the Board, indicating the inclusive dates, companies worked for, description of specific responsibilities, relevant accomplishments and name, position of immediate supervisors for a period of at least seven (7) years (inclusive and/or aggregate), at least two (2) years of which are in responsible charge of significant engineering work, from the date applicant took his/her oath as an Electronics and Communications Engineer or Electronics Engineer;
- (d) Three (3) certifications signed by three (3) Professional Electronics Engineers attesting that the experience record submitted by the applicant is factual.

(a) Hold a valid Certificate of Registration and Professional Identification Card as Electronics Engineer.

(b) Be a member of the Accredited Professional Organization (APO).⁹⁰

(c) Have certified experience record of active self-practice and/or employment either in government service or in the private sector, in the following format:

- Indicating the inclusive dates, companies, description of specific responsibilities, relevant accomplishments;
- Name, position of immediate supervisors for a period of at least 7 years (inclusive and/or aggregate);
- At least 2 years of which are in responsible charge of significant engineering work, from the date applicant took his/her oath as an Electronics and Communications Engineer or Electronics Engineer.

(d) Obtained letters of recommendations from 3 Professional Electronics Engineers attesting that the experience record submitted by the applicant is factual.

Applications for registration as Professional Electronics Engineer may be submitted anytime to the PRC. The PRB shall then schedule an oral interview for the purpose of verifying, authenticating and assessing the applicant according to rules, regulations and competency standards formulated by the PRB. Those who have been registered and licensed as Electronics and Communications Engineers under Republic Act No. 5734 for at least 7 years upon the implementation of this Act need to submit items (a), (b), and (c) only. Those who have been registered and licensed as Electronics and Communications Engineers under Republic Act No. 5734 for less than 7 years must submit item (d) in addition. Once the applicant passed the oral interview, he/she can be registered as a Professional Electronics Engineer.

⁹⁰ Accredited Professional Organization (APO) refers to a professional body approved by PRC. In the case of electronics engineer, it is The Institute of Electronics Engineers of the Philippines, Inc. (IECEP)

It should be noted that within 5 years after the implementation of this Act, the PRB may issue Certificates of Registration and Professional Identification Cards without examination to applicants who satisfy the following requirements.⁹¹

(1) Be a graduate of at least a two-year course in Electronics as certified by the Technical Education and Skills Development Authority (TESDA), or completed at least the minimum third-year equivalent of a Bachelor's Degree of Science in Electronics and Communications Engineering or Electronics Engineering program according to CHED guidelines, or, upon the assessment of PRB, a course or program recognized by the Government.

(2) Have at least 7 years (inclusive or aggregate) of self-practice and/or employment either in the Government or private sector, indicating specific duties and responsibilities, relevant accomplishments, names and positions of immediate superiors.

The above documents must be accompanied by 3 letters of recommendations from registered Professional Electronics Engineers vouching for the integrity, technical capability and good moral character of the applicant.

⁹¹ SEC. 20. Registration without Examination for Electronics Technicians. - Within five (5) years after the effectivity of this Act, the Board shall issue Certificates of Registration and Professional Identification Cards without examination to applicants for registration as Electronics Technicians who shall present evidence or other proof satisfactory to the Board that:

(a) He/She is a graduate of at least a two-year Associate, Technician, Trade or Vocational course in Electronics as certified by the TESDA, or that he/she has completed at least the minimum third-year equivalent of a Bachelor's Degree of Science in Electronics and Communications Engineering or Electronics Engineering program according to CHED guidelines, or, subject to the evaluation of the Board, an equivalent and/or related formal or non-formal course or program from any school, institute, college, university or training institution recognized by the Government or the State where it is established, and

(b) He/She has rendered at least seven (7) years (inclusive or aggregate) of active self-practice and/or employment either in the Government or private sector, indicating therein his/her specific duties and responsibilities, relevant accomplishments, the complete names and addresses of clients and companies or persons worked for, as well as the names and positions of immediate superiors.

The above submittals shall be accompanied by a certification from at least three (3) registered Professional Electronics Engineers vouching for the integrity, technical capability and good moral character of the applicant.

Section 26 exempts foreign PECE, ECE, or ECT temporarily employed by the Philippines Government or private firms in the following cases from examination and registration.⁹²

(a) When APO attested that no qualified equivalent Filipino professional is available for the specific item of work;⁹³

⁹² SEC. 26. Exemptions from Examination and Registration. - No examination and registration shall be required for foreign Professional Electronics Engineers, Electronics Engineers or Electronics Technicians who are temporarily employed by 13 the Philippine Government or by private firms in the Philippines in the following cases:

(a) Where no qualified equivalent Filipino professional is available for the specific item of work to be rendered, as attested to by the Accredited Professional Organization;

(b) Where the conditions of the scope and funding for the work or project are such that it stipulates the temporary employment of a foreign professional;

(c) As defined in the General Agreement on Trade in Services, the ASEAN and APEC Engineer Registry programs and other similar international treaties, agreements and/or covenants to which the Philippine Government is a signatory and has ratified: Provided, however, That:

(1) The said foreign professional is legally qualified to practice his/her profession in his/her own country in which the requirements for licensing and registration are not lower than those specified in this Act;

(2) The work to be performed by said foreign professional shall be limited only to the particular work or project for which he/she was specifically contracted;

(3) Prior to commencing the work, the foreign professional shall secure a Special Permit from the Board, which shall be subject to the approval of the Commission; Provided, That no working visa and/or permit shall be issued by concerned government agencies unless such Special Permit has been granted first;

(4) The same foreign professional shall not engage in private practice on his/her own account;

(5) For every foreign professional contracted for the work or project, at least two (2) corresponding Filipino professionals who are registered under this Act shall be employed as counterparts by the Philippine Government or the private firm utilizing the services of such foreign professional for at least the same duration of time as the foreigner's tenure of work; and

(6) The Special Permit herein granted shall be valid only for a period of not more than six (6) months and renewable every six (6) months thereafter subject to the discretion of the Board and the approval of the Commission: Provided, That said permit shall cease to be valid if the foreigner terminates his/her employment in the work or project for which said permit was originally granted and thereafter engages in an occupation that requires another Special Permit or registration under this Act.

(b) Where the conditions of the scope and funding for the work or project stipulates the temporary employment of a foreign professional;

(c) Additional conditions under General Agreement on Trade in Services, projects and agreements under ASEAN and APEC Engineer Registry, and other treaties to which the Philippines is signatories. Provided that they have following conditions:

- The foreign professional is legally qualified to practice his/her profession in his/her own country in which the requirements for licensing and registration are not lower than those specified in this Act.
- The work to be performed by foreign professional shall be limited only to what are specified in the contract.
- Prior to commencing the work, the foreign professional must hold a Special Permit from the PRB and PRC. No working visa and/or permit shall be issued by concerned government agencies unless such Special Permit has been granted first.
- The foreign professional cannot engage in private practice.
- For every foreign professional contracted for the work or project, at least 2 corresponding Filipino professionals who are registered under this Act shall be employed by the Philippine Government or the private firm employing such foreign professional for at least the same duration of time as the foreigner's tenure of work.
- The Special Permit shall be valid only for a period of not more than 6 months and renewable every 6 months, subjected to the discretion of the PRB and the approval of the PRC. The Special Permit will be invalid immediately after the foreign professionals cancelled the job specified in the Permit.

⁹³ In this process, the PRC would ask APO to check whether there are Filipino nationals with qualifications equivalent to the foreign applicants in the market. While APO can attest that there is no qualified Filipino national to take the particular job, the power to allow such foreigners to work in the Philippines still rests within the PRC.

It should be noted that electronics engineering is not listed as a controlled engineering under Engineering Act, B.E. 2542; therefore, Thai electronics engineers do not have professional licenses issued by Council of Engineers of Thailand. This may present a problem where a professional license is needed as proof for professional qualification. Nonetheless, the PRC may make an exemption or request other documents on a case-by-case basis or the principle of foreign reciprocity in Section 14.

Agricultural Engineering

The law which regulates agricultural engineering profession in the Philippines is the Republic Act No. 8559 - Philippines Agricultural Engineering Act of 1998. The provisions under this Act are similar to the Act regulating the above engineering services. That is, all applicants for registration for the practice of agricultural engineering are required to pass a written examination. Section 13 of Republic Act no. 8559 specifies the following qualifications for applicant.⁹⁴

(a) Be a citizen of the Philippines.

(b) Hold a Bachelor of Science in Agricultural Engineering or its equivalent recognized by the CHED.

It should be noted that foreign nationals may temporarily work as agricultural engineers or consultants, if their Country of Origin permits Filipino agricultural engineers to work in such country on the same basis (Foreign reciprocity).⁹⁵

⁹⁴ SECTION 13. Qualification of an applicant for examinations. — Every applicant for the examination for agricultural engineers shall establish the following:

(a) Be a citizen of the Philippines;

(b) Be a graduate of Bachelor of Science in Agricultural Engineering or its equivalent in a school, academy, institute, college or university duly recognized by the CHED.

⁹⁵ SECTION 27. Foreign reciprocity. — No foreign agricultural engineer shall be issued a temporary license to practice the agricultural engineering profession or consultancy thereof or be entitled to any of the rights and privileges under this Act unless the country of which he is a subject or citizen specifically permits Filipino agricultural engineers to practice within its territorial limits on the same basis as the subjects or citizens of such foreign state or country.

Therefore, Thai engineers may work as agricultural engineers in the Philippines on temporary basis under Section 27. However, as agricultural engineering is not regulated under the Engineering Act, B.E. 2542, this, again, can present a problem when a professional license is needed as proof of engineering qualification – similar to the case of electronics engineer.

Mechanical engineer

The law which regulates the mechanical engineering profession in the Philippines is the Republic Act No. 8495 - Philippines Mechanical Engineering Act of 1998. The Act requires all applicants for registration of the practice of mechanical engineering to pass a written technical examination, and provided three types of licenses namely Professional Mechanical Engineer (PME), Mechanical Engineer (ME), and Certified Plant Mechanic (CPM).

Applicants for Professional Mechanical Engineer (PME) must fulfill the following requirements.⁹⁶

- (a) Be a citizen of the Philippines;
- (b) Never been convicted by a court of law of a crime involving moral turpitude;
- (c) Have a valid certificate of registration and are a registered mechanical engineer (ME) and a holder of a valid professional license;

⁹⁶ Section 14. Qualifications of Applicants for Professional Mechanical Engineer.- Any applicant to the professional mechanical engineering examination must, at the time of filing of his application, establish to the satisfaction of the Board that:

- (a) He is a citizen of the Philippines;
- (b) He must not have been convicted by a court of law of a crime involving moral turpitude;
- (c) He has a valid certificate of registration and he is a registered mechanical engineer and a holder of a valid professional license;
- (d) He has graduated from an engineering school or college of recognized standing, after completing an approved course in mechanical engineering;
- (e) He has specific record of a total of four (4) years or more of active mechanical engineering practice, reckoned from the time he registered a mechanical engineering practice; and
- (f) He is competent to practice, as attested to by at least two (2) professional mechanical engineers.

- (d) Graduated from an engineering school or college of recognized standing;
- (e) Have at least 4 years of active mechanical engineering practice; and
- (f) Be competent to practice, as attested to by at least 2 professional mechanical engineers (PME).

Applicants for Mechanical Engineer (ME) must have qualifications as follows.⁹⁷

- (a) Be a citizen of the Philippines;
- (b) Never been convicted by a court of law of a crime involving moral turpitude;
- (c) Hold the degree of Bachelor of Science in Mechanical Engineering from an institute recognized by the government.

Applicants for Certified Plant Mechanic (CPM) must have the following qualifications.⁹⁸

- (a) Never been convicted by a court of law of a crime involving moral turpitude;

⁹⁷ Section 15. Qualifications of Applicants for Mechanical Engineer - Any person applying for examination and for a Certificate of Registration as Mechanical Engineer shall, prior to admission to the examinations, establish to the satisfaction of the Board that:

- (a) He is a citizen of the Philippines;
- (b) He must not have been convicted by a court of law of a crime involving moral turpitude;
- (c) He holds the degree of Bachelor of Science in Mechanical Engineering from a university, school, College, academy, or institute duly constituted and recognized as such by the government.

⁹⁸ Section 16. Qualifications of Applicants for Certified Plant Mechanic.- Any person applying for examination for certificate of registration as Certified Plant Mechanic shall establish to the satisfaction of the Board that:

- (a) He must not have been convicted by a court of law of a crime involving moral turpitude;
- (b) He has graduated from a vocational or trade school duly recognized by the government after completing an approved course of not less than two (2) years in stationary or power plant engineering or any mechanical plant operation; and
- (c) He has specific record of an additional one (1) year or more of active practice in mechanical plant operation of such character as indicated in an affidavit of a registered professional mechanical engineer and, likewise establish to the satisfaction of the Board, that the applicant is competent to undertake the operation, tending and maintenance of mechanical works, projects or plant of not less than one hundred (100) kilowatts.

(b) Graduated from an approved course of not less than 2 years in stationary or power plant engineering or any mechanical plant operation; and

(c) Have record of an additional 1 year or more of active practice in mechanical plant operation as attested by a registered professional mechanical engineer that the applicant is competent to undertake the mechanical works, projects or plant of not less than 100 kilowatts.

Section 31 specifies scope of Temporary/Special Permits by PRC as follows.⁹⁹

(a) If a foreign mechanical engineers is called in for consultation or for a project not requiring more than 3 months residence in the Philippines in a 12 month period, such engineers must legally practice mechanical engineering in their own country in which the requirements for registration are at least equal to those specified in this Act.

⁹⁹ Section 31. Coverage of Temporary/Special Permits. -The following shall be required to secure a Temporary/Special Permit from the Board subject to the approval by the Commission.

(a) Mechanical engineers, installation, commission or graduate engineers from other countries called in for consultation or for a specific design or installation project not requiring more than three (3) months residence in the Philippines in a twelve (12) month period: Provided, That such engineers are legally qualified to practice mechanical engineering in their own country or state in which the requirements and qualifications for obtaining a certificate of registration are at least equal to or more than those specified in this Act as certified by the Board;

(b) Foreigners employed as technical officers, training officers or consultants in such special branches of mechanical engineering who, in the judgment of the Board, are necessary and advantageous for the country particularly in the aspects of technology transfer, may be issued temporary permits: Provided, That such engagements have satisfied conditions, as may be deemed necessary as follows:

1) Non-availability of a mechanical engineer and/or mechanic in the country who is competent, able and willing at the time of engagement to perform the service for which the foreigner is desired for;

2) The foreigner must have been in the prior employ of the engaging firm, or its foreign business partner, outside of the Philippines for a period of not less than one (1) year immediately preceding the date of his engagement;

3) Any particular or specific engagement shall not be in excess of six (6) months but may be renewed once, if necessary, except when such engagement is for a newly established firm in which case the period of engagement may be for a longer term but not to exceed a total term of two (2) years.

(b) Foreigners employed as technical officers, training officers or consultants in special branches of mechanical engineering necessary for technology transfer may be issued temporary permits under these conditions.

- Non-availability of a local mechanical engineer who is competent and willing to perform the service for which the foreigner is desired for.
- The foreigner must have been employed by a firm outside the Philippines for at least 1 year immediately preceding the date of his engagement.
- Any particular or specific engagement shall not exceed 6 months but may be renewed once. For a newly established firm, the period of engagement may be longer term but not exceed a total term of 2 years.

Mechanical engineering is specified as a controlled engineering service under Engineering Act, B.E. 2542. Therefore, it is possible to compare the professional licenses between both countries. Nonetheless, similar to the case of civil engineer, those who wish to be PME and ME must be a citizen of the Philippines. However, exemption is available for foreign engineers wishing to work in the Philippines under Section 31 (b).

In 2005, ASEAN member countries signed the ASEAN MRA on Engineering Services. The MRA stipulates qualifications of professional engineers that are mutually recognized by the parties as follows.

- (1) Completed an accredited engineering degree recognized by the professional engineering body in the Country of Origin or Host Country.
- (2) Possess a professional licensing certificate issued by the Professional Regulatory Authority (PRA) of the ASEAN Member Countries.
- (3) Acquired practical experience of not less than 7 years after graduation, at least two 2 of which shall be in charge of significant engineering work.
- (4) In compliance with Continuing Professional Development (CPD) policy of the Country of Origin at a satisfactory level.
- (5) Obtained certification from the Professional Regulatory Authority (PRA) of the Country of Origin with no record of serious violation on technical, professional or ethical standards.

A Professional Engineer who possesses the above qualifications may apply to become an ASEAN Chartered Professional Engineer (ACPE) with the ASEAN Chartered Professional Engineer Coordinating Committee (ACPECC), which consists of regulatory authorities of engineering profession in all ASEAN countries. As of September 2015, there are 1,260 ACPE-registered engineers, 24 of which are from Thailand.¹⁰⁰

ACPE may request to be registered as Registered Foreign Professional Engineer (RFPE) with Professional Council in ASEAN countries in which he/she wishes to work, but in collaboration with designated local professional engineers in that country only.¹⁰¹ This opens an opportunity for Thai engineers graduated from Thai universities to work as civil engineers or mechanical engineers in the Philippines, despite the nationality restriction. On the other hand, the MRA is not of great benefit to electronics and agricultural engineers as they are not controlled engineering services in Thailand. Thus, the recognition of professional qualifications in such engineering fields may be difficult.

¹⁰⁰ ASEAN Chartered Professional Engineering Coordinating Committee, "Home," <http://acpecc.net/v2/> (Retrieved on 3 September 2014).

¹⁰¹ ASEAN Chartered Professional Engineering Coordinating Committee, "Application for Registration as ASEAN Chartered Professional Engineer (ACPE)," <http://app.peb.gov.sg/circular/circular25.pdf> (Retrieved on 3 September 2014).

Table 2.2 Summary of Qualifications and Requirements for Each Engineering Services in the Philippines

Qualifications ¹⁰²	Civil engineer	Electronics engineer	Agricultural engineer	Mechanical engineer
Pass exam	Section 8	Section 12	Section 12	Section 12
Nationality	Filipino only (Section 12) Foreign civil engineers must work as consultants or specialists in a project (Section 15 (2))	Filipino or others (Section 14) Section 26 allows foreign engineers to temporary work for 6 months. ¹⁰³ Section 33 specifies a condition that foreign engineers must come from countries with foreign reciprocity practice.	Filipino or others (Section 13 (1)) Section 27 specifies a condition that foreign engineers engaging in temporary work ¹⁰⁴ must come from countries with foreign reciprocity practice.	Section 14 and Section 15 allow only Filipino ME and PME. Foreign PME and ME may temporary work in the Philippine for 3-12 months (Section 31 (2)). Section 16 does not impose nationality restriction for CPM if the contract is temporary and not exceed 2 years (Section 31 (2)).

¹⁰² Qualifications under MRA made in 2005 that encompass all engineering services are as follows.

- (1) Completed an accredited engineering degree recognized by the professional engineering body in the Country of Origin or Host Country.
- (2) Possess a professional license issued by Professional Regulatory Authority (PRA) of ASEAN Member Countries.
- (3) Acquired practical experience of not less than 7 years after graduation, at least two 2 of which shall be in charge of significant engineering work.
- (4) In compliance with Continuing Professional Development (CPD) of the Country of Origin at a satisfactory level.
- (5) Has no record of serious violation on technical, professional or ethical standards.

¹⁰³ Foreign PECE, ECE, and ECT may be employed only when there is no Filipino with equivalent qualifications available. The employment ratio is 2 Filipinos to 1 Foreigner (Section 26). Moreover, foreign PECE, ECE, and ECT must register with APO and have 3 letters of recommendation from PECE.

¹⁰⁴ Duration of employment is not specified.

Table 2.3 Comparison of MRA Benefits for Each Engineering Field

Civil Engineer	Electronics Engineer	Agricultural Engineer	Mechanical Engineer
Beneficial through exemption from nationality requirement. However, other requirements under MRA must also be met.	May not be of benefit because there is no professional electrical engineering license in Thailand, but could be beneficial if the Council of Engineers of Thailand or other related agencies allow Filipino electrical engineers to work in Thailand. However, other requirements under MRA must also be met.	May not be of benefit because there is no professional electrical engineering license in Thailand, but could be beneficial if the Council of Engineers of Thailand or other related agencies allow Filipino electrical engineers to work in Thailand. However, other requirements under MRA must also be met.	Beneficial through exemption from nationality requirement. However, other requirements under MRA must also be met.

B. Architectural Services

The law which regulates the architectural profession in the Philippines is the Republic Act No. 9266 or The Architecture Act of 2004. Issued in 2004, the act's key provision is to require all applicants for registration for the practice of architecture to undergo a licensure examination held by the Professional Regulatory Board of Architecture (PRBoA).

Section 13 sets out qualifications of applicant for licensure examination as follows¹⁰⁵

¹⁰⁵ SEC. 13. Qualifications of Applicant for Examination. – Any person applying for examination shall establish to the satisfaction of the Board that:

- a. He/she is a Filipino citizen or a citizen of a foreign country qualified to take the examination as provided for in this Act;
- b. He/she is of good moral character;
- c. He/she is a holder of a degree of Bachelor of Science in Architecture conferred by a school, college, academy or institute duly recognized and/or accredited by the Commission on Higher Education (CHED) and in

(1) Be a Filipino citizen or a citizen of a foreign country who satisfies the requirements under this Act.

(2) Be of good moral character.

(3) Hold a degree of Bachelor of Science in Architecture conferred by a school, college, academy or institute duly recognized and/or accredited by CHED and a specific record of at least 2 years of diversified architectural experience certified by a registered/licensed architect. An applicant holding a Master's Degree in Architecture from an institute recognized by the government shall be credited 1 year in his/her practical experience.

(4) Never been convicted of any criminal offensive involving moral turpitude.

Similar to engineering service, the Act regulating architectural service employs the principle of foreign reciprocity. Foreign architects are allowed to take licensure examination if the countries of which they are citizens admit citizens of the Philippines to the practice of the same profession without restriction.¹⁰⁶

In addition, foreign architects may be allowed to perform architectural service as architects or consultants in the Philippines in foreign-funded or assisted projects of the government, or employed or engaged by Filipino or foreign contractors or private firms, provided that they receive approval from the PRC, which will consider the following conditions.¹⁰⁷

addition has a specific record of at least two (2) years or equivalent of diversified architectural experience duly certified by a registered/licensed architect: Provided, however, That an applicant holding a Master's Degree in Architecture from a school, college, university or institute recognized by the government shall be credited one (1) year in his/her practical experience; and

d. He/she has not been convicted of any criminal offensive involving moral turpitude.

¹⁰⁶ SEC. 27. Reciprocity Requirements. – A person who is not a citizen of the Philippines at the time he/she applies to take the examination shall not be allowed to take the licensure examination unless he/she can prove, in the manner provided by the Rules of Court that, by specific provision of law, the country of which he/she is a citizen, subject or national either admits citizens of the Philippines to the practice of the same profession without restriction or allows them to practice it after passing an examination on terms of strict and absolute equality with citizens, subjects or national of the country concerned, including the unconditional recognition of prerequisite degrees/diplomas issued by the institutions of learning duly recognized for the purpose by the Government of the Philippines.

¹⁰⁷ Sec. 38. Coverage of Temporary/Special Permits. – Foreign nationals who have gained entry in the Philippines to perform professional services as architects or consultants in foreign-funded or assisted projects of the government or employed or engaged by Filipino or foreign contractors or private firms, shall, before assuming the duties, functions and responsibilities as architects or consultants, secure a special/temporary permit from the Board subject to

(a) Be a citizen or subject of a country which permits Filipino professionals to perform architectural services within their territorial limits;

(b) Be legally qualified to practice architecture in his/her own country, and that his/her expertise is necessary and advantageous for technology transfer;

(c) Must work with Filipino architect and pay taxes to the Philippine government

(d) Organizations or individuals who employ foreign architects are responsible for securing a permit from PRC and the Department of Labor and Employment (DOLE).

Similar to the engineering profession, there is a nationality restriction for foreign architects, which is a major obstacle to working in the Philippines. Nevertheless, the Act provides room for foreign architects to work in the Philippines on the foreign reciprocity basis under Section 27. Even though the Thai law allows foreign architects to register as

approval of the Commission. To practice his/her profession in connection with the project to which he/she was commissioned: Provided, That a foreign national or foreign firm, whose name or company name, with title architect, architectural consultant, design consultant, consultant or designer appear on architectural plans, specifications and other related construction documents, for securing buildings permits, licenses and government authority clearances for actual building project construction in the Philippines and advertisement and billboards for marketing purposes, shall be deemed practicing architecture in the Philippines, whether the contract for professional services is consummated in the Philippines or in a foreign country: Provided, further, That the following conditions are satisfied as follows:

a. That he/she is a citizen or subject of a country which specifically permits Filipino professionals to practice his/her profession within their territorial limits, on the same basis as the subjects or citizens of such foreign state or country;

b. That he/she is legally qualified to practice architecture in his/her own country, and that his/her expertise is necessary and advantageous to our country particularly in the aspects of technology transfer and specialization;

c. That foreign nationals shall be required to work with a Filipino counterpart and shall also be responsible for public utilities and taxes due to the Philippine government, relative to their participation in, or professional services rendered to the project, in accordance with the established implementing rules and regulations providing for the procedure for the registration and/or issuance of temporary/special permits to foreign architects allowed by law to practice their profession in the Philippines by the Board of Architecture and the accredited professional organization; and

d. Agencies, organizations or individuals, whether public or private, who secure the services of foreign professional authorized by law to practice in the Philippines for reasons aforementioned, shall be responsible for securing a special permit from the Professional Regulation Commission (PRC) and the Department of Labor and Employment (DOLE) pursuant to PRC and DOLE rules.

extraordinary members, foreign applicants are required to pass the licensure examination in Thai language, which is an obstacle for foreigners. Thus, Thailand may not be able to apply the foreign reciprocity principle.

In 2007, ASEAN member countries signed the ASEAN MRA on Architectural Services, which is an agreement on mutual recognition of architecture qualifications in ASEAN. However, this agreement does not cover urban planning and landscape architecture. Therefore, architects who will benefit from the MRA are the professionals in architecture and interior architecture only.

The conditions and mutually recognized qualifications under ASEAN MRA on Architectural Services are as follows.

- (1) Completed an architectural degree recognized by the professional architectural council whether in the Country of Origin or Host Country or assessed and recognized as having the qualities equivalent to a holder of such a degree. The education for architects should be no less than 5 years in duration delivered on a full time basis.
- (2) Hold current professional license in the Country of Origin.
- (3) Acquired no less than 10 years of continuous work experience in architecture after graduation, of which no less than 5 years shall be after obtaining professional license and at least 2 years of which shall be in responsible charge of significant architectural works.¹⁰⁸
- (4) Complied with the Continuing Professional Development (CPD) policy as determined by the professional council of the country of Origin.
- (5) Has no record of serious violation of technical and ethical standards regarding the practice of architecture.

¹⁰⁸ The MRA stipulates that "significant architectural work" shall be determined at the discretion of the professional council of each member country based on the type, duration, value, and complexity of the project under the applicant's responsibility.

- (6) Complied with any other requirements determined by the ASEAN Architect Council (AAC), which comprises of professional councils from all ASEAN countries and is established by this MRA.

Architects who meet all aforementioned requirements can apply with the AAC to be registered as an ASEAN Architect (AA). If granted, he/she will be eligible to be registered as a Registered Foreign Architect (RFA) with the professional architectural council of the host country and work there with a local architect.

To conclude, this MRA for architectural service has very similar conditions to the MRA for engineering service. That is, it allows Thai architects who specialize in architecture and interior architecture with diplomas from Thai institutions who are barred from registering as architects in the Philippines due to nationality requirements to work in the Philippines after registering as AA and RFA respectively. Foreign architects must, however, work in collaboration with local architects in the Philippines only.

C. Surveying services

The law which regulates surveying professionals in the Philippines is the Republic Act No. 8560 or Philippines Geodetic Engineering Act of 1998. The Act's main provision is the establishment of the Board of Geodetic Engineering (BGE) to regulate and register surveying professionals in the Philippines. The Board also requires that all surveying professionals must pass licensing test to practice in the country.

Section 12 states the eligibilities of applicant who can register as a surveying professional in the Philippines as follows.¹⁰⁹

- (1) Be a citizen of the Philippines.

- (2) Be a graduate with a Bachelor of Science in Geodetic Engineering from a university or institution or college recognized by the Government.

¹⁰⁹ Section 12. Qualifications of Applicant for Examination. - Every applicant for examination shall establish the following:

- (a) That he is a citizen of the Philippines;
- (b) That he is a graduate of Bachelor of Science in Geodetic Engineering in a school, academy, insitute or college duly recognized by the Government.

Foreign surveying professionals are allowed to take licensure examination in the Philippines if the BGE determines that the countries of which they are citizens treat Filipino surveying professionals with the regulations and standards equivalent to those on this law.¹¹⁰

Similar to the cases of engineering and architecture, the Philippines laws require that those who wish to work as surveying professionals have to be Filipino citizens or citizens of countries which provide the same rights for Philippines citizen per foreign reciprocity. In Thailand, geodetic engineering is not formally regulated except for land surveying which requires registration with the Department of Lands. However, land surveyors in Thailand must be Thai nationals. In this case, foreign reciprocity per Section 26 may not be useful for Thai surveyors.

In 2007, ASEAN member countries signed the ASEAN Framework Arrangement for the Mutual Recognition of Surveying Qualifications. This agreement differs from the MRAs for engineering and architecture in that it is only a framework for future negotiations to agree on mutually recognized qualifications for all ASEAN countries. Thus, Thai surveyors cannot yet benefit from the MRA and practice in the Philippines.

D. Medical Practitioners

The law which regulates medical practitioners in the Philippines is the Republic Act No. 2382 or the Medical Act of 1959. The law was issued in 1959 with its main provision to establish the curriculum for medical schools. It also sets qualifications of individuals eligible to register as medical practitioners in the Philippines such as requiring that they must be at least 21 years old and pass a licensure exam.¹¹¹

¹¹⁰ Section 26. Foreign Reciprocity.- No foreign Geodetic Engineer shall be issued a temporary license to practice the Geodetic Engineering profession or consultancy thereof or be entitled to any of the rights and privileges under this Act unless the country of which he is a subject or citizen specifically permits Filipino Geodetic Engineers to practice within its territorial limits on the same basis as the subjects or citizens of such foreign state or country.

¹¹¹ Section 8. Prerequisite to the Practice of Medicine.- No person shall engage in the practice of medicine in the Philippines unless he is at least twenty-one years of age, has satisfactorily passed the corresponding Board of Examination and is a holder of a valid Certificate of Registration duly issued to him by the Board of Medical Examiners.

The qualifications of those eligible to take the licensure exam to practice medicine in the Philippines are as follows:¹¹²

(1) Be a citizen of the Philippines or a citizen of any foreign country determined by the Department of Foreign Affairs to have laws regulating medical practitioners that are similar to the Philippines

(2) Be of good moral character.

(3) Be of sound mind.

(4) Not have been convicted of any offense involving moral turpitude.

(5) Be a holder of the degree of Doctor of Medicine from an institution recognized by the Department of Education.

Section 12 states qualifications for individuals eligible to practice medicine in the Philippines without a license as follows:¹¹³

¹¹² Section 9. Candidates for Board Examinations.- Candidates for Board examinations shall have the following qualifications:

1. He shall be a citizen of the Philippines or a citizen of any foreign country who has submitted competent and conclusive documentary evidence, confirmed by the Department of Foreign Affairs, showing that his country's existing laws permit citizens of the Philippines to practice medicine under the same rules and regulations governing citizens thereof;

2. He shall be of good moral character;

3. He shall be of sound mind;

4. He shall not have been convicted by a court of competent jurisdiction of any offense involving moral turpitude;

5. He shall be a holder of the degree of doctor of Medicine or its equivalent conferred by a college of medicine duly recognized by the government; and

6. He must have completed a calendar year of technical training known as internship the nature of which shall be prescribed by the Board of Medical Education undertaken in hospitals and health centers approved by the Board.

¹¹³ Section 12. Limited practice without any certificate of registration.- Certificates of registration shall not be required of the following persons:

(A) Foreign physicians called in for consultation in specific cases or those attached to international bodies assigned to perform in the Philippines on specific work shall secure a special permit from the PRC, approved by the Board of Medical Examiners after consideration based on the Foreign Reciprocity principle.¹¹⁴

(B) Commissioned medical officers of the United States armed forces stationed in the Philippines.

(C) Foreign physicians employed as exchange professors in fields the Board of Medical Education sees as necessary. Medical students who pass at least the first four years of medical schools and registered nurses may practice in the case of epidemics or emergencies in the case where registered physicians cannot provide service.

Similar to other professions, those who wish to be physicians in the Philippines must be a Philippine national. Nonetheless, Thai physicians who meet requirements in Section 12 may work as physicians in the Philippines on a temporary basis.

In 2009, ASEAN member countries signed the ASEAN MRA on Medical Practitioners which is an agreement on mutual recognition of qualification of physicians

a. Physicians and surgeons from other countries called in consultation only and exclusively in specific and definite cases, or those attached to international bodies or organizations assigned to perform certain definite work in the Philippines, provided they shall limit their practice to the specific work assigned to them and provided further they shall secure a previous authorization from the Board of Medical Examiners.

b. Commissioned medical officers of the United States Armed Forces stationed in the Philippines while rendering services as such only for the members of the said armed forces and within the limit of their own respective territorial jurisdiction.

c. Foreign physicians employed as exchange professors in special branches of medicine or surgery whose service may, upon previous authorization of the Board of Medical Examiners. Medical students who have completed the first four year of medical course, graduates of medicine and registered nurses who may be given limited and special authorization by the Secretary of Health to render services during epidemics or national emergencies whenever the services of duly registered physicians are not available. Such authorization shall automatically cease when the epidemic or national emergency is declared terminated by the Secretary of Health.

¹¹⁴ The PRC is in the process of producing a handbook stating all the exemptions in hiring foreign labor under the MRAs. <http://dirp3.pids.gov.ph/ris/dps/pidsdps1304.pdf> (Page 3-4 Retrieved 5 February, 2015).

in ASEAN. If a person is qualified to work as physicians in one ASEAN country, he/she can work in another ASEAN country if the following qualifications are met:

- (1) In possession of a medical degree recognized by the professional medical council of the Country of Origin and the Host Country;
- (2) In possession of a valid professional license to practice medicine issued by the professional medical council of the Country of Origin;
- (3) Has been in active practice as a general medical practitioner or a specialist for no less than five continuous years in the Country of Origin;
- (4) In compliance with CPD as mandated by the professional medical council of the Country of Origin;
- (5) Has been certified by the professional medical council of the Country of Origin of not having violated any professional and ethical standards, local and international;
- (6) Has no investigation or legal proceeding pending against him/her in the Country of Origin
- (7) In compliance with any other conditions as may be imposed by the professional medical council of the Host Country

It is the view of this study however, that this MRA is not of great use for Thai physicians as they must meet the five-year professional experience requirement, which must be performed in the country of origin only. This means that physicians who had gained practical experience in other countries (These physicians are already more inclined to practice abroad) but have worked in Thailand for less than five years are not qualified under the MRA. Furthermore, foreign medical practitioners who satisfy all requirements in the MRA can only work in another ASEAN country after fulfilling the additional requirements of the relevant authorities in the host country, which may include licensure and language tests.

The requirements and procedures for medical practitioners or Filipino and foreign medical students¹¹⁵ in obtaining a license to study in Philippine medical school from the Technical Committee for Medical Education¹¹⁶ are as follows:

- (1) Possess a Bachelor's Degree in Medicine¹¹⁷
- (2) Pass the National Medical Admission Test (NMAT)¹¹⁸
- (3) Obtain a Certificate of Eligibility for Admission to a Medical Course (CEMed).

The requirements and procedures to obtain the CEMed are as follows:

- 3.1) Complete the CEMed application form
 - 3.2) Academic Transcript
 - 3.3) Diploma/Certificate of Graduation or copy
 - 3.4) NMAT Results
 - 3.5) Birth Certificate
 - 3.6) Certificate of good moral character
- (4) Pass an interview with the Philippine medical school and wait for admission results

The following are the additional documents required for foreign nationals who wish to study in Philippine medical schools. These documents can be mailed to the Philippine Foreign Service Post (PFSP):

¹¹⁵ Centre for Educational Measurement, Inc., "Requirements and Procedures for Admission to Philippine Medical Schools," <https://www.cem-inc.org.ph/nmat/requirements-procedures-admission-philippine-medical-schools> (Retrieved on January 28, 1015).

¹¹⁶ Formerly the Board of the Medical Education.

¹¹⁷ As of May 2016, the requirement is changed to possessing "any baccalaureate degree." Centre for Educational Measurement, Inc., "Requirements and Procedures for Admission to Philippine Medical Schools," <https://www.cem-inc.org.ph/nmat/requirements-procedures-admission-philippine-medical-schools> (Retrieved on May 22, 2016).

¹¹⁸ The exam and exam date, time and location are set by the Center for Educational Measurement, Inc. (CEM), a body under the Commission of Higher Education (CHED). Applicants must be graduates or about to graduate with a degree in medicine and must present academic transcripts along with the application form on the test date. Although there is no grade requirement, applicants should have a reasonable grade when compared with other applicants.

- 5 copies of Personal History Statement
- 2 copies of Academic Transcript
- A duly notarized affidavit of support from abroad
- Certificate of Good Moral Character from 2 officials of applicant's institution; one from an instructor/professor, one from school director
- NMAT results

After the mailing of documents, here are the following steps:

1. In the case where the applicant has satisfied all requirements, the school will issue a Notice of Acceptance (NOA) and forwards it¹¹⁹ to the CHED for consideration and issuance of CEMed.
2. After the applicant has been endorsed by the CHED, the matter is forwarded to the Department of Foreign Affairs (DFA) for the issuance of the student visa and the matter is then further forwarded to the Embassy or Consulate.
3. The PFSP mails the student visa to the applicant after the applicant proves his/her identity and admissibility.
4. Upon arrival in the Philippines, the applicant must appear personally at the Bureau of Immigration (BI) and obtain a student permit and CEMed at the CHED after which the applicant may commence his/her studies.

Foreign medical practitioners are accepted to work in the Philippines after passing an interview and registering and obtaining a license from the Department of Labor and Employment (DOLE). The different qualifications are considered by the Board of Medical Examiners under the PRC. This process follows the requirements listed in the MRAs and follows the principal of foreign reciprocity.

¹¹⁹ Additional documents are required to obtain a student Visa, which are the Visa application form (Form no. 2), medical certificate, chest x-ray film and laboratory reports and a police clearance.

E. Nursing services

The nursing profession in the Philippines is regulated by the Republic Act of 9173 or the Philippines Nursing Act of 2002. The Act was issued in 2002 with the main objective to establish the Board of Nursing (BON) to oversee examinations and the issuing of professional licenses, as well as to establish requirements for the registration of nurses in the Philippines. The Act requires all applicants for license to practice nursing to pass a licensure examination.

Section 13 sets out the qualifications for admission to the licensure examination at the time of filing his/her application as follows¹²⁰:

(1) Be a citizen of the Philippines, or a citizen a country which permits Filipino nurses to take licensure examination on the same basis;

(2) Be of good moral character

(3) Be a holder of a Bachelor's Degree in Nursing from a university or institution with the standards of nursing education recognized by the proper government agency

Registration by Reciprocity: Foreign nurses may register for a professional nursing license in the Philippines without examination if the nurses are already registered with the Country of Origin, provided that the requirements for registration or licensing of nurses in such country are the same as those prescribed under this Act.

¹²⁰ Section 13. Qualifications for Admission to the Licensure Examination. - In order to be admitted to the examination for nurses, an applicant must, at the time of filing his/her application, establish to the satisfaction of the Board that:

(a) He/she is a citizen of the Philippines, or a citizen or subject of a country which permits Filipino nurses to practice within its territorial limits on the same basis as the subject or citizen of such country: Provided, That the requirements for the registration or licensing of nurses in said country are substantially the same as those prescribed in this Act;

(b) He/she is of good moral character; and

(c) He/she is a holder of a Bachelor's Degree in Nursing from a college or university that complies with the standards of nursing education duly recognized by the proper government agency.

Furthermore, the laws of such country also grant the same privileges to registered nurses of the Philippines on the same basis.¹²¹

Section 21 states that special/temporary permit may be issued under the following conditions:¹²²

(A) Foreign nurses licensed in the Country of Origin with internationally-recognized expertise or who are specialists in any branch or specialty of nursing or other areas

(B) Foreign nurses licensed in the Country of Origin on charitable missions (Free of charge) at hospitals, medical centers or medical clinics in the Philippines

(C) Foreign nurses licensed in the Country of Origin employed by schools/colleges in the Philippines as exchange professors in a branch or specialty of nursing

The special/temporary permit shall be effective only for the duration of the project, medical mission or employment contract.

The Registration by Reciprocity principle under Section 20 may not fully apply to Thailand. Even though the Nursing and Midwifery Act, B.E. 2528 does not have nationality requirement, the Act requires the licensure examination to be in the Thai

¹²¹ Section 20. Registration by Reciprocity. - A certificate of registration/professional license may be issued without examination to nurses registered under the laws of a foreign state or country: Provided, That the requirements for registration or licensing of nurses in said country are substantially the same as those prescribed under this Act: Provided, further, That the laws of such state or country grant the same privileges to registered nurses of the Philippines on the same basis as the subjects or citizens of such foreign state or country.

¹²² Section 21. Practice Through Special/Temporary Permit. - A special/temporary permit may be issued by the Board to the following persons subject to the approval of the Commission and upon payment of the prescribed fees:

(a) Licensed nurses from foreign countries/states whose service are either for a fee or free if they are internationally well-known specialists or outstanding experts in any branch or specialty of nursing;

(b) Licensed nurses from foreign countries/states on medical mission whose services shall be free in a particular hospital, center or clinic; and

(c) Licensed nurses from foreign countries/states employed by schools/colleges of nursing as exchange professors in a branch or specialty of nursing; Provided, however, That the special/temporary permit shall be effective only for the duration of the project, medical mission or employment contract.

language, which represents a substantial obstacle for foreign nurses. Nonetheless, Thai nurses may use Section 21 to work in nursing colleges the Philippines.

In 2006, ASEAN member countries signed the ASEAN MRA on Nursing Services to facilitate movement of nurses among ASEAN member countries by mutually recognizing the following conditions:

- (1) Possession of a Nursing Degree
- (2) Possession of a valid and current professional license or registration from the Country of Origin
- (3) Have minimum practical nursing experience of no less than three years prior to the date application
- (4) Compliance with Continuing Professional Development in nursing as may be mandated by the professional council of the Country of Origin;
- (5) Certification from the Country of Origin of no record or pending investigation of having violated any technical, professional or ethical standards, local and international
- (6) Compliance with any other requirements, such as to submit for a personal medical examination or undergo an induction program or a competency assessment as mandated by the professional council of the Host Country.

Similar to the case of medical practitioners, the MRA on Nursing Services facilitates licensed nurses from Thailand with required professional experience to register as nurses in the Philippines. Nonetheless, Thailand is still unclear regarding CPD, which may cause the Board of Nursing in the Philippines to prohibit Thai nurses from registration. Therefore, the most convenient option for Thai nurses to be registered as a professional nurse in the Philippines is to work in a nursing school or college, as allowed by Section 21 of the Philippines Nursing Act of 2002.

F. Dental practitioner

The law which regulates dental practitioners in the Philippines is the Republic Act No. 9484 or the Philippines Dental Act of 1965. The Act established the Board of

Dentistry which is responsible for the administration of examinations and the registration of dentists in the Philippines. The Act requires dentists who wish to register for a license to work in the Philippines to pass a licensure examination.

This act has an interesting provision which is the permission for commissioned dental officers of any of the three branches of any foreign army with relationships to the Philippines army who are contacted to work on special projects in the Philippines may work as dentists in the country without the need for registration. Such foreign dentists may not work in the Philippines for longer than 30 days regardless of circumstance.¹²³

Section 17 requires that in order to be admitted to the licensure examination applicants must have the following qualifications:¹²⁴

- (1) Be a citizen of the Philippines
- (2) Possess good moral character
- (3) Finished a pre-dental course of at least two years in length

¹²³ SECTION 15. Exemption from registration. - Certificates of registration shall not be required of commissioned dental officers of the army, navy and air forces of any foreign country, whose operations in the Philippines are permitted by the Government, while rendering service as such for the members of said forces only; and of dentists or oral surgeons from other countries who are invited for consultations or demonstrations, provided that in such cases their work shall be limited to the specific tasks assigned to them, and provided further, that a previous authority has been granted by the Board of Dental Examiners, who shall have the discretion to determine the duration of said authority, but in no case shall it exceed the period of thirty days.

¹²⁴ SECTION 17. Qualifications for admission to examination. - In order to be admitted to the licensure examination for dentists, an applicant must, at the time of filing his application therefor, establish to the satisfaction of the Board that:

- (a) he is a citizen of the Philippines;
- (b) he possesses good moral character;
- (c) he had finished at least a two-year pre-dental course which complies with the minimum requirements of the Council on Dental Education; and
- (d) he shall be a holder of the degree of either Doctor of Dental Medicine (D.M.D.) or Doctor of Dental Surgery (D.D.S.), or their equivalents, conferred by a recognized and legally constituted university, college, school or institute.

(4) Be a holder of the Doctor of Dental Medicine (D.M.D) degree or the Dental Surgery (D.D.S.) degree or an equivalent degree from a university, college, school or institute properly recognized and established legally

Foreign dentists may register to take licensure examination in the Philippines according to the principle of foreign reciprocity.¹²⁵ However, this may not be applicable for Thailand as the dental examination in Thailand is conducted in the Thai language and thus makes it very difficult for Filipino dentists to work in Thailand.

In 2009, ASEAN member countries signed the ASEAN MRA on Dental Practitioners to facilitate movement of dentists among ASEAN member countries by mutually recognizing the following qualifications:

- (1) In possession of a dental qualification recognized by the Country of Origin and the Host Country
- (2) In possession of a current and valid license and registration form, issued by the professional council of the Country of Origin;
- (3) Has been in practice as a Dental Practitioner for no less than five continuous years in the Country of Origin
- (4) In compliance with CPD at satisfactory level as mandated by the professional council of the Country of Origin
- (5) In possession of a certification from the Country of Origin of not having violated or having any pending investigation of violating any professional or ethical standards, local and international
- (6) Not under any investigation or legal proceeding against him/her in the Country of Origin or another country

¹²⁵ SECTION 38. Foreign Reciprocity. - Except in the case of persons otherwise exempt under the provisions of this Act, no dentist who is a citizen of a foreign country or a particular state shall be granted any of the rights or privileges under this Act, unless the country or state of which he is a subject or a citizen permits dentists who are Filipino citizens to practice within its territorial limits on the same basis as the subject or citizens of such country or state, but under no circumstance shall such a set-up be initiated by the Philippine government.

(7) In compliance with any other requirements as may be imposed by the professional council of the Host Country (e.g. language skills).

It is noteworthy that the MRAs for dentists and physicians are very similar and were signed in the same year. Similar to the physician case, the dental practitioner MRA helps Thai dentists to avoid the nationality requirement in registering to become dentists in the Philippines as stated in Section 17 of the Philippines Dental Act of 1965. With the MRA, Thai dentists with all the qualifications as stated in the MRA may work in the Philippines. Furthermore, similar to the case for physicians, requirement (7) above may include a licensure examination with the Philippine Board of Dentistry and a language examination.

G. Accountant

The law which regulates accountants in the Philippines is the Republic Act No. 9298 or the Philippines Accountancy Act of 2004. The Act was issued in 2004 to set up and empower Professional Regulatory Board of Accountancy in regulating the accounting profession, as well as requiring applicants for registration for the practice of accountancy to undergo a licensure examination.

Section 14 stipulates the qualifications of applicants for the licensure examination as follows:¹²⁶

- (1) Be a Filipino citizen;
- (2) Be of good moral character
- (3) Be a holder of the degree of Bachelor of Science in Accountancy conferred by the university or institute recognized by the CHED

¹²⁶ SEC. 14. Qualifications of Applicants for Examinations. – Any person applying for examination shall establish the following requisites to the satisfaction of the Board that he/she:

- (a) is a Filipino citizen;
- (b) is of good moral character;
- (c) is a holder of the degree of Bachelor of Science in Accountancy conferred by a school, college, academy or institute duly recognized and/or accredited by the CHED or other authorized government offices; and
- (d) has not been convicted of any criminal offense involving moral turpitude.

(4) Has not been convicted of any serious criminal offence.

Foreigners may be allowed to work as accountants in the Philippines if they are citizens of countries that allow Filipinos to work as accountants in that country.¹²⁷ Nevertheless, similar to other professions, the Foreign Reciprocity principle cannot be fully utilized with Thailand as the licensure examination for accountants is taken primarily in the Thai language, which restricts foreign accountants.

In 2009, the ASEAN Mutual Recognition Arrangement Framework on Accountancy Services was signed by ASEAN member countries. This MRA is similar to that of surveyors in that it is only a framework for future negotiations to find mutually recognized qualifications for accountants. In November 2014, ASEAN countries signed the ASEAN Mutual Recognition Arrangement on Accountancy Services. This MRA covers accounting services, auditing services and compilation of financial statements services as per the United Nation's Central Product Classification (CPC) 862.

The main provision of this MRA is establishing the qualifications for registration to become an ASEAN Chartered Professional Accountant (ACPA) in order to register to become a Registered Foreign Professional Accountant (RFPA) with the relevant authority in the host country such as the Federation of Accounting Professions in Thailand and the Professional Regulatory Board of Accountancy in the Philippines. RFPA's can work with domestic accountants in providing accounting services in the Host Country but must abide by the laws and regulations of that country.

The qualifications for those eligible to register to become an ACPA are as follows:

- (1) The individual has completed an accountancy degree or professional accountancy examination recognized by the relevant authority in the

¹²⁷ SEC. 34. Foreign Reciprocity. – Subjects or citizens of foreign countries may be allowed to practice Accountancy in the Philippines in accordance with the provisions of existing laws, international treaty obligations including mutual recognition agreements entered into by the Philippine government with other countries. A person who is not a citizen of the Philippines shall not be allowed to practice accountancy in the Philippines unless he/she can prove, in the manner provided by the rules of court that, by specific provision of law, the country of which he/she is a citizen, subject or national admits citizens of the Philippines to the practice of the same profession without restriction.

Country of Origin or the Host Country or has been assessed and recognized by the relevant authority as having the equivalent of such a degree

- (2) Possess a current and valid professional license issued by the professional council in the country of origin
- (3) Has acquired relevant practical experience of no less than 3 years continuously within 5 years upon the fulfillment of the first requirement
- (4) Has complied with the Continuing Professional Development (CPD) policy as mandated by the professional council of the Country of Origin
- (5) Has obtained certification from the Country of Origin certifying that the individual has no record or pending investigation of any violation of technical, professional or ethical standards, local and international

Thai nationals with the above qualifications may register to become an ACPA through the Federation of Accounting Professions and the Ministry of Commerce. These bodies will collaborate with the ASEAN Chartered Professional Accountants Register (ACPAR) in the registration process. Once the ACPA registration process is complete, the individual may register to become a RFPA with the Professional Regulatory Board of Accountancy to commence the provision of accounting services but may only work with domestic accountants and in accounting branches approved by the board.

Therefore, although Thai accountants remain accountable to Filipino law and the Professional Regulatory Board of Accountancy may stipulate further requirements such as additional competency exams in language skills, this MRA is still beneficial as it allows Thai accountants to circumvent the nationality requirement as established in Section 14 of The Philippines Accountancy Act of 2004.

To conclude, the Philippines is a country which is not very open for foreigners to work in several professions, especially in service sectors such as construction (Engineer, architect, and surveyor), healthcare (Physician, dentist, and nurse), and financial services (Accountant). The Philippines have nationality requirements in every law that regulates professionals. Nonetheless, the Philippines provide some room for foreign professionals through the Foreign Reciprocity principle. If Thailand can revise its

rules on licensure examinations to allow English examinations, it can help Thai professionals work in the Philippines. As with MRAs, the formal mutual recognition of qualifications allows professionals to take licensure examinations in the Philippines.

2.2 Foreign Investment

This part presents laws about investment by foreigners in six topics, namely laws related to foreign enterprises, trade and service sectors that allow and promote foreign investor participation, public-private partnership law, concessions, special incentives for ASEAN investors, and investment treaty between the Philippines and Thailand.

2.2.1 Laws related to foreign enterprises

Executive Order (E.O.) 226, commonly referred to as The Omnibus Investment Code of 1987, was issued to encourage foreign investment in fields desired by the government through various incentives. The law establishes the procedures and conditions for non-Philippine nationals, including former Philippine nationals, on investment and running enterprises in the Philippines. The key condition is that the investment capital must be at least 200,000 US Dollars, or around 6 million Baht.

Moreover, foreigners can own up to 100% of equity except for enterprises in investment areas reserved for Philippine nationals as stated in the annex of Executive Order no. 98 as follows:¹²⁸

(A) List A consists of activities reserved for Philippine citizens. Equity ownership by foreigners in companies for export or for domestic purposes is limited to 60% of all equity as mandated by the Constitution and other related laws as follows:

- Enterprises which allow no foreign equity such as mass media except recording, cooperatives, mining, retails with capital less than US\$2.5 million, manufacture of firecrackers and other pyrotechnic devices.

¹²⁸ Securities and Exchange Commission, "Executive Order no. 98,"

<http://www.sec.gov.ph/download/Forms/foreign/6th%20FINL%20-%20sep%202013.pdf> (Retrieved on May 12, 2016).

- Enterprises which allow up to 20% foreign equity are private radio communications network.
- Enterprises which allow up to 25% of foreign equity such as recruitment companies and contracts for construction of defense-related structures.
- Enterprises which allow up to 30% of foreign equity are advertising.
- Enterprises which allow up to 40% of foreign equity such as development and utilization of natural resources, operation and management of public utilities and deep sea commercial fishing.
- Enterprises which allow up to 49% foreign equity are credit companies.
- Enterprises which allow up to 60% of foreign equity are finance and investment institutions regulated by the Securities and Exchange Commission.

(B) List B contains enterprises with foreign investment restrictions due to reasons of national stability and defense, public health, culture, or protection small-and-medium sized industries. Up to 40% of foreign ownership is allowed for enterprises such as factories that manufacture, repair, store and/or distribute products and/or components that require permission from Philippine National Police (PNP), factories that manufacture, repair, store and/or distribute products and/or components that require permission from the Department of National Defense and factories that produce and sell dangerous drugs.

Moreover, The Omnibus Investments Code of 1987 also specifies activities that the government supports. Each year, the government prepares an Investment Priorities Plan (IPP) and publicizes it for investors through BOI's website (<http://www.boi.gov.ph/>), The latest plan, which was issued in 2012, identifies priority sectors including Agriculture/Agribusiness and Fishery, Infrastructure, Shipbuilding, Mass Housing, Energy, Automobiles, Public Health Services, Disaster Prevention, and Strategic Activities. Strategic activities refer to projects with minimum investment value of 300 million US Dollars (or about 9.6 billion Baht) and either:

- (1) Employ at least 1,000 employees or

(2) Utilize internationally-accepted advanced technology, or both.¹²⁹

If Thai investors wish to benefit from the Special Economic Zone, they should consider the Republic Act No. 7916 (1991), as amended by Republic Act No 8748 (1995) or commonly referred to as The Special Economic Zone Act of 1995, which lays out the areas of investment promotion in the Philippines into five categories as follows.¹³⁰

1. Industrial Estate (IEs) refers to a tract of land with basic infrastructure and facilities for industries such as roads, electricity, and water.

2. Export Processing Zones (EPZs) refers to specialized industrial estates which are predominantly oriented towards export-oriented enterprises that are allowed to import capital equipment, raw materials and components duty-free.

3. Free Trade Zone (FTZs) refers to areas near the country's entry such as ports and airports, where imported goods waiting for transfer, packaging, sorting or otherwise are free from duties except when removed from area.

4. Tourism Ecozones are special economic zones which the government desires to become tourism areas equipped with facilities such as sports centers, entertainment centers, accommodations, cultural product exhibition halls, restaurants and retails.

5. IT Parks & IT Building is a special economic zone for information technology projects and service, comprising of buildings and facilities for IT investors.

The procedure for requesting permission to invest in the Philippines is summarized as follows:

1. Investors submit a project proposal along with the BOI form 501 and other relevant documents to the Board of Investments of the Philippines (BOI). The BOI will consider the proposal within 30 days.

¹²⁹ Isna Lipana & Co., "More Value for Your Business: Investment Incentives in the Philippines,"

http://www.pwc.com/en_PH/ph/business-guides/assets/documents/iip-2013.pdf (Retrieved on 27 September 2014).

¹³⁰ SEC 4. Definition of Terms. – For purposes of this Act, the following definitions shall apply to the following terms:

(a) "Special Economic Zones (SEZ)" – hereinafter referred to as the ECOZONES, are selected areas with highly developed or which have the potential to be developed into agro-industrial, Industrial tourist/recreational, commercial, banking, investment and financial centers. An ECOZONE may contain any or all of the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones, and Tourist/Recreational Centers.

2. If approved, the BOI will issue a Letter of Approval, the Pre-Registration Requirements with details on required documents so investors can prepare and details on the registration fee. The fee is different depending on the capital of each project. The investor shall respond to the BOI within 30 days.

3. Once approved, the BOI will issue a Certificate of Registration as proof. Investors then can register their companies with relevant agencies such as the Department of Trade and Industry (DTI), the Securities and Exchange Commission (SEC) or the Philippine Economic Zone Authority (PEZA) or the agency overseeing the special economic zone the company is located in.

4. The company then needs to register for tax purposes with Bureau of Internal Revenue as well as other relevant agencies such as Barangay and Bureau of Fire Protection which are local government agencies where the factory is located in. The registration process takes approximately one week. Additionally, permission from Department of Environment & Natural Resources is also needed for industrial factories, which may take around 2-3 months. Furthermore, permission from Department of Labor & Employment is needed if foreign workers are involved. Finally, permission from Department of Health is needed if enterprise involves food production or distribution and related businesses such as restaurants, before opening the business.

2.2.2 Trade and service sectors which allow and promote foreign investors' participation

Apart from the investment priority plan, the Philippine government has opened up the market of trade and services by permitting and promoting foreign entrepreneurs which is consistent with the Constitution of the Philippines which prohibits behaviors that obstruct competition. Monopoly is not outlawed per se but cannot be done if it is in conflict with public interest. Moreover, Section 186 of Penal Code R.A. 3815 (1930) is very similar to Section 2 of Sherman Act (1890) which is the key anti-competition law in the U.S., making anti-competition behavior such as monopolization, trade restriction, and government-owned enterprises punishable.

There are 6 trade and service sectors that the Philippines allow and promote foreign investors' participation in as follows:

(A) Water transport industry

Executive Order No. 185 (1994) specifies market entry for new service providers in the water transport industry to increase competition and quality and to reduce the price of the services. The law states that all transport routes must have at least two service providers, and the transport routes currently served by one service provider or under monopolization must be opened for new service providers, especially for routes continuously operated by current provider for more than 5 years current must open up for new service providers without condition.

(B) Aviation industry

Executive Order No. 219 (1995) requires competition in aviation industry by allowing private airlines to provide service in the case where the national airline (Philippines Airlines) does not operate in the given route.

(C) Port industry

To promote competition in port operation, Executive Order No. 212 (1994) allows ship owners, maritime transport service providers, ship renters, and other port users to have more options of service providers for cargo handling from representatives of the Philippine Port Authority (PPA) or from other private service providers. Previously, services were solely provided by representatives of PPA.

(D) Telecommunications

Example of successful effort by the government in breaking up monopolies can be seen in the telecommunications industry. Executive Order No. 59 (1993) requires mandatory connection among telecommunication firms with the Philippine Long Distance Telephone Company (PLDT) as the backbone. Executive Order No. 109 (1993) laid down policy to improve Local Exchange Carrier Service, including capital Manila, within 3 years after permission from the National Telecommunication Commission.

(E) Energy industry

Energy Executive Order No. 215 (1987) was issued to promote private sector participation in the business of electricity generation. In addition, the Republic Act No.

8180 (1996) deregulates the oil industry by allowing private companies to import or sell oil, operate refineries, and undertake other downstream activities and stop government monopoly. Section 5 of the Act requires that *"any person or entity may import or purchase any quantity of crude oil and petroleum products from a foreign or domestic source, lease or own and operate refineries and other downstream oil facilities such crude oil and petroleum products. That any person or entity who shall engage in any such activity shall give prior notice thereof to the DOE."*¹³¹

(F) Water Service Providers

Executive Order No. 311 (1996) was issued to encourage private sector participation in providing water utility services through reform of state-owned enterprise related to water utility and allowing private partnership in water industry through the Build-Operate-Transfer (BOT) system, i.e. private company invests and operates an enterprise, and upon expiry of contract, the company will transfer ownership of infrastructure, such as water pipes and water processing plants, to the government.

2.2.3 Public-Private Partnership Law

The Philippine government participates in the economic activities through economic planning and owning public utility and infrastructure enterprises such as banking, oil production, and transportation enterprises.¹³² However, since 1986, the Philippine government started to encourage private sector participation in these enterprises through Build-Operate-and-Transfer (BOT). The government issued the

¹³¹ Section 5. Liberalization of Downstream Oil Industry and Tariff Treatment. - a) Any law to the contrary notwithstanding, any person or entity may import or purchase any quantity of crude oil and petroleum products from a foreign or domestic source, lease or own and operate refineries and other downstream oil facilities and market such crude oil and petroleum products either in a generic name or its own trade name, or use the same for his own requirement: Provided, That any person or entity who shall engage in any such activity shall give prior notice thereof to the DOE for monitoring purposes: Provided, further, That such notice shall not exempt such person or entity from securing certificates of quality, health and safety and environmental clearance from the proper governmental agencies: Provided, furthermore, That such person or entity shall, for monitoring purposes, report to the DOE his or its every importation/exportation: Provided, finally, That all oil importations shall be in accordance with the Bases Convention.

¹³² Built-Operate-and-Transfer Center, "Primer: The Philippine PPP Program,"

http://www.philippineconsulatela.org/Trade/02b_Primer%20-%20The%20Philippine%20PPP%20Program.pdf

(Retrieved on 20 September 2014).

Republic Act No. 6957 and its amendment (R.A. 7718) to allow private sector participation in several areas such as:

- (1) Agri-Business Development
- (2) Transportation: building highways, railways, roads and bridges as well as mass transit systems
- (3) Logistics: airports, ports and structure of ports and airports
- (4) Energy Development
- (5) Water Supply Development
- (6) Telecommunications
- (7) Environment, such as solid waste management and drainage
- (8) Property Development
- (9) Tourism, Public Health and Educational Facilities

Moreover, the laws also laid out the process that the government and private sector have to follow, namely project proposal and auction.

2.2.4 Concessions

The Philippine government has a policy to promote sustainable economic growth by introducing a plan to increase the share of government spending to 5% of the country's GDP. Recently, President Aquino and cabinet approved a 10-year concession worth 325 million US Dollars for the operation and maintenance of Manila's railway system.¹³³ Such concession follows the requirements under the Republic Act No. 2713, which states that it is in the President's power, with cabinet approval, to grant concession if it is related to national infrastructure, and The Public Land Act (Com. Act no.141).¹³⁴

¹³³ Ministry of Foreign Affairs, "News: Philippines invests in infrastructure to promote growth [เกาะติดข่าว : ฟิลิปปินส์ ลงทุนโครงสร้างพื้นฐานหนุนศก.โต]," <http://www.mfa.go.th/business/th/news/84/46425> (Retrieved on 28 September 2014).

¹³⁴ Department of Environment and Natural Resources, "The Public Land Act," <http://www.denr.gov.ph/policy/basicpol/lancode/ca141.pdf> (Retrieved on June 5 2015).

Section 6 of Republic Act No. 2874 requires that the Governor-General, upon recommendation from the Secretary of Agriculture and Natural Resources, shall from time to time classify the lands of the public domain into:

(a) Alienable and disposable, meaning lands reclaimed by the state by dredging, filling or other means at foreshore, marshes or lands not included in other categories¹³⁵

(b) Timber and

(c) Mineral lands

Lands may be transferred from one category to another according to the purpose and operation of the government¹³⁶

Section 7 requires that the Governor-General, upon recommendation from the Secretary of Agriculture and Natural Resources, may declare which lands are open to concession.¹³⁷ However, this legislation does not clearly specify the process of obtaining a concession with only Section 5 specifying that the Director of Lands, upon recommendation from the Secretary of Agriculture and Natural Resources, to issue forms, instructions, rules and regulations consistent with this Act.

¹³⁵ Section 56. The lands disposable under this title shall be classified as follows:

- (a) Lands reclaimed by the Government by dredging, filling, or other means;
- (b) Foreshore
- (c) Marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers
- (d) Lands not included in any of the foregoing classes.

¹³⁶ Section 6. The Governor-General, upon the recommendation of the Secretary of Agriculture and Natural Resources, shall from time to time classify the lands of the public domain into —

- (a) Alienable or disposable
- (b) Timber and
- (c) Mineral lands

and may it any time and in a like manner transfer such lands from one class to another, for the purposes of their government and disposition.

¹³⁷ Section 7. For the purpose of the government and disposition of alienable or disposable public lands, the Governor-General, upon recommendation by the Secretary of Agriculture and Natural Resources, shall from time to time declare what lands are open to disposition or concession under this, Act.

Furthermore, the Public Land Act (Com. Act no.141) is a legislation that specifies the classification of land, limitations for utilization and research in addition to the issuing of concessions. Section 9 states that public land can be used for:¹³⁸

- 1) Agricultural purposes
- 2) Residential, commercial, industrial or for similar productive purposes
- 3) Educational, charitable, and other similar purposes
- 4) Reservations of town sites and for public and quasi-public uses

2.2.5 Incentives the Philippines gives to ASEAN investors

The Philippines imposes the National Treatment constraint by limiting access to domestic credit. Foreign non-manufacturing companies may borrow loans up to 50%:50% in terms of the debt-to-equity ratio. The Philippines also reserves certain activities for its citizens (Foreign equity ownership in such activities is limited to minority holding only). Foreign partnership in activities reserved for Filipino nationals are restricted by relevant supervisory agencies. Moreover, executives and managers have to be Filipino nationals.

Apart from limitations under Mode 3 of the trade and service agreement previously mentioned, establishing a commercial presence¹³⁹ in the Philippines allows

¹³⁸ Section 5. The Director of Lands, with the approval of the Secretary of Agriculture and Natural Resources, shall prepare and issue forms, instructions, rules and regulations consistent with this Act, as may be necessary and proper to carry into effect the provisions thereof and for the conduct of proceedings arising under such provisions.

Section 9. For the purpose of their administration and disposition, the lands of the public domain alienable or open to disposition shall be classified, according to the use or purposes to which such lands are destined, as follows:

- (a) Agricultural;
- (b) Residential, commercial, industrial, or for similar productive purposes;
- (c) Educational, charitable, or other similar purposes; and
- (d) Reservations for town sites and for public and quasi-public uses.

¹³⁹ The liberalization of the service sector under the ASEAN Economic Community (AEC) comes in 4 modes of supply. Mode 3 concerns commercial presence or what is called supply mode 3, which is the establishment of enterprises to provide services in a foreign country such as through establishing a branch, a representative office or a company. The path to become an AEC in the service sector has the objective of negotiating to liberalize the service sector to make the service sector in ASEAN fully free as stated in the AEC Blueprint. The objective of mode 3 is to allow ASEAN

ASEAN investors to establish enterprises in the country while benefits vary depending on the location of the enterprise and the form of registration chosen. For instance, there are benefits to registering with BOI and PEZA.

Table 2.4 Incentives for registering with BOI and PEZA

	Conditions	Incentives
1. Enterprises registering with BOI	<ul style="list-style-type: none"> ● Activities identified in IPP ● For activities not included in IPP, only at-least-50% export-oriented manufacturing (if foreign ownership does not exceed 40%), or at-least-70% export-oriented manufacturing (if foreign ownership exceeds 40%) 	<ul style="list-style-type: none"> - Income Tax Holiday (ITH) - New projects with pioneer status for 6 years - New projects with non-pioneer status for 4 years - Expansion projects for 3 years, generally limited to incremental revenue - New or expansion projects in less developed areas for 6 years, regardless of pioneer status - Modernization projects for 3 years, generally limited to incremental revenue - New projects and projects located in the LDAs may receive income tax exemption for an extra year if at least 50% of the total cost of raw materials is used on domestic raw materials for the preceding year (unless the BOI prescribes a higher percentage), or ratio of capital to worker does not exceed US\$10,000/worker or net foreign exchange earnings amount to at least US\$500,000 annually. - Exemption from taxes and duties on import <ul style="list-style-type: none"> - All enterprises registered under the IPP will be given a 10 year exemption from wharfage, export and import taxes and fees from the date of registration - Additional Deductions from Taxable Income - Deduction for labor expense: a registered enterprise shall be allowed an additional deduction from taxable income equivalent to 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 of simultaneously with the ITH. This additional deduction shall be doubled if the activity is located in

nationals to invest or hold equity in enterprises in another ASEAN country. By 2015, most service sectors in ASEAN countries must gradually liberalize for foreigners to invest up to 80%. ASEAN member countries may exempt certain enterprises that are sensitive and maintain certain necessary conditions/limitations while details on the plan to liberalize will need to be further negotiated in the future.

For more, please see SME Knowledge Center, "Service sector liberalization under AEC [การเปิดเสรีการค้าบริการภายใต้ AEC]," <http://www.smeservicecenter.net/public/uploads/p137578390252190141.pdf> (Retrieved on February 4 2015).

		<p>an LDA except for mining and forestry enterprises which have to be close to raw materials by default.</p> <ul style="list-style-type: none"> - Employment of Foreign Nationals – A BOI-registered enterprise may be allowed to employ foreign nationals in supervisory, technical or advisory positions for 5 years from date of registration. This limitation does not apply for the positions of President, General Manager and Treasurer. - Simplification of customs procedures for the importation of equipment, spare parts, raw materials and products and exports of products to provide greater convenience to investors.
2. Enterprises registering with PEZA	<ul style="list-style-type: none"> ● Located in investment promotion zones under PEZA's administration ● At least 70% export-oriented 	<ol style="list-style-type: none"> (1) 4 years Income Tax Holiday which can be extended to at most another 4 years, upon expiry of the Income Tax Holiday, 5% Special Tax on Gross Income and exemption from all national and local taxes. (2) Tax and duty free importation of raw materials, capital equipment, machineries and spare parts. (3) Exemption from wharfage dues and export taxes, import or fees for products (4) Permanent residence for foreign entrepreneurs and family if initial investment exceed 150,000 US Dollars (5) Simplification of customs procedures for import and export to provide greater convenience for entrepreneurs

Note: Non-resident aliens who do not run enterprises in the Philippines pay a 25% tax rate of total revenue generated in the Philippines

Source: Embassy of Thailand, Manila.

2.2.6 Investment treaty between the Philippines and Thailand

The Bilateral Investment Treaty between the Philippines and Thailand¹⁴⁰ was introduced in 1995 and provides protection for investment in areas covered under the treaty. The treaty's important provision ensures investors and investment of fair treatment and ensures compensation in cases of seizing, expropriating of properties, and unrest. Investors can also move capital freely and the treaty also lays down dispute resolution

¹⁴⁰ ASEAN Briefing, "Bilateral Investment Treaty between Thailand and the Philippines,"

<http://www.google.co.th/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.aseanbriefing.com%2Fuserfiles%2Fresources->

[pdfs%2FPhilippines%2FBIT%2FPhilippines_Thailand_BIT.pdf&ei=VR7TVLP3C4rr8AWW-ID4Cg&usq=AFQjCNHWQ7-pslhTjP7SprDkMOWMBQVSYA&sig2=ccJCovRKiSb1pxnYMD1gcw&bvm=bv.85464276,d.dGc](https://www.google.co.th/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.aseanbriefing.com%2Fuserfiles%2Fresources-pdfs%2FPhilippines%2FBIT%2FPhilippines_Thailand_BIT.pdf&ei=VR7TVLP3C4rr8AWW-ID4Cg&usq=AFQjCNHWQ7-pslhTjP7SprDkMOWMBQVSYA&sig2=ccJCovRKiSb1pxnYMD1gcw&bvm=bv.85464276,d.dGc) (Retrieved on

February 5 2015).

process between governments and between government and investors. If a state breaches the agreement and causes damage to investment, investors can sue the state under the dispute resolution process between governments. Furthermore, treatment towards companies of states party to the treaty must be no worse as that towards companies of other states and if there exists an agreement with other states, such agreements must not diminish benefits for companies of states party to agreement.

2.3 Immigration (Entry and Residency)

The main law which governs foreigners' entry and residency in the Philippines is the Philippine Immigration Act of 1940 which was introduced when the Philippines was still under U.S. rule. The law, which is also called the Commonwealth Act No. 613, gives the Department of Foreign Affairs (DFA) and the Bureau of Immigration (BI) the authority to oversee immigration matters. Moreover, the Philippines 4 types of visa to attract foreign investments to the country. This will be discussed later in this section.

Under the Philippine Immigration Act of 1940, there are two main visa types: Immigrants Visas and Nonimmigrants Visas¹⁴¹. Immigrants Visas are for those who wish to become permanent residents of the Philippines and Nonimmigrant Visas are for those who visit the Philippines for the follow reasons as stipulated by Section 9 of the Act:

- (1) A temporary visitor coming to the country for business purposes, vacation or for reasons of health.
- (2) A person in transit to a destination outside the Philippines.
- (3) A seaman serving as such on a vessel arriving at a port of the Philippines.

¹⁴¹ A foreigner who requests a Nonimmigrant Visa will receive a Permanent Resident Visa (PRV) if he/she is a resident of a country with reciprocity agreement with the Philippines. He/she may reside in the country for at most 50 days. Those who come from countries without a reciprocity agreement with the Philippines will receive a Temporary Resident Visa (TRV). Moreover, an important document required to request a Visa for foreigners is the Alien Certificate of Registration Identity (ACR I-CARD) which foreigners who reside in the Philippines for more than 59 days need to possess. For more information and requesting procedure, please see: Bureau of Immigration, "Conversion to Quota Immigrant Visa," <http://www.immigration.gov.ph/index.php/visa-requirements/immigrant-visa/quota-visa> (Retrieved on February 16 2015).

(4) Foreign businessmen entitled to enter the Philippines under the provisions of a treaty of commerce and navigation for the following purposes:

- Solely to carry out an important trade between the Philippines and the foreign state of which he/she is a national.
- Solely to develop and operate an enterprise in which, in accordance with Philippines law, he/she has invested or is in the process of investing; may bring spouse and unmarried children who are under 21 years old, if foreign state which alien is a citizen provides same privilege to Filipinos

(5) Authorized officials of foreign governments recognized by the Government of the Philippines, including their family, attendants, servants, and employees.

(6) A student, who is at least eighteen years of age and seeks to enter the Philippines to attend tertiary education.

(7) A person with prearranged employment¹⁴², his/her spouse, and unmarried children under twenty-one years of age.

It should be noted that Thai passport holders are not required to apply for visas to enter and reside in the Philippines for a period of up to 30 days. Those who wish to reside for more than 30 days for purposes as stated in Section 9 such as in-patient care of more than one month must apply for a Nonimmigrant visa with the Bureau of Immigration (See footnote 93 for procedure and documents for requesting a Visa).

Moreover, the Philippines issues two special visa types for investors who invest in the Subic Bay Freeport or the Subic Special Economic Zone, which is the first freeport in the Philippines created under the Republic Act No. 7227. The Subic Special Economic Zone is a strategic point for trading of goods, services, and technology in Asia neighbors. The Subic Bay Metropolitan Authority (SBMA) is the government agency

¹⁴² Prearranged employment is the employment of foreigners before the arrive in the Philippines in accordance with the laws such as professors and experts from educational institutions, physicians, nurses, scientists and employees or other specialists in areas like banking, commerce, industry, agriculture and cooperatives.

that manages investment in the Subic Bay.¹⁴³ SBMA assists investors by sourcing out their labor requirements through its own Labor Center secures. Business and investment opportunities abound in this free port such as port logistics, aviation and maritime telecommunications technology, maritime industry, tourism and land development.¹⁴⁴

The Republic Act no. 7227, or the Conversion of Bases and Development Act of 1992, states the conditions for the issuance of the Visa of Subic Special Investors. The Act gives alien investors and their family permanent resident status without having to present any additional documents under the following conditions:

(1) Investor's spouse and single dependent children under twenty-one years of age

(2) Investors with investment in the Subic Bay Freeport of no less than 250,000 US Dollars on a continuous basis.

(3) The investment in the investor's company may be undertaken by foreigners in the investment forms:

- Enterprise or any direct investment within the Subic Bay Freeport.
- Cash grant or interest-free loan to official agencies or enterprises within the Subic Bay Freeport for the purpose of making capital improvements in the enterprise of the recipient within the Subic Bay Freeport.
- Purchase of land or real estate in Subic Bay Freeport to build or renovate or for capital improvements by expanding enterprise and real estate or
- Donation to official agency or enterprise within Subic Bay Freeport for capital improvement

¹⁴³ Moreover, Section 13 states the responsibility of the SBMA to oversee infrastructure and public services, logistics, concessions, pollution control, the issuance of contracts and licenses for use in Subic Bay and the authority to establish education institutions and hospitals and regulate all enterprises to comply with the Republic Act no. 7227.

¹⁴⁴ Subic Bay Metropolitan Authority, "Subic Bay Freeport," <http://invest.mysubicbay.com.ph/invest-my-subic-bay> (Retrieved on 16 September 2014).

Another type of Visa to incentivize investment in the Subic Bay is the **Subic Special Retiree's Visa**, under Republic Act no. 7227 or the **Conversion of Bases and Development Act of 1992**. SBMA may issue this visa to any foreign national retired person including his/her spouse and dependent children under 21 years old to permanently reside in Subic Bay Freeport if the applicant meets the following conditions:

(1) He/she must be at least 60 years of age and can demonstrate to the satisfaction of Subic Bay Metropolitan Authority that he/she is of good moral character.

(2) Has not been convicted of any crime involving moral turpitude.

(3) No longer employed or self employed.

(4) Who receives a pension or passive income, that is payable in Subic Bay Freeport, exceeding 50,000 US Dollar per year.

The Subic Special Retiree's Visa will automatically terminate if:

(1) The retirees move outside the Subic Bay Freeport.

(2) The retirees or members of their families receive compensation for working in Subic Bay Freeport or anywhere else in the Philippines without SBMA's permission.

The visa of the spouse of the retiree will automatically terminate upon:

(1) The death of the retiree to whom the visa was granted.

(2) Divorce, unless he/she submits and receives visa from SBMA on his/her own.

The SBMA may revoke the residency visa of any retiree, his/her spouse or child for violation of any Philippine law or violation of conditions and terms under the visa.

Foreign investors who wish to invest in the tourism sector can also apply for another type of special Visa, namely the **Special Investors Resident Visa in Tourist-Related Projects and Tourist Establishments under Executive Order 63**. Some important provisions are stated below:

Section 1 Foreign Investors who invests at least 50,000 US Dollar in a tourist-related enterprise will be entitled to the benefits and incentives granted under Executive Order 63, and may apply for Special Investors Resident Visa, provided that such

investment is made in accordance with the Constitution. The applicants must prove that such investment is made in any acceptable foreign currency to the Philippines.

The Committee will consider whether the investment meets the following criteria:

- (1) The investment shall promote the development of the tourism industry.
- (2) The investment shall provide more opportunities for employment.
- (3) The investment shall increase the country's national income.

Section 2 This Section sets out benefits and incentives available for holders of Special Investors Resident Visa: the investor, his/her spouse and unmarried children under 21 years old shall be permitted to enter and reside in the Philippines as special investor residents without the need for additional documents or fees for as long as the agreed investment subsists. Provided, that the aliens meet the requirement of Department of Foreign Affairs and Bureau of Immigration as follows:

- (1) They have not been convicted of a crime involving moral turpitude.
- (2) They are not afflicted with any loathsome, dangerous or contagious disease.
- (3) They have not been institutionalized for any mental disorder or disability.
- (4) They stay in the country at least 7 days for each visit.

Should the investor withdraw or transfer the investment from the Philippines without approval of the Committee, the special investor resident visas may be revoked.

Another type of visa which may be useful for Thai investors is the **Special Resident Retiree Visa (SSRV) under Executive Order 1037 or the Philippine Retirement Authority (PRA)**, which allows permanent residence in the Philippines and unlimited entry and exit, issued by Bureau of Immigration (BI).

There are 4 types of SRRV, namely SRRV Smile, SRRV Classic, SRRV Human Touch, and SRRV Courtesy, depending on the conditions and the requirements of the applicant. The applicants, regardless of nationality, must already hold a Visa to enter the

country (Meaning visa from investing in the Philippines) and are over 35 years of age.¹⁴⁵ Other conditions differ depending on the visa deposit, application fee, and benefits attached in different visa types. For visa deposit exceeding 50,000 US Dollar, the deposit may be used to invest, such as investing in completed real estate.

Therefore, the SRRV is more flexible than the Subic Special Retiree's Visa as the age requirement is much lower at just 35 years old. It is thus an interesting option for people who wish to invest and reside in the Philippines. Nonetheless, those who wish to work or do business in the Philippines should carefully study relevant rules and regulations, as well as local languages and local culture to ensure their pleasant stay in the Philippines.

2.4 Laws related to business administration in the Philippines

This section presents the laws related to business administration in the Philippines in four topics, namely Commercial laws, tax laws, financial and banking laws, and ASEAN investment agreements.

2.4.1 Commercial laws

Forming an enterprise is covered under the corporate registration law and the Corporation Code of the Philippines, which are summarized below (See Table 2.5).

¹⁴⁵ Philippine Retirement Authority, "Special Resident Retiree's Visa," http://pra.gov.ph/main/srrv_program?page=1 (Retrieved on 17 September 2014).

Table 2.5 Conditions for Formation of Enterprise

Type of Enterprise		Minimum Capital Requirement	Method of Registration	Method of Contact
Entity under Philippine Law	1. Single/sole proprietorship for Filipinos and aliens	3,000 Pesos	Name reservation and registration with the Department of Trade and Industry -National Capital Region	Call: (632) 751-3330 bnrshelpdesk@dti.gov.ph http://www.business.gov.ph
	2. Partnerships - General partnership - Limited partnership		- Registration with the Securities and Exchange Commission (SEC) - Not required to register with Department of Trade and Industry	Call: (632) 584-0923/9225 http://www.sec.gov.ph
	3. Corporations, with 5 to 15 shareholders. If foreign ownership exceeds 40%, corporation is deemed foreign, not exceeding 40%, deemed local.	5,000 Pesos	- Registration with Securities and Exchange Commission (SEC) - Not required to register with Department of Trade and Industry	Call: (632) 584-0923/9225 http://www.sec.gov.ph
Entity under foreign law	4. Branch office. Enterprises registered abroad may enter the Philippines under management of HQ abroad.	- In general, 200,000 USD, 100,000 USD for enterprises involving high-technology or employs more than 50 people - No requirement for at least 60% export-oriented enterprise, or corporation which buys domestic goods and exports no less than 60%	Registration with Securities and Exchange Commission (SEC)	Call: (632) 584-0923/9225 http://www.sec.gov.ph

Type of Enterprise		Minimum Capital Requirement	Method of Registration	Method of Contact
	5. Representative Office. Corporation registered abroad may enter the Philippines and set up Representative Office to perform certain function for its HQ without generating revenue in the Philippines.	30,000 USD	Registration with Securities and Exchange Commission (SEC)	Call: (632) 584-0923/9225 http://www.sec.gov.ph
	6. Regional Headquarters (RHQ). The center of service and management of company in the Asia-Pacific region. May not generate revenue in the Philippines. Regional Operating Headquarters (ROHQ). The management center of different fields of operations as stated ¹⁴⁶ and may generate revenue in the Philippines	- 50,000 USD for RHQ - 50,000 USD for ROHQ	Registration with BOI via the Project Evaluation and Registration Department	Call: (632) 895-3997 perd@boi.gov.ph

As mentioned in subtopic 2.2.1, foreign investors may own an enterprise without a local investor except if the type of enterprise is in the negative Lists A and B under FINL (Please see subtopic 2.2.1 for more details) whereby a ceiling exists for foreign equity holding. Enterprises in which no foreign equity holding ceiling exists¹⁴⁷ include

¹⁴⁶ The operations are (A) planning and general management (B) coordinating and business planning (C) sourcing raw materials (D) financial advice (E) sales and marketing support (F) human resource management and training (G) logistics management (H) research and product development (I) maintenance and technical service (J) communication and data compilation and (K) business development. Department of Trade Negotiations, "Learn about investing in ASEAN [รอบรู้เรื่องการลงทุนในอาเซียน]," http://www.thaifta.com/ThaiFTA/Portals/0/investment_ph2557.pdf (Retrieved on February 4 2015).

¹⁴⁷ R.A. 8179 Sec. 7. Foreign Investments in Domestic Market Enterprises. - Non-Philippine nationals may own up to one hundred percent (100%) of domestic market enterprises unless foreign ownership therein is prohibited or limited by the Constitution and existing law or the Foreign Investment Negative List under Section 8 hereof."

domestic manufacturing, import-wholesale businesses, travel agencies, hotels, life insurance agencies and other types of insurance. Enterprises with a ceiling for foreign equity holding are summarized in Table 2.6.

Table 2.6: Summary of Enterprises with Ceiling for Foreign Equity Holding

Enterprises that Allow Foreign Equity Holding	Details
No more than 20%	<ol style="list-style-type: none"> 1. Private radio communications network 2. Private recruitment 3. Construct or repair of public works except: <ul style="list-style-type: none"> - Infrastructure/development projects covered in R.A. no. 7718 - Projects which are foreign funded or assisted and required to undergo international competitive bidding 4. Construction of defense-related structures
No more than 30%	Advertising
No more than 40%	<ol style="list-style-type: none"> 1. Exploration, development and utilization of natural resources 2. Real Estate 3. Operations of public utilities 4. Educational institutions 5. Manufacturing and processing of rice and corn 6. Supplier of raw materials for government-owned entities 7. Submarine 8. Condominium
No more than 60%	<ol style="list-style-type: none"> 1. Financial institutions controlled by the Securities and Exchange Commission 2. Investment institutions controlled by the Securities and Exchange Commission

The approval procedure for investment in enterprises with ceilings for foreign equity holding is similar to the procedure already mentioned in Subtopic 2.2.1.

In consideration of which body the proposed enterprise or project should seek approval from or register with among BOI, PEZA and other Investment Promotion Agencies (IPAs), the following conditions must be considered.

Enterprises Registering with the BOI¹⁴⁸

Enterprises that have to register with the BOI may be owned by locals or foreigners and operated under Filipino law as a domestic entity and desire to receive investment benefits under the Omnibus Investment Code of 1987. In addition, such enterprises must meet these requirements:

- 1) Be an enterprise listed in the Investment Priorities Plan (IPP)
- 2) If not listed in the IPP, only at least 50% export-oriented manufacturing (If foreign ownership does not exceed 40%) or at least 70% export-oriented manufacturing (If foreign ownership exceeds 40%)
- 3) Foreign-owned export enterprise must submit the required reports to ensure continuing compliance with its export requirement. The export enterprise's domestic sales volume must be no more than 40% of total production.¹⁴⁹

Enterprises Registering with PEZA and IPAs

For enterprises located in the investment promotion zones under the management of PEZA and exports at least 70% of their output or is an enterprise related to free trade, tourism, agricultural export, biological fuel, telecommunications technology, public utilities, logistics service enterprises providing warehousing and trade operations in the ecozones¹⁵⁰.

¹⁴⁸ Section 5 of R.A. 7042 or the Foreign Investment Act of 1991

¹⁴⁹ R.A. 7042 Section 6. Foreign Investments in Export Enterprises. - Foreign investment in export enterprises whose products and services do not fall within Lists A and B of the Foreign Investment Negative List provided under Section 8 hereof is allowed up to one hundred percent (100%) ownership. Export enterprises which are non-Philippine nationals shall register with BOI and submit the reports that may be required to ensure continuing compliance of the export enterprise with its export requirement. BOI shall advise SEC or BTRCP, as the case may be, of any export enterprise that fails to meet the export ratio requirement. The SEC or BTRCP shall thereupon order the non-complying export enterprise to reduce its sales to the domestic market to not more than forty percent (40%) of its total production; failure to comply with such SEC or BTRCP order, without justifiable reason, shall subject the enterprise to cancellation of SEC or BTRCP registration, and/or the penalties provided in Section 14 hereof.

¹⁵⁰ Isla Lipana & Co., "Explore Opportunities: How to Invest in the Philippines,"

http://www.pwc.com/en_PH/ph/business-guides/assets/documents/htip-2013.pdf (Retrieved on February 4, 2015).

2.4.2 Tax laws

The main law related to taxes in the Philippines is the National Internal Revenue Code. This law should be considered in tandem with the Double Taxation Agreement between Thailand and the Philippines.¹⁵¹ The important contents of the law and the agreement can be summarized as follows as follows:

A) National Internal Revenue Code

(1) Income Tax: Currently, the rate is at 30% with the following taxable income base:

- Domestic Corporation, referring to corporation registered under Philippine law, uses all net income from all over the world.
- Resident Foreign Corporation in the Philippines, referring to corporation registered abroad under foreign law and comes to operate in the Philippines (Branch of foreign headquarters), uses net income earned in the Philippines only.
- Non-resident Foreign Corporation, referring to corporation registered abroad under foreign law and does not come to operate in the Philippines, uses Gross Income earned in the Philippines only, such as dividends, rents, fees, compensation, and various service fees. Tax collection happens at point of payment. However, some corporations may have special rate, such as foreign loan interest pays tax rate of 20% per year.

(2) Special Income Tax

Corporations located in the Ecozones Subic Bay Freeport and Special Economic Zone and Clark Special and Economic Zone receiving tax incentives may choose to pay tax at a special rate of 5% of their Gross Income instead of the rates stated in (1).

¹⁵¹ ASEAN Briefing, "Double Taxation Avoidance Agreement between Thailand and Philippines (1982)," file:///C:/Users/yuisep/Downloads/ASEAN_DTA_Thailand_Philippines.pdf (Retrieved on February 4 2015).

(3) Profit Remittance Tax

- 15% of Remittance, no deduction
- Exception for corporations under PEZA that do not have to pay this tax

(4) Value-added Tax

- 12%
- Certain goods are exempted, such as trade or import of agricultural, fishery and livestock products and fertilizer. Import of specialized equipment, certain services enterprises, or personal articles for residence in the Philippines without intent of sales are also exempted.

(5) Personal Income Tax

- 5-32%
- For foreigners, tax rate is calculated from income made in the Philippines only. Foreigners who are not Philippine residents and do not do business in the Philippines but earn some income in the Philippines must pay tax rate of 25% of Gross Income.

Table 2.7 Income tax rate in the Philippines

Income Bracket (Pesos)	Tax rate
0 - 10,000	5%
10,001 - 30,000	10%
30,001 - 70,000	15%
70,001 - 140,000	20%
140,001 - 250,000	25%
250,000 - 500,000	30%
Over 500,000	35%

Source: Board of Investment

B) Double Taxation Agreement between Thailand and the Philippines¹⁵²

The Double Taxation Agreement between Thailand and the Philippines came into effect in 1983. It is currently being revised under the coordination of the MFA.¹⁵³

Taxes covered under this agreement are income taxes and petroleum income taxes in the case of Thailand and income tax under Title 2 of the National Internal Revenue Code collected from individuals and corporations in the case of the Philippines. Relevant officials from both countries must notify the other country of significant modifications to the domestic tax laws at the end of every year.

For legal persons, the Agreement only covers "permanent establishment", i.e. a fixed place of business through which the enterprise is wholly or partly carried on, which includes a branch, a factory, an office, a place of management, a warehouse, a construction site or an ongoing construction project longer than 6 months, an assembly or installation project which exists for more than 3 months but not including the use of facilities solely for the purposes of storage, display, delivery and purchase of goods or of collecting information (Article 5).

Article 7 mandates that the profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries out business in the other Contracting State through a permanent establishment in that State. In this case, the profits of the enterprise may be taxed in the other State but only profit attributable to that permanent establishment is taxable. Where an enterprise of a Contracting State carries out business in the other Contracting State through a permanent establishment in that State, there shall in each Contracting State be attributed to that permanent

¹⁵² Revenue Department, "Convention between the Government of the Kingdom of Thailand and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income," http://download.rd.go.th/fileadmin/download/nation/philippines_e.pdf (Retrieved on 2 August 2014).

¹⁵³ Ministry of Foreign Affairs, "ทวีปเอเชีย: สาธารณรัฐฟิลิปปินส์ [Asia: The Philippines]," <http://www.mfa.go.th/main/th/world/70/10253-%E0%B8%AA%E0%B8%B2%E0%B8%98%E0%B8%B2%E0%B8%A3%E0%B8%93%E0%B8%A3%E0%B8%B1%E0%B8%90%E0%B8%9F%E0%B8%B4%E0%B8%A5%E0%B8%B4%E0%B8%9B%E0%B8%9B%E0%B8%B4%E0%B8%99%E0%B8%AA%E0%B9%8C.html> (Retrieved on 27 September 2014).

establishment profits which it might be expected to make if it were a distinct enterprise engaged in the same or similar activities under the same or similar conditions and dealing independently with the enterprise of which it is a permanent establishment.

In determining the profits of a permanent establishment, there shall be allowed deduction expenses incurred for purposes of permanent establishment, including general administrative expenses incurred whether in the State the permanent establishment is situated in or elsewhere. Nevertheless, no deduction shall be allowed for amounts paid (other than reimbursement of actual expenses) by the permanent establishment to the HQ of the enterprise or any of its other offices, by way of:

- Royalties, fees or other payments for use of patents or other rights
- Commission for specific services performed or for management
- Interest on money lent to the permanent establishment.

Profit determination of permanent establishment is customarily determined as an appropriate percentage of gross revenue or by appropriating total profit of enterprise to its various parts. The determination is made the same way each year with no payment of profits to permanent establishment in case of purchase of goods for own use.

For shipping and air transport, Article 8 of the Agreement states that profits derived by enterprise of Contracting State from operating ships or aircraft in international traffic shall be taxable in that State. However, profits from sources within a Contracting State derived by enterprise of other Contracting State from the aforementioned action may be taxed in the former State but the tax charged shall not exceed the lesser of:

- 1.5% of the gross revenues derived from sources in that State; and
- The lowest rate of Philippine tax that may be imposed on profits of the same kind of enterprise under similar situation by resident of third State.

In the case of operation of ships in international traffic, the tax collected shall be no less than 50% of tax chargeable under Thai law in force on the date of Agreement.

Article 11 Dividends paid by a company within a Contracting State to a resident of other Contracting State may be taxed in that other State. However, such dividends may also be taxed in the Contracting State which the company paying the dividends is

in according to laws of that State but if the dividend recipient is a company with at least 15% of voting shares of the company paying the dividends, the tax shall not exceed:

- 15% of the gross amount of the dividends if the company paying the dividends is a Philippine company or if the company paying the dividends is a Thai company engaged in an industrial undertaking;
- 20% of the gross amount of the dividends if the company paying the dividends is a Thai company not engaged in an industrial undertaking.

The aforementioned provisions shall not apply if the recipient of the interest is a resident of a Contracting State and carries out business or provides professional services through a permanent establishment in the other Contracting State which the company paying the dividends is located in. In this case, Articles 7 or Article 15 shall apply.

Article 12 Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such interest may also be taxed in the Contracting State in which it arises according to the laws of that State, but if recipient is the beneficial owner of the interest, the tax shall not exceed:

- 10% of the gross amount of interest if it arises in Thailand and is received by Philippine financial institutions (including insurance companies) and if it arises in the Philippines in respect of public issues of bonds or debentures
- 15% of the gross amount of interest if it arises in the Philippines; and
- 25% of the gross amount of interest if it arises in Thailand.

Interest is considered to arise in the Contracting State or its political subdivision when the payer has a permanent establishment in that Contracting State, regardless of whether the payer is a resident of that State or not and interest arisen is therefore the responsibility of such establishment.

Article 15 stipulates that salaries, wages and other similar remuneration or income for personal (and professional) services shall be taxed only in that Contracting State, unless the services are performed in the other Contracting State. If the services are so performed, such remuneration or income derived may be taxed in that other

Contracting State if the recipient is present in that other State for an appropriate period of time, payment of remuneration or income is made through a representative and the remuneration or income is not borne out of a permanent establishment.

Moreover, the Agreement covers taxation from directors' fees (Article 16), artists and athletes (Article 17), pensions (Article 18), governmental functions (Article 19), teachers and researchers (Article 20) and students and trainees (Article 21).

Article 23 In the case of the Philippines, subject to the laws of the Philippines regarding the allowance as a credit against Philippine tax for tax payable in any country other than the Philippines:

- Thai tax payable in respect to income derived from Thailand is allowed as credit against Philippine tax payable in respect to that income.
- If such income is a dividend paid by a company in Thailand to a company in the Philippines which owns at least 15% of voting shares of the company paying the dividend, the credit shall take into account the Thai tax payable by that company in respect to its income; and
- The credit shall not exceed that part of the Philippine tax as computed before the credit is given, which is appropriate to such item of income.

2.4.3 Financial and Banking Laws

There are four important laws that regulate financial and banking affairs in the Philippines, namely the Republic Act no. 8556 (Financing Company Act), the Republic Act no. 8791 (Banking Law), the Securities Regulation Code, and the Republic Act no. 10168. These four legislations have no clear connections but all regulate the banking industry in the Philippines.

A) Republic Act No. 8556 (Financing Company Act)¹⁵⁴

This Act was issued with the aim to regulate and support leasing and financial enterprises by requiring such enterprises to obtain formal licenses.

¹⁵⁴ Bango Sentral Ng Pilipinas, "Republic Act no. 8556," <http://www.bsp.gov.ph/downloads/laws/RA8556.pdf> (Retrieved on 27 September 2014).

Section 3 of the Financing Company Act defines "Financing companies" as corporations except banks, credit facilities, savings and loan associations, insurance companies, and other financial institutions organized or operated under other special laws, which primarily serve purpose of extending credit to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or by buying and selling contracts, leases, chattel mortgages, or by leasing of movable and immovable property.

With regards to requirement for registration, the Securities and Exchange Commission shall register financing companies when the Commission is satisfied on the evidence submitted to it that all requirements of existing laws to engage in the business for which the applicant is proposed to be incorporated in have been complied with and the organization, integrity and responsibility of the organizers is sufficient to assure the protection of the interest of the general public. With regards to registration process, the company must submit relevant and required documents to Commission.¹⁵⁵

If an entity carries out its operations under the 'Financing company' identity under this law without proper approval from the Securities and Exchange Commission, a fine of no less than 10,000 pesos but no more than 100,000 pesos or imprisonment of no longer than 6 months or both shall be levied.¹⁵⁶

B) Republic Act No. 8791 (Banking Law)¹⁵⁷

The Act was issued as the Philippines recognized the vital role of banks in the sustained development of the national economy and the fiduciary nature of banking that

¹⁵⁵ "Sec. 7. Requirement for registration. — Aside from requiring compliance with the provisions of the Corporation Code, the Securities and Exchange Commission shall not register the articles of incorporation of any financing company unless its office is satisfied on the evidence submitted to it, that:

"(a) All the requirements of existing laws to engage in the business for which the applicant is proposed to be incorporated or organized have been complied with;

"(b) The organization, direction and administration, as well as the integrity and responsibility of the organizers and administrators reasonably assure the protection of the interest of the general public"

¹⁵⁶ "Sec. 14. Penalty. — A fine of not less than Ten thousand pesos (P10,000.00) and not more than One hundred thousand pesos (P100,000.00) or imprisonment for not more than six (6) months or both, at the discretion of the court.

¹⁵⁷ Bango Sentral Ng Pilipinas, "Republic Act no. 8791," <http://www.bsp.gov.ph/downloads/Regulations/gba.pdf>

(Retrieved on 27 September 2014).

requires high standards of performance. Chapter II of the Act specifies the power and role of the Philippine Central Bank such as the authority to issue standard regulations for banks to follow and the determination of the different types of banks.¹⁵⁸

Other important content in this Act is similar to the Bank of Thailand Act, B.E. 2485 in that both are laws specifying the regulation of financial institutions.

The special provision of Republic Act no. 8791 (which does not present in the Bank of Thailand Act, B.E. 2485 but is stated in a subordinate legislation) is the determination of certain prohibited activities. For instance, Section 55 prohibits directors, officers, employees or agents of any bank to -¹⁵⁹

(a) Make false entries in any bank statement or participate in any fraudulent transaction affecting the financial interest or causing damage to the bank or any person

(b) Disclosure, without court order, to unauthorized individuals of information regarding funds or properties of private individuals, corporations or any other entity

Violation of the aforementioned section will lead to administrative and criminal charges against the perpetrator according to the New Central Bank Act.

Administrative sanctions are (A) a fine of no more than 30,000 pesos for each violation and (B) suspension of rediscounting privileges, including access to the Philippines central bank's credit facilities. (Bangko Sentral ng Pilipinas: BSP)¹⁶⁰

¹⁵⁸ Banks shall be classified into:

- (a) Universal banks;
- (b) Commercial banks;
- (c) Thrift banks
- (d) Rural banks, as defined in Republic Act no. 7353 (hereafter the "Rural Banks Act");

¹⁵⁹ No director, officer, employee, or agent of any bank shall —

(a) Make false entries in any bank report or statement or participate in any fraudulent transaction, thereby affecting the financial interest of, or causing damage to, the bank or any person;

(b) Without order of a court of competent jurisdiction, disclose to any unauthorized person any information relative to the funds or properties in the custody of the bank belonging to private individuals, corporations, or any other entity: Provided, that with respect to bank deposits, the provisions of existing laws shall prevail.

¹⁶⁰ Bangko Sentral ng Pilipinas, "Republic Act no. 7653 the New Central Bank Act, Section 37,"

http://www.bsp.gov.ph/downloads/regs/new_central_bank_act.pdf (Retrieved on September 27 2014).

Criminal sanctions include (a) a fine of at least 50,000 pesos but no more than 200,000 pesos or imprisonment of no less than 2 years but no more than 10 years or both at the discretion of the court.¹⁶¹

C) Securities Regulation Code¹⁶²

This law concerns securities and equity and was issued to promote people's participation in owning enterprises, to support the development of the stock market, to protect investors by providing fair market information and to reduce or eliminate insider trading and other forms of fraud which can cause distortions in the market. The Act has a large body of content regarding securities regulations, consisting of various laws related to the stock market such as Chapter 2 on Securities and Exchange Commission, Chapter 3 on Registration of Securities, Chapter 6 on Protection of shareholder interests and Chapter 7 on Prohibitions of fraud, manipulation and Insider Trading.

D) Republic Act No. 10168 (Terrorism Financing Prevention and Suppression Act)¹⁶³

This Act is an Anti-Money Laundering law which criminalizes the financing of terrorist organizations. There is a law that strengthens the anti-money laundering regulation, namely the Republic Act No. 10167.

The Republic Act No. 10168 empowers the Anti-Money Laundering Council (AMLC) to freeze property and funds of those who support terrorism. Meanwhile, the revision of Republic Act No. 10167 (an act to further strengthen the anti-money laundering law) in 2011, led to the Financial Action Task Force on Money Laundering

¹⁶¹ Republic Act no. 7653 the New Central Bank Act, Section 35-36

¹⁶² Securities and Exchange Commission, "Republic Act no. 8799," <http://www.sec.gov.ph/laws/srcode.html> (Retrieved on 27 September 2014).

¹⁶³ Official Gazette of the Philippines, "Republic Act no. 10168," <http://www.gov.ph/2012/06/18/republic-act-no-10168/> (Retrieved on 27 September 2014).

(FATF) to revise the Philippines' status from a country originally in the dark gray list to a country in the gray list.¹⁶⁴

The revision occurred after President Benigno Aquino had signed the Anti-Money Laundering Act, positioning the Philippines in the international standard. This law emphasizes the prevention of terrorists, corrupt officials, drug gangs, and human traffickers from using the Philippines as their base to hide the illegal money. The Philippines expanded the definition of "crime" per the request of FATF, as well as the expanding the list of business on the money laundering watch list to go beyond financial institution like banks. On June 2011, the Philippines passed two Anti-money laundering laws (Senate Bill no. 3009 and House Bill no.4275)¹⁶⁵, and passed a third law (Republic Act 10365 – An Act Further Strengthening the Anti-Money Laundering Law)¹⁶⁶ in 2013. Nonetheless, the Republic Act 10365 does not include casinos in the watch list to make it easier to investigate bank accounts as it was feared that it would drive away investors despite a request from FATF to expand the watch list to include not only banks, but also casinos, foreign currency traders, and other non-bank enterprises.

2.4.4 Investment Agreements with ASEAN countries

This part presents two international agreements related to investment in the Philippines. The first one is the multilateral ASEAN Comprehensive Investment Agreement (ACIA) and the second is a bilateral agreement between Thailand and Philippines.

¹⁶⁴ Samuel Rubinfeld, "FATF Blacklists Ecuador, Yemen, Vietnam, Upgrades Philippines,"

<http://blogs.wsj.com/corruption-currents/2012/06/25/fatf-blacklists-ecuador-yemen-vietnam-upgrades-philippines/>

(Retrieved on 27 September 2014).

¹⁶⁵ Anti-Money Laundering Council, "Annual Report 2011," <http://www.amlc.gov.ph/archive/2011AR.pdf> (Retrieved on June 5 2015).

¹⁶⁶ Anti-Money Laundering Council, "Annual Report 2013," <http://www.amlc.gov.ph/archive/2013AR.pdf> Retrieved on June 5 2015).

A. ASEAN Comprehensive Investment Agreement (ACIA)

The ASEAN Comprehensive Investment Agreement (ACIA) was signed on February 14 1979 and came into effect on March 29 2012, resulting in the automatic cancellation of the ASEAN Investment Guarantee Agreement (IGA) and ASEAN Investment Area (AIA).¹⁶⁷

The ACIA, which was the outcome from merging AIA and IGA, covers investment liberalization and investment support and protection with the goal of greater freedom of movement in investment among ASEAN countries. This is done through progressive liberalization of the member states' investment regimes, enhanced protection for investors of member states, improvement of transparency and predictability of investment rules, regulations and procedures and joint promotion of the region to become a single integrated investment area.

The ACIA is guided by 4 main principles, namely investment liberalization, protection, promotion and facilitation. The agreement covers investments in agriculture, fisheries, forestry, mining and manufacturing industries including services related to the aforementioned sectors and covers both foreign direct investment (FDI) and portfolio investment. It is expected that the beneficiaries of the ACIA are ASEAN investors and foreign investors with enterprises in the region.¹⁶⁸

In the area of liberalization, parties to the agreement pledge to overturn limitations or conditions which represent obstacles to investment or will not issue any

¹⁶⁷ ASEAN Secretariat, "Agreements and Declarations," <http://www.asean.org/communities/asean-economic-community/category/agreements-declarations-7> (Retrieved on February 17, 2015).

¹⁶⁸ Thailand does not offer benefits to 'non-party', meaning aliens without ASEAN citizenship. 'Investor' under the ACIA refers to those without one of the following qualities: (1) Private individuals who are citizens of ASEAN state or (2) Legal persons of ASEAN states (ASEAN Comprehensive Investment Agreement 2009, Article 4(d), Page 8) Although the scope of 'investor' under ACIA is broader than that of AIA (only that benefits fellow ASEAN investors) by expanding to include non-ASEAN investors, the investor must run a 'substantive business operation' in ASEAN (ASEAN Comprehensive Investment Agreement 2009, Scope of Application, page 4) and each country must set out criteria for consideration of what is 'substantive' as appropriate for that country. Nonetheless, Thailand has indicated that it will not allow non-ASEAN individuals to seek ASEAN-only benefits under the ACIA from Thailand.

new regulation which is more stringent than the level of agreement as per National Treatment (NT) and Most Favored Nation Treatment (MFN), which are international principles under the World Trade Organization.

The investment protection under ACIA comprises of compensation in cases of seizures or strife and permission for investors to sue under the international dispute resolution process in cases of agreement breach which causes damage to investor. In creating exceptions for liberalization, ASEAN countries may create exemptions for sectors not ready for liberalization by listing the exempted sectors or conditions for exemption in the Reservation List. Nevertheless, the degree of liberalization must not be less than what the Contracting State agreed to in the AIA.

Thailand's Reservation List under the ACIA follows domestic laws still in place today. The Temporary Exclusion List (TEL)¹⁶⁹ comprises of three items which are planting/development of plant species, aquaculture and forestry from forestation.

The ACIA does not provide special rights to non-parties by defining "investors" that can be expanded to exercise the rights under this agreement as "ASEAN investor" which means:

- (1) Natural persons with nationality of ASEAN member countries.
- (2) Legal persons of ASEAN member countries.

In considering the nationality of the investors, one should primarily refer to the laws of the host country of the investment. In **Thailand's** case, a natural person's nationality is identified by their passport. Permanent residents, therefore, cannot exercise such rights. Legal person's nationality is identified by the majority of 50% of shareholders under the Foreign Business Act, B.E. 2542, which can be shares of a single ASEAN country, or a group of countries. In the case of the **Philippines**, a person's nationality is also identified by their passports. Permanent residents are, therefore,

¹⁶⁹ Meaning list of sectors that are temporarily exempt from liberalization or areas that take longer to liberalize

excluded. A legal person's nationality is identified by the majority of 50% of shareholders similar to the Thai case.

Furthermore, investment liberalization is one way to help stimulate the increase of investment between the ten ASEAN nations by offering special privilege for investors from ASEAN nations and foreign investors with enterprise in ASEAN. This special privilege permits greater investment freedom than for other investors. Nevertheless, liberalization does not mean allowing ASEAN investors to invest without any restrictions in any type of enterprise but rather, the liberalization comes with conditions and flexibility because ASEAN is aware of the differences in levels of development of each member nation and therefore, allows the countries some freedom to set their own conditions for foreign investors.

The ACIA allows member countries to voluntarily draw up a reservation list for certain sectors they do not wish to liberalize, but the overall level of liberalization must be no less than what it was under AIA originally which has been in use since 1998. ASEAN countries may progressively liberalize certain sectors later if they wish as per their readiness until 2015, by which every member country must be most liberalized to comply with the objective of establishing the ASEAN Economic Community (AEC).¹⁷⁰

The process of drawing up the reservation list shall be based on the following principles:

- (1) Reserve only differential treatment measures and measures with conditions for senior management and board of directors only (State may issue non-differential treatment measure at any time without stating in Reservation List)
- (2) National Security Measures such as arms and drugs production do not need to be included in the reservation list unless the government allows private

¹⁷⁰ Board of Investment, "Guidelines for drawing up Reservation List under ACIA [แนวทางการจัดทำรายการข้อสงวนภายใต้ความตกลงด้านการลงทุนอาเซียน]" <http://www.boi.go.th/thai/ASEAN/ASEAN/report.pdf> (Retrieved on February 4 2015).

sector to carry out such tasks but gives differential treatment to domestic and foreign companies.

- (3) Reservation list has to be signed off by the AIA Council first before coming into effect.

For the Philippines,¹⁷¹ reservation is as follows:

- Headnote is an annex for the reservation list, giving details on the principle in drawing up the reservation list, and specifying conditions that cannot be in the list. Therefore, reservation list will only include differential measures. In other words, ASEAN investors will not be treated equally to Filipino investors and measures to impose restrictions on senior management and board of director. The government of each country has the power to issue non-differential treatment measures without including them in the reservation list.
- The sectors which the Philippines forbid equity holding by foreigners are printing and publishing (e.g. publishing of brochures/pamphlets, printing of catalogues), manufacture of firecrackers and other pyrotechnic devices (listed under FIA above), agriculture and fishery, forestry and mining.

The ACIA covers the liberalization of investment in 5 business sectors, namely agriculture, fishery, forestry, mining, manufacturing industry and services related to aforementioned sectors including foreign direct investments (FDI) and portfolio investments but does not cover service sector liberalization but gives protection for investments in all sectors, including services.

Protection of investments under ACIA comprises of things like fair treatment, compensation for strife, compensation for expropriation, dispute resolution between state and state and dispute resolution between state and investor.

¹⁷¹ ASEAN Secretariat, "Schedule to the ASEAN Comprehensive Investment Agreement,"

[http://www.asean.org/images/2012/Economic/AIA/Agreement/Philippines%20Rsv%20List%20%20\(Final%2016%20Aug%202010\).pdf](http://www.asean.org/images/2012/Economic/AIA/Agreement/Philippines%20Rsv%20List%20%20(Final%2016%20Aug%202010).pdf) (Retrieved on 28 September 2014).

B. Thailand-Philippines Bilateral Investment Treaty (Thailand-Philippines BIT) on Profit Outflows

The Thailand – Philippines BIT came into effect in 1995 with the aim to promote economic cooperation between the two countries, create an environment conducive for investment and stimulate enterprise formation through promotion and protection of investments in manufacturing and service sectors. The main content of the agreement is as follows:

(1) Treatment of Investment: Section 4 states that investments made by Thai nationals or companies shall be subject treatment no different than that accorded to investments or returns made by Philippine nationals or companies or by the nationals or companies of any third State, whichever is more favorable.¹⁷²

(2) Compensation and Expropriation

Normally, the state will not expropriate enterprises, properties or land from foreign investments except in the interest of the public, public welfare or for national defense. In such cases, foreign investors will be properly compensated in the currency used during principal investment at the exchange rate at the time of compensation.¹⁷³

¹⁷² Article 4 Treatment of Investment 1. Investment made by nationals or companies of either Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be subject to a treatment no less favourable than that accorded to investments and returns made by its own nationals or companies or by the nationals or companies of any third State, whichever is more favourable to the nationals and companies, in areas allowed by existing laws, rules and regulations.

¹⁷³ Article 6. Compensation: Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict) revolution) state of national emergency) revolt) insurrection or riot in the territory of the latter Contracting Party shall be accorded by the same Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement for the investment suffered, no less favourable than that accorded to its own nationals or companies or to the nationals or companies of any third State, whichever is more favourable to the nationals of companies.

Article 7. Expropriation 1. a) in any case where investments of a national or company of one Contracting Party are subjected, directly or indirectly, to any measure of expropriation, or nationalization or any measure equivalent thereto, the national or company concerned shall be accorded in the territory of the other Contracting Party fair and equitable treatment on a non-discriminatory basis in relation to any such measure. No such measure shall be taken except for public purposes and against payment of compensation. Such compensation shall amount to the market value of the investments affected, immediately before the measure becomes public knowledge and it shall be made without delay and freely transferable in freely usable currency from the host country.

(3) Benefits from liberalized investment as specified in Section 8 are as follows.¹⁷⁴

- Capital, profits, dividends, technical fees, interests or other incomes
- Proceeds from liquidation of investment
- Funds from repayment of loans and
- Earnings of Thais from investment and compensation for losses incurred from war, military conflict and other emergencies in the Philippines

It is observed that previous agreements do not usually have provisions as strict as the ones in recent agreements. Nevertheless, as ASEAN countries have bilateral agreements on investment with each member countries and the ACIA is also in effect, investors can therefore choose to use any provision from any treaty or agreement which seems best fit for their purpose.

2.5 Land and Land Utilization Laws

The Philippines is an archipelagic state, consisting of 7,107 islands in total, only around 2,000 of which are inhabited. The total land of the Philippines is around 3,000 square km.¹⁷⁵ Such scarcity of land resources led the Constitution of the Philippines to limit land ownership to Filipino nationals only. As for legal persons such as companies or organizations, they are considered Filipino as long as at least 60% of the equity is held by Filipinos.

The presentation of this topic will be divided into two sub-topics, namely land laws and land utilization laws.

¹⁷⁴ Article 8 Each Contracting Party shall allow without delay the free transfer in freely usable of payments in connection with approved investments under Article 2 and returns therefrom, in particular, but not exclusively, of: a) the capital, net profits, royalties, technical fees, interest and other income, accruing from any investments of the nationals or companies of the other Contracting Party; b) the proceeds from the total or partial liquidation of any investments made by nationals or companies of the other Contracting Party; c) funds in repayment of loans given by nationals or companies of one Contracting Party to the nationals or companies of the other Contracting Party which the Contracting Parties have recognized as investment; d) the earnings of nationals of the other Contracting Party who are employed and allowed to work in connection with an investment in its territory; and d) payments or compensation under Articles 6 and 7.

¹⁷⁵ Ibid.

2.5.1 Land Laws

As previously mentioned, the 1987 Constitution of the Republic of the Philippines, Philippines' highest law, has a provision that prohibits land ownership in the Philippines by foreigners. Nevertheless, foreigners may own, buy, sell and rent certain types of land and real estate and also need to pay property tax on all lands owned in accordance to three relevant laws, namely the Republic Act No. 4726 (commonly referred to as the Condominium Act), the Republic Act No. 7652 (commonly referred to as the Investor's Lease Act of the Philippines) and the Real Property Tax Code.

The presentation of this subtopic will be divided into four parts, namely, Land and Real Estate Ownership, Real Estate Acquisition, Land and Real Estate Leasing and Land and Real Estate Tax.

A) Land and Real Estate Ownership

The 1987 Constitution of the Republic of the Philippines has a provision on land ownership in the Article XII National Economy and Patrimony. The Article aims to provide social equality in all aspects, including income, an increase in sustainable employment, and improvement in quality of life. The law consists of land reform to support the development of productive agriculture and industry for domestic and international markets. It is stated in Section 1 that the Philippines government shall protect Filipino entrepreneurs from unfair foreign competition and trade practices.¹⁷⁶

¹⁷⁶ Section 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged. The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, *the State shall protect Filipino enterprises against unfair foreign competition and trade practices*. In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

Section 7 of the Constitution¹⁷⁷ states that except in cases of hereditary land transfers, no private lands shall be transferred except to individuals, corporations or associations qualified to acquire or own lands of the public domain. Such corporations or associations must be legally registered and at least 60% of its equity must be held by Philippine nationals in accordance to Article 10 of the Philippines Constitution¹⁷⁸.

B) Real Estate Acquisition

Although foreigners are not allowed to own land in the Philippines, they are allowed to own condominium units. Section 5 of the Republic Act No. 4726¹⁷⁹ states that any transfer of condominium or apartment units, office or other space shall also include the transfer of the common areas, including the membership or shareholdings in the condominium corporation: provided, however, that:

(1) Where the common areas in the condominium project are jointly owned by the owners of separate units, no condominium units shall be transferred to persons other than Filipino citizens or corporations with at least 60% of the capital stock owned by Filipino citizens, except in cases of hereditary transfers.

¹⁷⁷ Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

¹⁷⁸ Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

¹⁷⁹ Section 5. Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interests in the common areas or, in a proper case, the membership or shareholdings in the condominium corporation: Provided, however, That where the common areas in the condominium project are owned by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens, or corporations at least sixty percent of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws.

(2) Where the common areas in a condominium project are held by a corporation, no transfer of a unit shall be allowed if it will cause the foreign interest in such corporation to exceed the limits imposed by existing laws, or more than 40%.

Therefore, foreigners can own condominium units in the Philippines but the total sum of foreign ownership in a condominium project must not exceed 40% of all units.

C) Land and Real Estate Leasing

Article 12, Section 2 of the Philippines Constitution¹⁸⁰ dictates that the state owns all natural resources in the country and all lands in the public domain cannot be transferred or sold except for agricultural lands. The exploration, development and utilization of natural resources and land shall be under state's authority only. The state may enter a joint venture manufacturing agreement with associations or corporations where at least 60% of its equity is owned by Filipinos. Joint venture agreements may be no longer than 25 years and renewable for not more than 25 years under conditions as may be provided by the law. Joint venture agreements with aliens must support economic growth through use of domestic resources.

¹⁸⁰ Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant...The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

Section 3 of the Constitution ¹⁸¹ classifies lands in the public domain to agricultural, forest, mineral lands and national parks. Corporations or private agencies may not acquire state-owned agricultural land but may rent under the following conditions:

(1) Private corporations may enter a leasing agreement of no longer than 25 years, renewable for another 25 years at most. The leased land must be no larger than 1,000 hectares (10,000,000 square meters).

(2) Philippine nationals may enter a leasing agreement for land no larger than 500 hectares (5,000,000 square meters) or own land no larger than 12 hectares (120,000 square meters).

Moreover, the Republic Act No. 7652 (Investor's Lease Act of the Philippine) also allows foreigners to lease private lands for construction on a long-term basis to encourage foreign investment. Constructions allowed include the establishment of industrial estates, factories, manufacturing industries, agro-industrial enterprises, land development for industrial and commercial use and tourism. ¹⁸²

Section 3 of the Republic Act No. 7652 (Investor's Lease Act of the Philippine) ¹⁸³ provides the definition for foreign investments in the Philippines as follows:

¹⁸¹ Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

¹⁸² Section 2. Declaration of Policy. — It is hereby declared the policy of the State to encourage foreign investments consistent with the constitutional mandate to conserve and develop our own patrimony. Towards this end, the State hereby adopts a flexible and dynamic policy on the granting of long-term lease on private lands to foreign investors for the establishment of industrial estates, factories, assembly or processing plants, agro-industrial enterprises, land development for industrial, or commercial use, tourism, and other similar priority productive endeavors.

¹⁸³ Section 3. Definitions. — For purposes of this Act, unless the context indicates otherwise, the term:

(1) "Investing in the Philippines" may mean investment through actual remittance of foreign currency or transfer of assets, whether in the form of technology, and manufacturing procedures, including trademarks and patents upon registration with the Securities and Exchange Commission.

(2) Approved investments can be withdrawn in the following cases:

- Failure to operate the investment project for three consecutive years
- Abandonment of the investment project before expiry of lease agreement, measured by failure to pay lease rental and/or operate for three consecutive months.

Foreigners, natural persons or legal persons with more than 40% of equity held by foreigners, investing in the Philippines can lease private lands in accordance with the Republic Act no. 7652 (Investor's Lease Act of the Philippines) as long as:¹⁸⁴

(1) No lease contract shall be for a period exceeding 50 years, renewable once for a period of not more than 25 years.

(1) "Investing in the Philippines" shall mean making an equity investment in the Philippines through actual remittance of foreign exchange or transfer of assets, whether in the form of capital goods, patents, formulae, or other technological rights or processes, upon registration with the Securities and Exchange Commission; and

(2) "Withdrawal of approved investment" shall mean either; (a) the failure to operate the investment project for any three (3) consecutive years; or (b) outright abandonment of the investment project at any time during the approved lease period: provided, that failure to pay lease rental for three (3) consecutive months coupled with the failure to operate the investment project for the same period shall be deemed an outright abandonment of the project.

¹⁸⁴ ¹⁸⁴ Section 4. Coverage. — Any foreign investor investing in the Philippines shall be allowed to lease private lands in accordance with the laws of the Republic of the Philippines subject to the following conditions:

- (1) No lease contract shall be for a period exceeding fifty (50) years, renewable once for a period of not more than twenty- five (25) years;
- (2) The leased area shall be used solely for the purpose of the investment upon the mutual agreement of the parties;
- (3) The leased premises shall comprise such area as may reasonably be required for the purpose of the investment subject however to the Comprehensive Agrarian Reform Law and the Local Government Code.

The leasehold right acquired under long-term lease contracts entered into pursuant to this Act may be sold, transferred, or assigned: provided, that when the buyer, transferee, or assignee is a foreigner or a foreign-owned enterprise, the conditions and limitations in respect to the use of the leased property as provided for under this Act shall continue to apply.

(2) The leased area shall be used solely for the purpose of the investment mutually agreed by the parties

(3) The leased premises shall comprise of areas required for the purpose of the investment subject as specified in the Comprehensive Agrarian Reform Law and the Local Government Code.

The long-term lease agreement under this legislation may be sold, transferred, or assigned to others, provided that when the buyer, transferee, or assignee is a foreigner, the conditions in the agreement shall not be altered. At the end of the contract, the foreign buyer, transferee or assignee may not own the land.

Section 5 of the Republic Act No. 7652 (Investor's Lease Act of the Philippine)¹⁸⁵ sets out the limitations for the leasing of private lands by foreign individuals as follows:

(1) In the case where foreign investors in the Philippines with investment conditions not mentioned by this law, they shall continue to be covered by the Presidential Decree No. 471¹⁸⁶ and other laws related to lease of lands by foreigners.

¹⁸⁵ Section 5. Limitations. — (1) Foreign individuals, corporations, associations, or partnerships not otherwise investing in the Philippines as defined herein shall continue to be covered by Presidential Decree No. 471 and other existing laws in lease of lands to foreigners.

(2) Withdrawal of the approved investment in the Philippines within the period of the lease agreement entered into under this Act, or use of the leased area for the purpose other than that authorized, shall warrant the ipso facto termination of the lease agreement without prejudice to the right of the lessor to be compensated for the damages he may have suffered thereby.

(3) Any lease agreement under this Act which is renewable at the option of the lessee subject to the same terms and conditions of the original contract shall be interpreted to mean as renewable upon the mutual agreement of the parties.

(4) In addition to the conditions for the renewal of a lease agreement after the period of fifty (50) years as provided herein, the foreign lease shall show that it has made social and economic contributions to the country.

(5) In the case of tourism projects, lease of private lands by foreign investors qualified herein shall be limited to projects with an investment of not less than five million (5M) US dollars, seventy percent (70%) of which shall be infused in said project within three years from the signing of the lease contract.

¹⁸⁶ This law concerns the length of leasing agreements of private lands to foreigners. The law states that foreign investors wishing to invest in the Philippines are allowed to lease private lands for 25 years and renewable for another 25 years as agreed to with the other party in the agreement.

(2) In the case of withdrawal of the approved investment before the end of the lease agreement such as through use of leased area for purposes other than that authorized, the renter shall compensate for damages incurred by the withdrawal.

(3) If the renter renews the agreement under the same terms, this shall be interpreted to mean as renewable upon the mutual agreement of the parties.

(4) Once the leasing agreement expires after 50 years and the renter wishes to renew the agreement, the renter must show that the business has made social and economic contributions to the country.

(5) In the case of tourism projects, foreigners may lease with an investment of at least 5,000,000 US dollars, 70% of which shall be infused in said project within three years from the signing of the lease contract.

Any lease contract shall be terminated if the investment project is not initiated within 3 years from the signing of the lease contract.¹⁸⁷ Moreover, any contract made in violation of the law shall be void and both contracting parties shall be fined 100,000 – 1,000,000 pesos or imprisoned from six months to six years or both, at the discretion of the court: Leasing contracts are illegal if they have the following characteristics¹⁸⁸:

¹⁸⁷ Section 6. Termination of Lease Contract. — The Secretary of Trade and Industry shall terminate any lease contract entered into under the provisions of this Act, if the investment project is not initiated within three (3) years from the signing of the lease contract.

¹⁸⁸ Section 7. Penal Provision. — Any contract or agreement made or executed in violation of any of the following prohibited acts shall be null and void ab initio and both contracting parties shall be punished by a fine of not less than One Hundred thousand pesos (P100,000) nor more than One million pesos (P1,000,000), or imprisonment of six (6) months to (6) years, or both, at the discretion of the court:

(1) Any provision in the lease agreement stipulating a lease period in excess of that provided in paragraph (1) of Section 4;

(2) Use of the leased premises for the purpose contrary to existing laws of the land, public order, public policy, morals, or good customs;

(3) Any agreement or agreements resulting is the lease of land in excess of the area approved by the DTI: provided, that, where the excess of the totality of the area leased is due to the acts of the lessee, the lessee shall be held solely liable therefore: provided, further, that, in the case of corporations, associations, or partnerships, the president, manager, director, trustee, or officers responsible for the violation hereof shall bear the criminal liability.

(1) Any provision in the lease agreement stipulating a lease period in excess of 50 years, renewable once for a period of not more than 25 years for a total of 75 years. This has since been extended to 80 years.¹⁸⁹

(2) Use of the leased premises for the purpose contrary to existing laws on land, public policy, public order, morals, or good customs

(3) Any agreement resulting in the lease of land in excess of the area approved by the Department of Trade and Industry, the renter violating the law shall be held liable. In the case where other parties are at fault such as corporations, associations, employees, directors, or designated officers, such party shall bear the criminal liability.

D) Land and Real Estate Tax

The Real Property Tax Code is a law written to govern the appraisal and assessment of real property value, the calculation of property taxes in provinces, cities and local political subdivisions and the collection and administration of property taxes. According to the law, foreigners are not allowed to own land in the Philippines. Therefore, this law may not be directly relevant to the Thai investors or Thai entrepreneurs as property taxes are paid by the land owners.

The appraisal and assessment of real property value and the calculation of property taxes shall be based on the following principles under The Real Property Tax Code:¹⁹⁰

¹⁸⁹ Senate of the Philippines, "The Foreigners' Lease Act of 2013, Section 3(1),"

<https://www.senate.gov.ph/lisdata/17876150991.pdf> (Retrieved on March 14 2015).

¹⁹⁰ Section 2. Fundamental Principles. — The appraisal and assessment of real property for taxation purposes shall be guided by the following fundamental principles:

- (1) Real property shall be appraised at its current and fair market value;
- (2) The appraisal of real property shall be uniform in each local political subdivision;
- (3) Real property shall be classified for assessment purposes on the basis of its actual use;
- (4) Real property shall be assessed on the basis of a uniform standard of value within each local political subdivision;
- (5) In no case shall the appraisal and assessment of real property for taxation purposes and the collection of the real property tax be let to any private person; and
- (6) The goal of property assessment shall be the equitable distribution of the tax burden.

- (1) Real property value shall be appraised at its current and fair market value;
- (2) Each political subdivision shall appraise real property value using the same standards
- (3) Property shall be classified and tax assessment shall be on the basis of its actual use
- (4) Each political subdivision shall assess property taxes using the same standards
- (5) The appraisal of real property value and property taxes and the collection of property taxes shall not be carried out by individuals without proper authority
- (6) The objective of property value and tax assessment regulations shall be the equitable distribution of the tax burden.

Moreover, the Real Property Tax Code states that every administrative division shall maintain assessment rolls, a list of names of all property owners along with the value of lands. It shall be the duty of all persons owning or administering real property, their duly authorized representative or those who benefit from the property, including corporations and partnership limited, to prepare and file with the provincial or city assessor, whether taxable or exempt. The filing shall be done once every five years during the period from January 1 to June 30 of every year, unless required earlier by the Secretary of Finance¹⁹¹. To claim tax exemption for such property under this Code, the

¹⁹¹ Section 5. Appraisal of Real Property. — All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality where the property is situated.

Section 6. Declarations of Real Property by Owner or Administrator. — It shall be the duty of all persons, natural or juridical, owning or administering real property, including the improvements therein, within a city or municipality, or their duly authorized representative, to prepare, or cause to be prepared, and file with the provincial or city assessor, a sworn statement declaring the true value of their property, whether previously declared or undeclared, taxable or exempt, which shall be the current and fair market value of the property, as determined by the declarant. Such declaration shall contain a description of the property sufficient in detail to enable the assessor or his deputy to identify the same for assessment purposes. The sworn declaration of real property herein referred to shall be filed with the assessor concerned once every five years during the period from January first to June thirtieth, commencing with the calendar year 1977, unless required earlier by the Secretary of Finance.

Section 8. Listing of Real Property in the Assessment Rolls. — In every province and city, there shall be prepared and maintained by the provincial or city assessor an assessment roll wherein shall be listed all real property, whether

claim shall be filed within thirty days from the date of the declaration of real property along with sufficient documentary evidence in support of such claim.¹⁹²

When the property owner fails to make such declarations within the time prescribed, the provincial or city assessor shall automatically declare the property in the name of the original owner, if known, or as an unknown owner.¹⁹³

taxable or exempt, located within the province or city. Real property shall be listed and valued in the name of the owner or administrator, or anyone having legal interest in the property.

The undivided real property of a deceased person may be listed and valued in the name of the estate, or of the heirs and devisee without designating them individually; and undivided real property other than owned by a deceased may be listed and valued in the name of one or more co-owners; Provided; however, That such heir, devisee or co-owner shall be liable severally for all obligations imposed by this Code and for the payment of the real property tax with respect to the undivided property.

The real property of a corporation, partnership or association shall be entered and assessed in the same manner as that of an individual.

Real property owned by the Republic of the Philippines, its political subdivisions and any government-owned corporation so exempt by its charter, the beneficial use of which has been granted, for consideration or otherwise, to a taxable person, shall be listed for purposes of taxation in the name of the grantee, or of the public entity if such property has been acquired for resale or lease.

The assessment roll shall be prepared in accordance with rules and regulations prescribed by the Secretary of Finance.

¹⁹² Section 9. Proof of Exemption of Real Property from Taxation. — Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Code shall file with the provincial or city assessor within thirty days from the date of the declaration of real property sufficient documentary evidence in support of such claim, including corporate charters, titles or ownerships, articles of incorporation, by-laws, contracts, affidavits and certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, it shall be proven to be tax exempt the same shall be dropped from the roll of taxable properties.

¹⁹³ Section 7. Declaration of Real Property by the Assessor. — When any person, natural or juridical, by whom real property is required to be declared under Section six hereof refuses or fails for any reason to make such declaration within the time prescribed, the provincial or city assessor shall himself declare the property in the name of the defaulting owner, if known, or against an unknown owner, as the case may be, and shall assess the property for taxation in accordance with the provisions of this Code. No oath shall be required of a declaration thus made by the provincial or city assessor.

If the property owner is deceased, the property may be listed in the names of more than one heir. The heir shall be liable for all payments incurred from the property, including debts and taxes. In the case of corporate property, the organization or limited partnership shall follow the same procedures as properties of natural person.

Real properties owned by state agencies are exempt from taxes. If such properties are sold or leased, the property shall be listed under the name of the grantee for tax purposes.

For purposes of appraisal and assessment, real property shall be classified according to its purpose as residential, agricultural, commercial, industrial or mining. All lands used for educational, cultural, recreational or scientific purposes, as well as hospitals not owned by the government, shall be classified as 'special'.¹⁹⁴ Moreover, the classification of properties shall not factor in the property's location and the beneficiaries of the property.¹⁹⁵

Tables 2.8 – 2.10 present the tax bracket used for calculating property taxes by assessing current market values, its purpose of use, and whether it is of a special class.¹⁹⁶

¹⁹⁴ Section 18. Classes of Real Property for Assessment Purposes. — For purposes of assessment, real property shall be classified as residential, agricultural, commercial or industrial and also as mineral in the case of lands. Special Classes of Real Property - All lands, buildings and other improvements thereon, actually, directly and exclusively used for educational, cultural, recreational or scientific purposes, as well as hospitals not owned and operated by the government or by any of its instrumentalities, shall be classified as special.

¹⁹⁵ Section 19. Actual Use of Real Property as Basis for Assessment. — Real property shall be assessed on the basis of its actual use regardless of where located and whoever uses it.

¹⁹⁶ Tables 2.5 - 2.7 are a summary of Section 20 of The Real Property Tax Code.

Table 2.8 Real Property Tax Rate per Purpose of Land Use

Type of Real Property	Purpose of Land Use	Assessment Level (of current market values)
Lands	Residential	30%
	Agricultural	40%
	Commercial	50%
	Industrial	50%
Mineral Lands	Not covered by lease	50%
	Covered by lease*	50%

Note* declared for taxation purposes and paid either by the owner of the land or renter

Table 2.9 Tax Rate on Buildings, Machineries and Other Improvements per Market Value

Market Value	Assessment Level
0 - 30,000 pesos	15%
30,001 - 50,000 pesos	20%
50,001 - 75,000 pesos	25%
75,001 - 100,000 pesos	35%
100,001 - 150,000 pesos	45%
150,001 - 250,000 pesos	55%
250,001 - 350,000 pesos	65%
350,001 - 500,000 pesos	75%
over 500,000 pesos	80%

Table 2.10 Tax Rate on Special Classes of Land per Purpose of Land Use

Purpose of Land Use	Assessment Level (of current market values)
Educational	15%
Cultural	15%
Scientific	15%
Hospitals	15%
Recreational	30%

In the case of an increase in property value, the Secretary of Finance may increase the aforementioned tax rates by no more than 10%. The adjustment may be made before the end of the fifth year after the date of the last general tax revision. The new tax rate will come into effect in the following general revision (tax revision in the province or city to take effect 1 January 1979, and once every five years thereafter).¹⁹⁷ In the case where there is no increase in property value, the tax rate shall not be adjusted more than once every 5 years.¹⁹⁸

2.5.2 Land Utilization Laws

With constraints on land availability, the Philippines have relatively strict rules on foreign land ownership. Nevertheless, given that land is a key economic production factor, total prohibition of foreign land ownership will minimize foreign direct investment. The Philippine government therefore issued laws that provide exceptions for land use by foreigners. This section will discuss two relevant laws on land utilization as follows.

A) *National Land Use Act of the Philippines*

The Act was issued to allocate, utilize, administer, and develop land in the Philippines through appropriate means, in line with the principle of sustainable and equitable social development. The Act creates the Land Use Policy Administration (LUPA)¹⁹⁹ to oversee management, deliberate and regulate land use per requirements of

¹⁹⁷ Section 21. General Revision of Assessments. — Beginning with the calendar year 1978, the provincial or city assessor shall make a general revision of real property assessments in the province or city to take effect January 1, 1979, and once every five years thereafter: Provided, however, That if property values in a province or city, or in any municipality, have greatly changed since the last general revision, the provincial or city assessor may, with the approval of the Secretary of Finance or upon his direction, undertake a general revision of assessments in the province or city, or in any municipality before the fifth year from the effectivity of the last general revision.

¹⁹⁸ Section 22. Valuation of Real Property. — Upon the discovery of real property or during the general revision of property assessments as provided in Section twenty-one of this Code or at any time when requested by the person in whose name the property is declared, the provincial or city assessor or his authorized deputy shall make an appraisal and assessment in accordance with Section five hereof of the real property listed and described in the declaration irrespective of any previous assessment or taxpayer's valuation thereon: Provided; however, That the assessment of real property shall not be increased oftener than once every five years in the absence of new improvements increasing the value of said property or of any change in its use, except as otherwise provided in this Code.

¹⁹⁹ Section 17 of the National Land Use Act of the Philippines transfers all the authority and responsibility of the Housing and Land Use Regulatory Board (HLURB) and the National Land Use Committee (NLUC) under the supervision of the National Economic Development Authority (NEDA) to LUPA. (<http://www.senate.gov.ph/lisdata/12841073!.pdf>)

this Act. This law emphasizes efficiency and safety of land use, as well as environmental friendliness for every purpose of land use.²⁰⁰

As land ownership by foreigners violates the Constitution of the Philippines, utilization of land owned by foreigners must refer to the Republic Act No. 7916 which was issued to regulate the stable operation under The Philippines Economic Zone Authority (PEZA).²⁰¹

B) Republic Act No. 7916

The Sections of this Act provides directions for the establishment of Special Economic Zones and specifies the authority of relevant agencies, as well as regulations for investors, both domestic and international. The Sections related to land utilization and property tax are as follows.

The Republic Act No. 7916 mandates that business establishments operating within the PEZA or ECOZONE shall be exempt from property taxes. In lieu of paying taxes, 5% of the gross income earned by such businesses shall be remitted to:²⁰²

²⁰⁰ Section 4 (cc) of the Senate Bill (S.B) No. 149. Ibid.

²⁰¹ ECOZONES is the abbreviation for Special Economic Zones (SEZ) as defined in Chapter 4 of RA 7916 (1991) as amended by Republic Act No 8748 (1995) (the Special Economic Zone Act of 1995). ECOZONES are areas that have been developed or have potential to be developed to become areas for agricultural industry, tourism industry, commerce, banking, investment and finance, classified into 5 categories as stated in 2.2. ECOZONE may refer to one economic zone or all 5 economic zones. PEZA or the Philippine Economic Zone Authority is the agency that oversees the ECOZONES.

²⁰² Section 24. Exemption from Taxes Under the National Internal Revenue Code. — Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. This five percent (5%) shall be shared and distributed as follows:

- (a) Three percent (3%) to the national government;
- (b) One percent (1%) to the local government units affected by the declaration of the ECOZONE in proportion to their population, land area, and equal sharing factors; and
- (c) One percent (1%) for the establishment of a development fund to be utilized for the development of municipalities outside and contiguous to each ECOZONE: Provided, however, That the respective share of the affected local government units shall be determined on the basis of the following formula:

(1) 3% of gross income to the national government;

(2) 1% gross income to local government agencies as declared in the ECOZONE and

(3) 1% of gross income to the development fund, which is used for development of areas around the ECOZONE.

All income derived by persons and corporations in the ECOZONE shall be subject to taxes as stated in the National Internal Revenue Code and the Local Government Code.²⁰³ In addition, lands and buildings in each ECOZONE may be leased to foreign investors under conditions specified in the Republic Act No. 7652, otherwise known as the Investors' Lease Act.²⁰⁴

To conclude, the Philippines' laws on land and land utilization create considerable constraints for foreigners as the Constitution does not allow foreigners to own land. Nevertheless, foreigners can own units of condominiums and lease land in ECOZONE, subject to the relevant taxes on land and property.

2.6 Labor Laws

Similar to the laws on land, the Constitution of the Philippines has provisions relevant to labor, providing labor the rights to collectively bargain by law, work in appropriate working environments, participate in policy decision-making process concerning labor, and a fair share of his or her production. The main law which

(1) Population — fifty percent (50%);

(2) Land area — twenty-five percent (25%); and

(3) Equal sharing — twenty-five percent (25%).

²⁰³ Section 25. Applicable National Taxes. — All income derived by persons and all service establishments in the ECOZONE shall be subject to taxes under the National Internal Revenue Code.

²⁰⁴ Section 30. Leases of Lands and Buildings. — Lands and buildings in each ECOZONE may be leased to foreign investors for a period not exceeding fifty (50) years, renewable once for a period of not more than twenty-five (25) years, as provided for under Republic Act No. 7652, otherwise known as the Investors' Lease Act. The leasehold right acquired under long-term contracts may be sold, transferred or assigned, subject to the conditions set forth under Republic Act No. 7652.

regulates labor in the Philippines is the Labor Code of the Philippines which covers several key aspects related to labor for both Philippine workers and foreign workers that have obtained the Alien Employment Permit (AEP).

This section will present the legal matters relevant to labor in 3 topics, namely employment and its conditions, minimum wage, and collective bargaining and strikes.

2.6.1 Employment and Its Conditions

The Labor Code of the Philippines was issued on Labor Day or May 1 1974, to set out key conditions for employment as follows:

In Book III Conditions of Employment which covers Sections 82-155 states that working hours must not exceed eight hours per day, including lunch breaks of no less than 60 minutes. In case of a night shift (between 22.00 hr. to 06.00 hr. of the next day) employees shall be paid an additional 10% of their regular wage. In the case of overtime work, employees shall be paid extra 25% of their regular wage. Work performed on a holiday by employees shall be paid an additional 30% of their regular wage. Employees are entitled to rest periods of not less than 24 consecutive hours after every six consecutive normal work days (Section 91), and are also entitled to an annual service incentive leave of five days with pay (Section 95).

In terms of female worker, no woman shall be employed or permitted to work during the night, except in the agricultural sector under the requirement that female employees are given a period of rest of not less than nine consecutive hours. Moreover, employers are required to provide facilities for women, such as female toilets, nursery, and recreational areas to ensure a safe working environment.²⁰⁵ Moreover, female employees are entitled to maternity leave of at least two weeks prior to the expected

²⁰⁵ Article 130. Nightwork prohibition. No woman, regardless of age, shall be employed or permitted or suffered to work, with or without compensation:

1. In any industrial undertaking or branch thereof between ten o'clock at night and six o'clock in the morning of the following day; or
2. In any commercial or non-industrial undertaking or branch thereof, other than agricultural, between midnight and six o'clock in the morning of the following day; or
3. In any agricultural undertaking at nighttime unless she is given a period of rest of not less than nine (9) consecutive hours.

date of delivery and at least another four weeks after delivery or miscarriage. The maternity leave shall be provided only for the first four deliveries however.²⁰⁶

In terms of child labor, employment of children below 15 years of age shall be prohibited unless the employment is under direct supervision of parents or legal guardians and the employment does not affect schooling.²⁰⁷

2.6.2 Minimum wage

The minimum wage is also covered by the Labor Code of the Philippines. The National Wages and Productivity Commission (NWPC), established by the Section 120 of Chapter 5²⁰⁸, is the agency responsible for issuing policies and regulations related to wages. The NWPC also sets the minimum wage in the Philippines, including the minimum wage for foreign workers who possess an AEP to work in the Philippines.

²⁰⁶ Article 133. Maternity leave benefits.

1. Every employer shall grant to any pregnant woman employee who has rendered an aggregate service of at least six (6) months for the last twelve (12) months, maternity leave of at least two (2) weeks prior to the expected date of delivery and another four (4) weeks after normal delivery or abortion with full pay based on her regular or average weekly wages. The employer may require from any woman employee applying for maternity leave the production of a medical certificate stating that delivery will probably take place within two weeks.
2. The maternity leave shall be extended without pay on account of illness medically certified to arise out of the pregnancy, delivery, abortion or miscarriage, which renders the woman unfit for work, unless she has earned unused leave credits from which such extended leave may be charged.

The maternity leave provided in this Article shall be paid by the employer only for the first four (4) deliveries by a woman employee after the effectivity of this Code.

²⁰⁷ Article 139. Minimum employable age.

1. No child below fifteen (15) years of age shall be employed, except when he works directly under the sole responsibility of his parents or guardian, and his employment does not in any way interfere with his schooling.
2. Any person between fifteen (15) and eighteen (18) years of age may be employed for such number of hours and such periods of the day as determined by the Secretary of Labor and Employment in appropriate regulations.

The foregoing provisions shall in no case allow the employment of a person below eighteen (18) years of age in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labor and Employment.

²⁰⁸ Article 120. Creation of National Wages and Productivity Commission. There is hereby created a National Wages and Productivity Commission, hereinafter referred to as the Commission, which shall be attached to the Department of Labor and Employment (DOLE) for policy and program coordination. (As amended by Republic Act No. 6727, June 9, 1989).

The minimum wage varies by occupation and region. In determination of the regional minimum wage, the following factors are considered:²⁰⁹

- 1) The demand for living wages
- 2) The consumer price index
- 3) The cost of living
- 4) The needs of workers and their families
- 5) The need to induce industries to invest in the countryside
- 6) Improvements in standards of living
- 7) The prevailing wage levels
- 8) Fair return of the capital invested and capacity to pay of employers
- 9) Effects on employment generation
- 10) Effects on employment generation and family income
- 11) The equitable distribution of income and wealth along the imperatives of economic and social development.

Employers must report the names and wages of each employee in the enterprise on an annual basis if the minimum wages prescribed by NWPC affect the wage rates of the said enterprise. Employers and labor unions can negotiate a new minimum wage level that corresponds with the skills and experience of that group of employees.

²⁰⁹ Article 124 Standards/Criteria for minimum wage fixing. The regional minimum wages to be established by the Regional Board shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the employees within the framework of the national economic and social development program. In the determination of such regional minimum wages, the Regional Board shall, among other relevant factors, consider the following:

1. The demand for living wages;
2. Wage adjustment vis-à-vis the consumer price index;
3. The cost of living and changes or increases therein;
4. The needs of workers and their families;
5. The need to induce industries to invest in the countryside;
6. Improvements in standards of living;
7. The prevailing wage levels;
8. Fair return of the capital invested and capacity to pay of employers;
9. Effects on employment generation and family income; and
10. The equitable distribution of income and wealth along the imperatives of economic and social development.

All workers paid by performance, including those who are paid on piecework, shall receive no less than the prescribed minimum wage for an 8-hour work day. If work is less than 8 hours, the workers should be paid an appropriate fraction. Interns must be compensated by adjusting the prescribed minimum wage as appropriate.

The Philippines have no law preventing workers from bargaining for higher wages with their respective employers.²¹⁰ Therefore, workers may free bargain under the condition the wage bargained may not be lower than that prescribed by the law.²¹¹

Table 2.11 shows the minimum wages in National Capital Region, classified by sector and region as of September 1, 2014. The minimum wages for other regions are compiled in Annex A of this report.

Table 2.11 Minimum Wages in the National Capital Region (NCR)

Sector/Condition	Minimum Wage (Under W.O. No. NCR-18, effective from 1 January 2014)*
Non-Agriculture	466.00
Agriculture	
Plantation and Non-Plantation	429.00
Private Hospital	
Less than 100-bed in size	429.00
Retail/Service	
No more than 15 employees	429.00
Production	
No less than 10 full-time employees	429.00

Currency in Pesos

* Revised upward by 10 pesos for minimum wage and 15 pesos for living expenses from what is specified in W.O. No. NCR-17. Effective since 1 January 2014

²¹⁰ Article 125. Freedom to bargain. No wage order shall be construed to prevent workers in particular firms or enterprises or industries from bargaining for higher wages with their respective employers. (As amended by Republic Act No. 6727, June 9, 1989)

²¹¹ Article 127. Non-diminution of benefits. No wage order issued by any regional board shall provide for wage rates lower than the statutory minimum wage rates prescribed by Congress. (As amended by Republic Act No. 6727, June 9, 1989)

2.6.3 Collective Bargaining and Strike

The laws related to collective bargaining and strikes are covered by Book V Labor Relations²¹² of the Labor Code of the Philippines. The Book covers the rights and responsibilities of Philippine workers as follows:

A) Self-Organization

Every employee has the right to self-organize; including the right to establish, join or assist labor unions that he/she is chooses to join for collective bargaining purposes.²¹³

B) Collective Bargaining

The rights for collective bargaining between employers and employees to negotiate an agreement or settle dispute related to work is specified by Sections 250 – 256. The Sections state that when a party desires to negotiate an agreement; it shall send a written notice declaring its intent to the other party. The other party shall reply within 10 days from receipt of such notice. If the dispute is not settled, a meeting between representatives of both sides shall be convened to negotiate an agreement. If there is a collective bargaining agreement, both the employer and employees shall follow the agreement and may not cancel or revise the content of the negotiation for the duration of the agreement but can, however, send a notice stating the intent to cancel or revise the agreement within 60 days before the end of the agreement. The agreement shall be for a term of five years and may be renegotiated within three years after its initial execution.

C) Collective Protest, Strikes or Lockouts

Sections 263 to Section 268 provide the right for employees and labor unions to collectively protest, strike or lockout to campaign or protect their rights and to support the independence of labor unions and collective bargaining. The Department of Labor and Employment shall provide support for workers who are unable to collectively

²¹² Covers Sections 211 to Section 277.

²¹³ Article 243 to Article 246 of the Labor Code of Philippines.

bargain due to financial constraints. Protests shall be peaceful and satisfy the following prohibitions by the Secretary of Labor and Employment or the Commission:

(1) Protests nearby hospitals, clinics and other medical institutions are prohibited or must be protests that do not affect health and national property.

(2) Violent and illegal acts, or exploitation of legal loopholes are prohibited.

(3) Workers shall not protest without prior collective bargaining with employer and workers terminated as a result of illegal protests shall be entitled to wages until the last day of work

(4) Any union officer who participates in any illegal strike will be terminated from his/her employment.

(5) No person shall obstruct any peaceful and lawful protest and no person shall be hired to organize or obstruct a protest.

(6) Employees and employers must return to work once negotiations meet the demand of the majority.

(7) Members of labor unions may lawfully protest or collectively bargain for the union. Illegal acts, however, shall be prosecuted accordingly.

The punishment for violators of protest and collective bargaining laws is a fine of 1,000 - 10,000 Pesos or imprisonment from three months to three years, or both at the discretion of the court. Any foreigners found guilty shall be prosecuted according to law and deported. Any violation not mentioned in this law shall be punished at the discretion of the justice system.²¹⁴

²¹⁴ Book VII Article 288. Penalties. Except as otherwise provided in this Code, or unless the acts complained of hinge on a question of interpretation or implementation of ambiguous provisions of an existing collective bargaining agreement, any violation of the provisions of this Code declared to be unlawful or penal in nature shall be punished with a fine of not less than One Thousand Pesos (P1,000.00) nor more than Ten Thousand Pesos (P10,000.00) or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the court. In addition to such penalty, any alien found guilty shall be summarily deported upon completion of service of sentence. Any provision of law to the contrary notwithstanding, any criminal offense punished in this Code, shall be under the concurrent jurisdiction of the Municipal or City Courts and the Courts of First Instance. (As amended by Section 3, Batas Pambansa Bilang 70).

D) Prohibited Activities for Foreigners or Foreign Agencies

(1) All foreign workers or foreign organizations are prohibited from engaging in trade union activities except for foreigners or foreign organizations with valid work permits may exercise the right to collectively bargain with a union: Provided, further, that such foreigners must be nationals of countries which grant the same or similar rights to Filipino workers (foreign reciprocity).²¹⁵

(2) No foreign individual or organization may give any donations, assist in monetary or other forms of assistance to any agency related to any labor organization (Such as through establishing and administering an agency related to labor, bargaining and managing according to mutual agreement, coordinating work, organizing seminars, meetings and elections of union representatives) in relation to trade union activities, without prior permission by the Secretary of Labor.²¹⁶

To conclude, the Philippines's Labor law gives priority to employees as can be observed from many employee's rights guaranteed in the Constitution of the Philippines, especially in creating policies related to labor benefits. Nevertheless, foreign workers' rights are limited in collective bargaining and strike under Philippines' law unless those foreigners are nationals of a country which grants the same or similar rights to Filipino workers, which is inapplicable to Thai nationals.

²¹⁵ Article 269. Prohibition against aliens; exceptions. All aliens, natural or juridical, as well as foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contacts between Philippine labor unions and recognized international labor centers: Provided, however, That aliens working in the country with valid permits issued by the Department of Labor and Employment, may exercise the right to self-organization and join or assist labor organizations of their own choosing for purposes of collective bargaining: Provided, further, That said aliens are nationals of a country which grants the same or similar rights to Filipino workers.

²¹⁶ Article 270. Regulation of foreign assistance.

1. No foreign individual, organization or entity may give any donations, grants or other forms of assistance, in cash or in kind, directly or indirectly, to any labor organization, group of workers or any auxiliary thereof, such as cooperatives, credit unions and institutions engaged in research, education or communication, in relation to trade union activities, without prior permission by the Secretary of Labor.
2. This prohibition shall equally apply to foreign donations, grants or other forms of assistance, in cash or in kind, given directly or indirectly to any employer or employer's organization to support any activity or activities affecting trade unions.
3. The Secretary of Labor shall promulgate rules and regulations to regulate and control the giving and receiving of such donations, grants, or other forms of assistance, including the mandatory reporting of the amounts of the donations or grants, the specific recipients thereof, the projects or activities proposed to be supported, and their duration.

2.7 Intellectual Property Law

Article 14 Education, Science and Technology, Arts, Culture and Sports of the Philippines Constitution states that the State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations when beneficiaries are the people.²¹⁷ Moreover, the Republic Act No. 8293,²¹⁸ or commonly referred to as the Intellectual Property Code of the Philippines, which became effective on January 1, 1998, is another law governing intellectual property.

Apart from the laws mentioned above, the Philippines are also a party to the following international agreements as follows.

(1) Berne Convention for the Protection of Literary and Artistic Works, 1886, Berne

(2) Universal Copyright Convention (1952, Geneva) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organization 1961, Rome

(3) Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (1994)

On July 4, 2002, the Senate of the Philippines ratified the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty.²¹⁹ Subsequently, the provisions of these two treaties have been adopted into domestic laws.

²¹⁷ Section 13 the State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law.

²¹⁸ World Intellectual Property Organization, "Intellectual Property Code of the Philippines (Republic Act No. 8293)," <http://www.wipo.int/edocs/lexdocs/laws/en/ph/ph001en.pdf> (Retrieved on October 15, 2014).

²¹⁹ Amended in October 2004.

In this section, the issues of copyright and intellectual properties will be discussed as they are the matters covered by the Intellectual Property Code, whereas copyright protection is covered by other laws.

2.7.1 Intellectual Property Code of the Philippines (Republic Act No. 8293)

2.7.1.1 Copyright and Patents

A) The term "intellectual property rights" consists of:

Copyright and Related Rights; Trademarks and Service Marks; Geographic Indications; Industrial Designs; Patents; Layout-Designs of Integrated Circuits; and Trade Laws.

B) Copyright Protection System

The Philippines do not have a copyright registration system. Copyright occurs and is protected as soon as a work is publically disseminated. Nevertheless, RA No. 8293 states that within 3 weeks after the first public dissemination or performance of the work, there shall be two complete copies that must be registered or kept in the national library and the Supreme Court Library. For copyright owners who are not residents of the Philippines, a representative in the Philippines shall be appointed to contact the Intellectual Property Office.

C) Works Protected/Definition

Copyright means legal right of the owner of literature, academic, scientific, or artistic work, including computer programs.

Work with copyright under this Act includes:

Literary work, dramatic work, musical work, artistic work including paintings, sculptures, photographic works including works produced by a process similar to photography; still photographs, accompanying photographs and advertising photographs; drawings or plastic works of a scientific or technical character; maps, plans, sketches, charts and three-dimensional works related to geography, topography, architecture or science; Works of drawing, architecture, sculpture, engraving, lithography or other works of art; models or original jewelry design or replica for

invention, regardless of its eligibility for registration as industrial design, and other art related work.²²⁰

Audiovisual works, cinematographic works, musical compositions, audio visual dissemination works, protected Derivative works,²²¹ and Computer programs.

Other protected rights include performer's rights, Rights of Producers of Phonograms and Rights of Broadcasting Organizations.

D) Exemption of Protection

- News of the day or other miscellaneous facts having the character of mere news items of press and not a part of literary, scientific or artistic works
- Constitution and laws
- Rules, regulations, declarations, orders, explanations and letters to departments, offices, or any agencies of the government or local jurisdiction.
- Any work of the Government of the Philippines is not copyright protected. However, in the case where work is created for profit, the agency or office may require payment of royalties for use of that work. No prior approval and royalties shall be required for the use of laws, regulations, speeches, addresses, dissertations, pronounced or testimonies before court or state agencies
- Verdict, order or report of government officials
- Ideas, procedures, systems, methods or operations, concepts, principles, discoveries or data of discovery even if displayed, explained, raised as example or included in work, daily news and facts with characteristics of

²²⁰ Section 172 of RA No. 8293 Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

²²¹ Derivatives work as defined by Berne Convention Article 2(3) includes translations, adaptations and arrangements of music and other alterations of literary or artistic work.

http://www.wipo.int/treaties/en/text.jsp?file_id=283698#P85_10661 (Retrieved on February 28, 2015).

mere news or administrative provisions or laws, including official translations thereof, do not receive copyright protection

E) Rights of copyright owner

Copyright owner shall have the exclusive right to carry out the following acts:

- Reproduction or transformation of the work
- Dissemination or public display
- Audiovisual dissemination
- Dissemination of work to public through sale or rental
- Transfer proceeds of Copyright to others
- Dramatization, translation, adaptation, abridgment, arrangement or other

transformation of the work.

F) Limitations of the Rights of Copyright Owner

The following acts shall not constitute infringement of copyright:

- 1) Non-profit research or educational purposes
- 2) Using of work for personal purposes or that of family and relatives.
- 3) Comment, analysis or recommendation while recognizing the copyright.
- 4) Reporting through public media while recognizing the copyright.
- 5) Reproduction, transformation, action or display for consideration of Court or authorized officials or for report of such consideration.
- 6) Reproduction, adaptation, display for non-profit educational purposes
- 7) Reproduction, adaptation of parts of work or summarization or distribute or sale of summary book for students in schools or educational institutions of a work for non-profit purposes.
- 8) Using a copyright work as a question in a test.

- 9) Recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society.
- 10) Public citation of work in a fair and purpose-appropriate manner, as well as citation of newspaper, magazines in a form of news summary provided that the source and name of author are mentioned.
- 11) Rights granted to performers and producers of sound recordings under shall expire 50 years from the end of the year in which the performance or recording took place. In case of broadcasts, the term shall be 20 years from the date the broadcast took place.

The following acts shall not constitute infringement of patents:

- 1) Use of patented product which is sold in the country by patent holder or with his/her permission as long as usage is after the product is put on sale
- 2) Private use without commercial objectives as long as the use will not affect economic interests of patent holder
- 3) Use comprising of making or using exclusively for purposes of experiment that relate to subject matter of patented invention
- 4) Use involving preparation of medicine for individual purposes according to prescription in a pharmacy or by a medical professional
- 5) Where the invention is used in any ship, vessel, aircraft, or land vehicle of any other country entering the territory of the Philippines temporarily or accidentally, provided that such invention is used exclusively for the needs of the ship, vessel, aircraft, or land vehicle and not used for the manufacturing of anything to be sold within the Philippines.
- 6) Anyone using or undertaken preparation to use the invention in good faith in their enterprise before the filing date or priority date of the application on which a patent is granted, shall have the right to continue the use.

G) Retaining Copyright

Copyright owner is not required to use or do anything to retain his/her copyright.

H) Revoking Copyright

Not mentioned in the Act.

I) Transmission of Rights

Transmission of rights can be made with a request, with a copy for the National Library, accompanied by transmission fee. Such request will be announced in the IPO Gazette.

J) Permission to Exercise Rights

Permission to exercise rights can be made with a request, with a copy for the National Library, accompanied by permission fee. Such request will be announced in the IPO Gazette.

K) Requirements for Copyright Registration

In the case that foreigners have their copyright infringed and desire to be protected, the following steps must be taken:

1) Preparation for Request of Copyright Protection

The Philippines does not have a copyright registration system because the copyright protection commences while creating the work. Nevertheless, the copyright owner must send a notice to the National Library and the Supreme Court Library after public distribution of work or initial performance under the authority of the copyright owner for documentation purposes for the National Library and the Supreme Court Library.

If within 3 weeks after receiving notice from National Library and/or Supreme Court Library, the copyright owner, transferee of copyright or representative fails to file a copy of the copyright work and pay the copyright registration fee and deposit, the copyright owner must pay a late fine and must pay the amount of the retail price of the best edition of the work to the National Library and the Supreme Court Library.

In the case that the person requesting the copyright is not a resident of the Philippines, the person must appoint a representative in the Philippines to contact the IPO Office.

2) Documents Required for Copyright Protection Request²²²

To obtain a certificate of registration with the National Library or the Supreme Court Library, the following documents are required:

- 2.1) Two identical copies of certificate requesting protection correctly filled for each type of work²²³
- 2.2) A support document evidencing ownership of the copyright, may be document or action showing possession of work if the claimant is not the original author, translator, or real contact person, the claimant must also show steps in creating copyrighted work and provide dates of completion and publication
- 2.3) Receipt showing payment of the registration fee
- 2.4) Documentary stamps affixed to the registration and deposit certificate
- 2.5) 2 copies of the work or replica or picture
- 2.6) 2 printed copies with the copyright notice printed in front or at the back of the title page or on any clear space for a non-book material
- 2.7) If the work is in a musical work, 2 copies of the original work, in the form of a music sheet, in cassette, optical disk, or other multimedia
- 2.8) If the work is an unprinted literary work, 2 copies of the original work without the need for a copyright certificate
- 2.9) A technical description of the design, if the work is an ornamental design

²²² <http://www.ipophil.gov.ph/index.php/services/copyright/ownership-and-rights>

²²³ Copyright Registration and Deposit Form, http://www.ipophil.gov.ph/images/Copyright/copyright_form.pdf
(Retrieved on February 28, 2015)

2.10) Copy of transfer document, letter, management, letter of will or written testimony with agreement oath of inheritance which is beyond the justice system

2.11) Document handing authority to appoint resident agent to allow the handing of copyright to others and source of notice or other legal means regarding testimony for copyright protection in the case where claimant is not resident of country

2.12) Copy of company and limited partnership registration

3) Verification of Request and Advertisement

Not mentioned in the Act.

4) Copyright Registration

The Philippines does not have a copyright registration system but it has a system for documenting copies or reproductions of the copyright work in the National Library and the Supreme Court Library.

5) Acts considered as Copyright Infringement

5.1) Acts considered as direct copyright infringement

- Reproduction, display or distribution to public; distribution through cable or distribution of visual, audio, complete works or important content of work, whether in original form or in adapted form
- Importation of any item for commercial or for-profit purposes without consent from copyright owner

5.2) Acts considered as indirect copyright infringement

- Rental, sale, offer to sell, copying infringed works or distributing copies of infringed works
- Possession of copies of infringed works for purposes beyond personal or household uses
- Display of infringed work to public with for-profit objectives
- Importation of infringed works; if produced domestically, will be considered as infringement except for personal or household uses only

6) Remedial Measures

When copyright is infringed, the copyright owner may seek the following civil and criminal remedial measures:

6.1) Civil remedial measures: may request temporary protection when filing complaint to Court or after filing complaint to Court, filing can take place at the district where infringement takes place. Damages may be sought by proving extent of damage, damage from loss of sales, loss of royalty, loss of proceeds from projected sale, volume of sales made by infringer, necessary costs for copyright enforcement, including payment to copyright holder or transferor or person continuing the copyright, including payments and fees according to law and profits from selling infringed products entitled to copyright owner. The plaintiff must prove all claimed payments, including damage costs and profits, are fair appraisals at the satisfaction of to the Court

6.2) Criminal remedial measures: Copyright owner may wage criminal case against copyright infringer with possible punishments include fines or imprisonment or both, depending on type of wrongdoing. A civil case can be filed concurrently with a criminal case.

*L) Patent Application*²²⁴

1) Application

The patent application must in Tagalog or English and must be filed with the Bureau of Patent and must contain the following information:

- The patent application consisting of a name identifying the invention, name, address and nationality of the patent applicant and inventor,

²²⁴ Department of Intellectual Property, "Philippines,"

http://www.ipthailand.go.th/index.php?option=com_docman&task=cat_view&gid=699&Itemid=160 (Retrieved on February 28, 2015).

information about original patent application for the same invention (If any) and signature of applicant or representative²²⁵

- Explanation of invention
- Drawing if necessary for understanding the invention
- Claims
- Abstract

The applicant must also pay the registration fee which comprises of the filing fee, search fee and publication fee.

The applicant shall pay the registration fee within one month after the filing date of application or he/she will have to pay a late fee. The applicant must file for a retrieval of information within 4 months of the filing date or the information will be deposited.²²⁶

Each patent application may be related to one or many inventions. If the many inventions are related, they may be considered as one invention.

2) Examination of Application

2.1) Formality Examination

After filing the patent application, the determination of a filing date and the payment of the registration fee within 1 month, the Intellectual Property Office will begin conducting a formality examination²²⁷ on matters such as the content of the application, priority documents, proof of authority, deed assignment, full payment of all fees (In the case of more than 5 claims, the applicant will have to pay additional fees from the 6th claim onwards),²²⁸ signature of applicant and formal drawings.

²²⁵ The revised implementing rules and regulations for patents, utility models and industrial designs, Part 4, Rule 4041-402.

²²⁶ The revised implementing rules and regulations for patents, utility models and industrial designs, Part 4 http://www.ipophil.gov.ph/images/Patents/IRRs/THE_REVISIED_IRR_FOR_PATENTS_UTILITY_MODELS_AND_INDUSTRIAL_DESIGNS_OFFICIAL_COPY.pdf

²²⁷ According to mandated requirements, comprising of 1) contents of patent application, 2) priority document and a certified English translation (In the case where applicant claims right to priority), 3) deed of assignment, 4) signature of applicant 5) identification of inventor and 6) formal drawings.

²²⁸ The limits of patent rights for inventions are set by the claims, which will be considered along with the details of the invention and the drawing, including the Doctrine of Equivalents. In the case of claims, it must be consistent with the

2.2) Examination of the Invention

Applicants must file a request for the examination of the invention within 6 months of the publication of the application. Failure to do so is considered a withdrawal of the application. The examiner will order the applicant to send a copy of the examination result and report or a copy of the patent registered abroad to accompany the examination. Moreover, the examiner will order the applicant to alter the claims so as to be in the line with the foreign patent if the claim is not contrary to the patent laws of the Philippines.

Within 6-12 months from the filing for examination, the examiner will begin examining the application. The examination period will last around 2 - 4 years from the commencement of the examination.

3) Publication of Patent

After 18 months from the day the patent application was filed or from the date the original patent application was filed (In the case of right to priority claims), the patent application will be published in the IPO Gazette, along with the search document established by or on behalf of the IPO.

Patent application that are rejected or withdrawn or deemed to be withdrawn before the completion of the technical preparations of the publication will not be published. After the publication of the application, affected persons may inspect the application that was filed to the IPO Office.

Furthermore, after registering the patent, the patent will be published in the IPO Gazette within 6 months.

details of the invention, be clear and concise and may have both main and secondary claims. Moreover, there are no limits in the number of claims but if there are more than 5 claims, additional fees must be paid from the 6th Claim onwards. (http://www.ipthailand.go.th/en/images/law/Patents_Philippines.pdf) (Retrieved on February 6, 2016).

4) Registration

After filing the application and paying of the application fee, the next step is the formality examination where the officer will determine whether the application meets the mandated requirements or not.

5) Right of Priority

Those seeking patents must file a patent application for their invention in the Philippines within 12 months of filing the patent application abroad for the first time and the application must clearly claim priority. The applicant must also send a copy of the patent application that was filed abroad, certified by the IPO Office that received the application or any other agency dealing with patent applications. This copy must be accompanied by an English translation within 6 months of filing the patent application in the Philippines. This period of time may be expanded to another 6 months at most but the applicant must prove sufficient reason for the extension unless permitted by an international treaty which the Philippines are party to.

The patent applicant may claim more than one priority in the original patent application.

6) Dispute/Argument

There are no provisions regarding dispute/arguments during the patent registration process in the Intellectual Property Code. Nevertheless, the Intellectual Property Code allows outside individuals to file observations regarding the application. In action, this means that after the publication of the application, any individual may file written observations to the IPO Office regarding the application on whether the invention is patentable or not. Such observations will be sent to the applicant so he/she can address and give his/her opinions. The IPO Office will then certify and keep hold of the observations and opinions of the applicant in the relevant application file.

7) Appeal

If the examiner makes the final decision to refuse a patent, the applicant may appeal to the Director within 2 months of the date of the filing of the rejection order. This period of time may be expanded to no more than 6 months. If the Director confirms the

refusal, the appellant may appeal to the Director General within 30 days of receiving a copy of the Director's decision.

Finally, if the appellant is not satisfied with the Director General's decision, he/she may appeal to the Court of Appeals within 15 days of receiving a copy of the Director General's decision.

M) Cancellation of Patent

Any person may petition to cancel the patent for any of the following reasons:

- That what is claimed as the invention is not new or patentable;
- The patent does not disclose the invention in a manner sufficiently clear
- That the patent is contrary to public order or morality

Similar to other laws, intellectual property laws are covered in the Constitution of the Philippines to provide protection for the rights of scientist, inventors, and artists. In the end, it is the people who benefit from such inventions and innovations. If a Thai person wishes to apply for a copyright in the Philippines, he/she needs to appoint a representative in the Philippines to contact the IPO. In the case of patents, the patent application must be in Tagalog or English.

2.7.1.2 Trademark²²⁹

A) Scope of Protection/Definition of Trademark

"Trademark/ Service Mark" means any visible sign capable of distinguishing the goods or services of an enterprise to those of another enterprise and shall include a stamped or marked container of goods.

"Collective mark" means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristics, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark.

²²⁹ Trademark Laws in the Philippines, Department of Intellectual Property (Retrieved on February 28, 2015).

"Marks" are graphic, words, invention traces, label, brand, abbreviation, special composition of colors, handwriting, three-dimensional shapes, containers or slogans.

Registered trademarks must have sufficient particular qualities and marks may not be registered if:

- It contains matter that is deceiving or contrary to public order or morality
- It contains the flag of the Philippines or other countries
- It is identical to marks belonging to other proprietors that have already been registered in respect to the same products or services or related products or services or confusingly similar products or services
- It is likely to mislead the public, particularly as to the characteristics, quality, or geographical origin of the goods or services;
- It contains common words
- It cannot distinguish the differences of products or services pending for registration with products or services of other proprietors
- It indicates geographical directions that are commonly known
- It is a mark that explains or specifies qualities or characteristics of products or services pending for registration

B) Protection System for Trademarks

Utilization of registration system. Trademarks are protected in the Philippines only when registered in the Philippines. One may file for protection of trademark to the Intellectual Property Office.

Utilization of First to File System and registration withdrawal system by using right of first use of trademark.

C) Rights of Trademark Owner

The registered trademark or service mark owner has the sole right to use the trademark or service mark with the property or service in the Philippines. The owner also has the right to prevent others from using a trademark or service mark that is identical or confusingly similar without prior permission.

The law mandates that there shall be symbols showing that the trademark has been registered such as "Reg. Phil. Pat. Off." "TM" or the ® symbol. Products manufactured under the trademark contract must contain such symbols as well.

D) Duration and Renewal of Trademark Protection

The duration for protection is 10 years from the date of registration and renewable every 10 years. When filing to renew trademark, the law requires evidence of use and must send at least 5 labels of real products.

E) Withdrawal of Trademark

Persons affected by a trademark may request for withdrawal of the trademark if:

- The registered owner has not used the trademark for more than 3 consecutive years from the date of registration or within 3 years before request for withdrawal without legitimate reason
- The person affected may request for withdrawal of trademark if he/she can prove that he/she has a greater right on trademark than the registered trademark owner
- The trademark doesn't have sufficiently particular qualities to be registered
- The trademark has characteristics making it prohibited from registration
- The trademark is the same or similar to another trademark registered before it
- The trademark is contrary to public order and morals
- The trademark becomes common objects in trade

F) Transfer of Trademark Rights

The transfer of trademark rights must be documented with the Intellectual Property Office. The transfer must be accompanied by business goodwill and the following documents:

- 1) Agreement of transfer, certified by Notary Public official and Legal Officer
- 2) Document of transfer from receiver, may be included in agreement

G) Permission to Exercise Rights

The permission to exercise rights may be registered with the Documentation, Information and Technology Transfer Bureau and the permission to exercise trademark rights may be documented with the Bureau of Trademark. Nevertheless, this is not required by law.

The law does not mandate registration of permission to exercise trademark rights with the Documentation, Information and Technology Transfer Bureau as long as the permission agreement has provisions completely in line with the specified laws and not in conflict with the Intellectual Property Code. Registration of the permission agreement may be required in the case where the other party wishes for exceptions from certain provisions in the Intellectual Property Code or if the party wishes to obtain tax benefits according to international taxation treaties.

Documents accompanying such requests are as follows:

- 1) Request for registration, certified by Notary Public official
- 2) Original and two copies of permission agreement, certified by Notary Public official
- 3) Two copies of certificate of registration from the Bureau of Internal Revenue of the person receiving permission

Examples of other minor laws related on Intellectual Property are as follows.

2.7.2 Republic Act 9239 Optical Media Act²³⁰

The Republic Act 9239 Optical Media Act is a law laying out the protocols for the state with respect to the manufacturing, mastering, replication, importing or exporting of optical media under the supervision of the Optical Media Board (OMD), which was established by Presidential Decree No. 1987.

²³⁰ <http://www.wipo.int/edocs/lexdocs/laws/en/ph/ph066en.pdf> (Retrieved on February 28, 2015).

The OMD mandates that those wishing to establish enterprises in the following areas must seek permission from OMD first (Including before requesting permission or registering related enterprises). Permissions last for 3 years and may be altered or renewed upon petition.²³¹

- 1) Importation, exportation, acquisition, sale or distribution of optical media, manufacturing equipment and accessories for manufacturing, mastering, manufacture or replication of optical media
- 2) Possession or operation of manufacturing equipment, parts or accessories, or the possession, acquisition, sale or use of manufacturing materials for the mastering, manufacture or replication of optical media
- 3) The mastering, manufacture, replication, import or export of optical media.

2.7.3 Republic Act 8792 Electronic Commerce Act²³²

The RA 8792 Electronic Commerce Act is the main law on Information Technology (IT) in the Philippines. It was issued with the objective of promoting and facilitating electronic transactions for both the State and the public. This law combines provisions on making electronic agreements, electronic handwriting and electronic testimonies together.

With respect to Cybercrimes, the Philippines have another law, which is the RA 10175 Cybercrime Prevention Act of (2012),²³³ effective on October 3, 2012. The law sets out punishments for different types of cybercrimes such as illegal interception, unauthorized access, interference with the function of computer and the use of computer for deception such as phishing.²³⁴

²³¹ Section 13 of RA 9239 Optical Media Act of 2003 (<http://www.wipo.int/edocs/lexdocs/laws/en/ph/ph066en.pdf>)

²³² RA 8792 (2000). <http://www.wipo.int/edocs/lexdocs/laws/en/ph/ph022en.pdf> (Retrieved on February 28, 2015).

²³³ <http://www.gov.ph/2012/09/12/republic-act-no-10175/> (Retrieved on February 28, 2015).

²³⁴ <https://www.blognone.com/node/36241> (Retrieved on February 28, 2015).

Cybercrime can be classified into 3 types, namely (1) offenses against the confidentiality, integrity and availability of computer data and systems, (2) computer-related offenses and (3) content-related offenses.²³⁵

Furthermore, there are over 40 other main and secondary legislation regarding Intellectual Property such as:

- Philippine Technology Transfer Act of 2009 (RA 10055) (2010)
- Philippine Plant Variety Protection Act of 2002 (RA 9168) (2002)
- Republic Act No. 9150 entitled 'An Act for the Protection of Layout-Designs (Topographies) of Integrated Circuits (2001)
- Inventors and Invention Incentive Act of Philippines (RA No. 7459)
- Food, Drug, and Cosmetic Act (RA 3720)
- Anti-Graft and Corrupt Practices (RA No. 3019)
- An Act to Regulate and Control the Manufacture, Importation, Labeling, Advertising, and Sale of Livestock and Poultry Feeds and Providing Funds (RA 1556)
- Revised Penal Code (Act No. 3815 of December 8, 1930)²³⁶

2.8 Dispute Resolution System

The Republic Act No. 9285 (2004), also known as the Alternative Dispute Resolution (ADR) Act defines dispute resolution as any process used to resolve a dispute or controversy other than by adjudication of a presiding judge of a court or an officer of a government agency. A neutral third party instead assists in the resolution of issues, which includes arbitration, mediation and conciliation.

In this section, the dispute resolution system, arbitration, and the rulings of the Regional Trial Court will be discussed as principles for dispute resolution.

²³⁵ Chapter II Section 4 Punishable Acts of the Cybercrime Prevention Act of 2012 (RA 10175).

²³⁶ List of laws related to intellectual property (<http://www.wipo.int/wipolex/en/profile.jsp?code=PH>).

The Republic Act No. 9285 defines the Alternative Dispute Resolution (ADR) Providers as institutions or persons accredited as mediator, conciliator, arbitrator and neutral evaluator.²³⁷

Mediation is a dispute resolution process based on mutual agreement and consent between the two opposing parties with a neutral third party as the mediator, assisting in recommending and finding acceptable solutions for both sides. Mediation is an option that has been used for a long time. In the past, a community leader or a widely respected senior would be the mediator between conflicting parties in the community. For example, the Philippines require a mediation process before suing. As for Thailand, the mediation system was incorporated into the The Civil Procedure Code B.E. 2477 but has only been used officially since 1994, starting first in the Civil Court.²³⁸

RA No. 9285 (2004) ADR Act²³⁹ sets out 10 mediation laws, covering matters such as general provisions, the selection and ethical standards of mediators, location, protocols and agreement of mediation results.

Arbitration is one of the ADR that has been used in resolving disputes in ASEAN. Arbitrators or any person exercising similar functions in any Alternative Dispute Resolution system shall refer to two international agreements for guidance, namely the "Model Law", or the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, and the "New York Convention", or the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

²³⁷ Mediators or conciliators are individuals appointed by a presiding judge of a court to act as a third party assisting the court in the dispute resolution process. Neutral Evaluators are bureaucrats with the authority and responsibility in deliberating verdicts in family cases and public inheritance and ensuring that for Muslim followers, the legal process adheres to Muslim principles and their normal way of life.

(http://www.parliament.go.th/ewtadmin/ewt/elaw_parcy/download/article/article_20111018111947.doc)

²³⁸ Ministry of Justice, "Dispute Resolution Legal Execution Level [การไกล่เกลี่ยข้อพิพาท ชั้นบังคับคดี]" http://website2556.moj.go.th/upload/main_magazine/uploadfiles/757col_3591.pdf (Retrieved on February 28, 2015).

²³⁹ Chapter 3, Article 3.1 - 3.26

Guidance on arbitration is *ad hoc* at institutional or specific expertise. With regards to *ad hoc* dispute resolution, Philippines law allows the parties to choose between the arbitration or the resolution process, including the rules of arbitration as long as the key requirement for arbitration or acceptance exists. The State allows the parties to use arbitration with conditions.

The arbitration processes must not be contrary to law, morals, good customs, or public order.²⁴⁰

The law also states that parties can use arbitration to resolve disputes between each other and may state in the contract that such process may be used again if problems arise in the future. Nevertheless, such contracts must be complete and enforceable.

Arbitration through institutions can be done through a number of bodies, such as court, arbitrator, trade association, and arbitration center. Each of the body has different arbitration procedures. The bodies mentioned here does not take part in the dispute resolution process directly but help create an arbitration body and set up the rules for resolution process. For international disputes, the most commonly used rules are those of International Chamber of Commerce (ICC) Hong Kong International Arbitration Centre (HKIAC) and Singapore International Arbitration Centre (SIAC).

Nevertheless, the rules of these arbitration bodies do not cover the details of arbitration process. The rules cover the beginning of the arbitration process, presentation of answers and arguments, appointments of arbitration, price, and fee. Therefore, without a contract, the issue about specific process will be under the power of the arbitrators who will rule the dispute to consider.

As for international trade arbitrators, RA No. 9285 (2004) ADR Act needs to be referred to as the Act will be used to interpret the agreement between parties. Other relevant laws include Section 2028 to Section 2046 of the Civil Code²⁴¹ and international

²⁴⁰ Civil Code Article. 1306.

²⁴¹ ARTICLE 2037. A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

agreements such as the Model law and the New York Convention. In the case of dispute resolutions in ASEAN, the ASEAN Protocol on Enhanced ASEAN Dispute Settlement Mechanism (EDSM) shall be referred to. The EDSM Protocol is an agreement which specifically sets out the settlement mechanism for economic disputes in ASEAN. The Protocol was issued in 2004 to replace the older version of 1996. It sets out the procedures for the dispute resolution for disputes arisen under the ASEAN economic agreements, as amended by Protocol to Amend Certain ASEAN Economic Agreements and the ASEAN agreements as stated in Annex A of the Protocol and future ASEAN economic agreements.

In the case where a member state has the right to sue under the ASEAN dispute settlement mechanism or other dispute settlement mechanisms under other agreements such as the dispute resolution mechanism under the United Nations Charter or other international conventions where member states are party to or other mechanisms which can be used at any time but states must start the process before a state requests the

ARTICLE 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of article 1330 of this Code. However, one of the parties cannot set up a mistake of fact as against the other if the latter, by virtue of the compromise, has withdrawn from a litigation already commenced.

ARTICLE 2039. When the parties compromise generally on all differences which they might have with each other, the discovery of documents referring to one or more but not to all of the questions settled shall not itself be a cause for annulment or rescission of the compromise, unless said documents have been concealed by one of the parties. But the compromise may be annulled or rescinded if it refers only to one thing to which one of the parties has no right, as shown by the newly-discovered documents.

ARTICLE 2040. If after litigation has been decided by a final judgment, a compromise should be agreed upon, either or both parties being unaware of the existence of the final judgment, the compromise maybe rescinded. Ignorance of a judgment which may be revoked or set aside is not a valid ground for attacking a compromise.

ARTICLE 2041. If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand.

ARTICLE 2042. The same persons who may enter into a compromise may submit their controversies to one or more arbitrators for decision.

ARTICLE 2043. The provisions of the preceding Chapter upon compromises shall also be applicable to arbitrations.

ARTICLE 2044. Any stipulation that the arbitrators' award or decision shall be final, is valid, without prejudice to articles 2038, 2039, and 2040.

ARTICLE 2045. Any clause giving one of the parties power to choose more arbitrators than the other is void and of no effect.

ARTICLE 2046. The appointment of arbitrators and the procedure for arbitration shall be governed by the provisions of such rules of court as the Supreme Court shall promulgate.

ASEAN Senior Economic Officials Meeting (SEOM)²⁴² to establish a panel,²⁴³ the EDSM protocol²⁴⁴ sets out the following steps for dispute settlement:

1. Resolving Disputes by the Disputing Parties

1.1) Resolving disputes through consultations: Consultations shall be the first step in the dispute resolution process under the EDSM Protocol. In the case where a member state feels their rights under the EDSM Protocol, either directly or indirectly, are affected due to another member state undertaking measures or taking any other action contrary to the protocol, the affected state may engage in consultations with the other state to find a resolution acceptable to both sides.²⁴⁵

1.2) Resolving disputes through good offices, conciliation or mediation: Disputing states may agree to good offices, conciliation or mediation at any time. Nevertheless, if the states agree to good offices, conciliation or mediation, the process must end before requesting the establishment of a panel.²⁴⁶ Disputing states may also agree to mediate along with following the Protocol where the ASEAN Secretary-General may offer him/herself to be the neutral mediator in the dispute resolution process.²⁴⁷

2. Resolving Disputes by a Panel

2.1) The dispute settlement mechanism under the EDSM Protocol uses the Negative Consensus principle, similar to the dispute settlement mechanism of the WTO (DSU) in considering the request to establish a Panel,²⁴⁸ certification of the Panel report and the Appellate Body report,²⁴⁹ including allowing the winning party to respond,²⁵⁰ in the case where the losing party does not comply with the verdict or allowing responses

²⁴² Comprised of ASEAN senior economic officials, responsible for overseeing ASEAN's economic cooperation

²⁴³ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 1.3

²⁴⁴ P. Boonklom, "ASEAN Economic Community Dispute Settlement Mechanism: Case Study, Violation of Trade and Investment Obligations [กลไกในการระงับข้อพิพาทของประชาคมเศรษฐกิจอาเซียน : ศึกษาเฉพาะ กรณีละเมิดพันธกรณีด้านการค้าและการลงทุน]" <http://libdcms.nida.ac.th/thesis6/2557/b185197.pdf> (Retrieved on February 28, 2015).

²⁴⁵ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 3.2

²⁴⁶ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 4.1

²⁴⁷ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 4.2

²⁴⁸ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 5.1

²⁴⁹ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 9.1

²⁵⁰ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 16.1

is almost impossible, except when member states reaches a consensus to block the establishment of a Panel or does not certify the verdict or does not allow a response.

3. Appealing the Dispute Resolution Decision

The EDSM Protocol requires the establishment of an Appellate Body, at the decision of the panel.²⁵¹ Nevertheless, members of the Appellate Body may not take part in the consideration of any dispute where he/she has a direct or indirect interest.²⁵²

The Appellate Body must consider and deliver a decision report within 60 days. In the case the Appellate Body cannot complete within 60 days, it can ask for an extension but the overall timeframe may not exceed 90 days. The consideration shall only cover legal issues covered in the Panel report and the Panel's legal interpretation. The Appellate Body may stand with, alter or reverse the Panel's decision.²⁵³

The SEOM shall certify the Appellate Body's report within 30 days from the day the report was filed to the members of the Appellate Body for consideration unless the SEOM reaches a consensus to not certify the report.²⁵⁴

4. Complying with the Decision

If a member state undertakes measures contrary to the covered agreement, the Panel or Appellate Body shall recommend that the member state brings the measure to conformity with the covered agreement within 60 days or according to the requested extension while not adding or decreasing any rights from the agreement.²⁵⁵

The main purpose of the EDSM Protocol of 2004 is to establish Panels and Appellate Body to match the process under the World Trade Organization (WTO). The EDSM Protocol encourages member countries to settle disputes among each other by consultation or using a trusted third party, conciliation and mediation before resorting to formal dispute settlement procedures of the Panels and the Appellate Body. Once the

²⁵¹ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 12.1

²⁵² ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 12.2

²⁵³ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 12.5 and 12.6

²⁵⁴ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 13.1

²⁵⁵ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, Article 14.1-14.2, 15.1-15.2

Panels and the Appellate Body make a decision and give recommendations, member countries are obligated to honor and comply with the decision and the recommendations. If the parties fail to do so, the party who suffer damage may request for compensation or to rescind special trade rights for the party in dispute.²⁵⁶

For domestic arbitration, the Republic Act No. 9285 is the main law which is used to settle dispute between parties, as well as the Republic No. 876 and Model Law.

Limits to the Arbitration Process

Disputing parties can choose which disputes and which issues to be ruled by arbitration. However, arbitration shall not apply to settlement of the following cases:

- Labor disputes covered by Presidential Decree No. 442
- Disputes regarding the civil status of persons
- Disputes regarding the validity of a marriage
- Disputes regarding the jurisdiction of courts
- Disputes regarding future legitimacy
- Disputes regarding any ground for legal separation
- Disputes regarding criminal liability and
- Disputes which by law cannot be compromised²⁵⁷

If a settlement of dispute is done through court²⁵⁸ (ruling of Supreme Court as principle of settlement dispute), Resolution No. 02-04 specifies the steps according to

²⁵⁶ ASEAN Secretariat, "ASEAN Protocol on Enhanced Dispute Settlement Mechanism," <http://www.asean.org/news/item/asean-protocol-on-enhanced-dispute-settlement-mechanism> (Retrieved on 15 October 2014).

²⁵⁷ Republic Act No. 9285, Sec. 6.

²⁵⁸ Refers to dispute mediation in court which arises from bringing the case to mediation through the two channels:

1. The court mediates by itself in the case where the judge starts mediating him/herself in the deliberation room or encourages the other party to enter the mediation process.
2. The other party wishes for mediation, usually in the case where the judge initiates the mediation him/herself in the mediation room but the parties cannot reach an agreement. The parties eventually ask for the Court to mediate by asking the judge to mediate or forwards the case for mediation.

The mediation result is that the party wishes to have result that can be mediated, either in part or whole, as follows:

- (1) Parties settle by conciliation agreement and court judges as agreed.
- (2) The plaintiff withdraws the suit, meaning that the mediation was successful.
- (3) The party accepts the truth, meaning that the mediation was only partially successful but still makes the other party understand the problems of the dispute and the way to continue his/her case.

the laws and order of dispute resolution, guidelines for mediation, including the role and responsibility of those related to the reconciliation process to use as an administrative principle and for reference during mediation procedures in the Court such as court executives are responsible for regulation and ensuring confidence in the mediation process and executive judges are responsible for recommending and forwarding the case for mediation, including assisting judges and court personnel.²⁵⁹

To conclude, dispute settlement in the Philippines is based on both domestic and international laws, such as Model Law and New York Convention, which meet general international standards. For instance, the parties can choose which issues they want to bring to the arbitrator. Moreover, cases of international economic disputes between ASEAN member countries can refer to EDSM Protocol which is compatible with the WTO process.

Conclusion

The Philippines have many factors that are attractive for investment and conducting business, such as a largely English-speaking workforce who are friendly to foreigners, relatively low labor cost, large domestic market and ample natural resources such as gold, copper, chromium, nickel, as well as fishery and agricultural products. Industries with potential for Thailand to invest in the Philippines are as follows:

- Agricultural processing industry. Examples of successful Thai companies include Alliance Tuna International Inc. and Charoen Pokphand Group.
- Raw material/Natural resources-oriented industry, such as mining, and downstream industries, such as construction materials.
- Electronics and parts. Philippine government gives priority to this kind of industry, and has built science and IT parks. Interesting areas for investment are Manila and nearby provinces, central Luzon, and south Tagalog.

See C. Tubwong, "การไกล่เกลี่ยข้อพิพาทในศาล [Dispute Resolution in Court]," <http://www.adro.coj.go.th/userfiles/file/CM-InCourtMediation.pdf> (Retrieved on February 28, 2015).

²⁵⁹ Philippines Mediation Center, "Annex I A.M. No.04-3-15-SC-PHILJA," http://pmc.judiciary.gov.ph/downloads/ADR_Operations_Manual_-_AM_No_04-03-15_SC.pdf (Retrieved on 15 October 2014).

- Infrastructure construction and low cost accommodation construction.
- Health care industry. The Philippines have a large number of medical personnel. Bumrungrad International Hospital group has invested in the Philippines under the name of Asian Hospital since 2004.
- Paper and tile industry. SCG group has a factory under the name of UPPC (paper) and Mariwasa Siam Ceramics, Inc. (tiles).

Nonetheless, the Philippines have a number of challenges which Thai investors should take into account.

1. Investment in the Philippines should be within the industrial zone or special economic zone as the Philippines still lacks infrastructure readiness in many areas. Moreover, investment in such areas receives high incentives, such as income tax holiday for four to eight years, with an optional special tax rate of 5% of gross income afterwards.

2. Traveling to the Philippines with a Thai passport allows entry and stay of up to 30 days without a visa. Stays of over 30 days require a non-permanent visa from the Bureau of Immigration as applicable to the objective of travel. The Philippines do issue special visas or long-term visas of different types to foreign investors or retirees in the Subic Bay for instance.

3. Running an enterprise in the Philippines requires consideration of the type of enterprise of which is classified into 6 main types, from personal businesses to regional headquarters which all differ in the procedure for establishing the enterprise and limitations for foreign investment.

In addition to considering banking and tax laws when establishing and operating a business in the Philippines, potential Thai investors should also consider investment benefits under the ACIA as an ASEAN citizen and the Thailand-Philippines Bilateral Investment Treaty in terms of profit outflows.

Investments in the Philippines in the industrial or special economic zones will receive plenty of benefits but also vary across locations, each of which are overseen by the following organizations:

Investment-Promoting Body	Parent Organization	Authority and Responsibility
BOI	Department of Trade and Industry (DTI)	
PEZA (State-owned Enterprise)	DTI	Regulates enterprises in investment promotion zones or Special Economic Zones established under the Special Economic Zone Act of 1995
Philippine Retirement Authority (PRA)	BOI and DTI	Manages Special Economic Zones for retirees in the country

In investing and running enterprises, other factors such as labor, land and intellectual property must also be considered as these three are all factors of production that important to economic development. As a result, Philippine laws support and protect these factors such as allowing labor to self-organize to increase bargaining power in negotiations with employers and intellectual property rights are guaranteed by the Constitution of the Philippines. Moreover, a number of Philippines laws provide protection for native entrepreneurs only. For instance, the Constitution limits land ownership by foreigners and the labor law does not allow foreign workers to collectively bargain and strike, unless the foreigners are nationals of a country which grants the same or similar rights to Filipino workers. Nonetheless, Thai investors and entrepreneurs can use to trade dispute settlement mechanism. The relevant Philippines laws on dispute settlement are of international standards as they refer to international agreements such as Model Law and New York Convention. There is also the EDSM Protocol which both Thailand and the Philippines are parties to.

The procedures in the EDSM Protocol are that ASEAN member countries have the right to use ASEAN's new dispute resolution procedure when they see that the other member states take measures contrary to ASEAN agreements. The first step is for the disputing states to consult each other. If they cannot agree, the next step is to request the establishment of a Panel or jury to consider and decide on the dispute. If the decision is not satisfactory, the state that is the plaintiff may appeal the decision to the Appellate Body for further consideration. The member state that loses the case must strictly comply with the decision of the Panel or the Appellate Body within the prescribed period of time and must also pay for all the fees associated with the case.

Chapter 3

State agencies with relevant authority

Apart from laws related to trade and investment, an important topic to study and understand before doing business, investing, or working in the Philippines is the government agencies whose authorities are related to trade and investment in the Philippines as these agencies enforce the laws that were presented in Chapter 2. Thai entrepreneurs, investors and laborers will need to contact these agencies if they want to do business, invest or work in the Philippines.

The over 40-year colonial history of the Philippines under the U.S. leaves the Philippines with a civil service system very similar to that of the U.S., such as the fact that the heads of each department are called Secretary instead of Minister as the Philippines is governed by a presidential system with the president as head of state. The heads of department are an equivalent of secretaries assisting the president in overseeing the work in different areas. Moreover, the important law related to the civil service of the Philippines is the Executive order No. 292 or Administrative Code of 1987, issued on July 25, 1987 by President Corazon Aquino. This law sets out the administrative authority and the power of government agencies in the Philippines, including the ones to be presented below.

Chapter 3 is the last chapter of this report and it will present the structures and functions of the 12 government agencies whose authorities and functions are related to trade and investment in the Philippines. The 12 agencies will be divided into four groups according to its main functions, namely trade agencies, investment agencies, economics and finance agencies and labor and immigration agencies.

A. Trade Agencies

3.1 Bureau of Customs, Department of Finance (BC)

An equivalent of Thai Customs Department, BC was founded several decades before the Philippines were discovered by Eastern and Western expeditioners.²⁶⁰ As customs tax is one of the oldest taxes collected from international trade. The Philippines then already had flourishing trade with countries in Southeast Asia. The rulers of the barangays, known as "datu" or "rajah", collected tributes from the people before they were allowed to trade. The practice of collecting tributes became part of their culture and was then observed and followed as the Customs Law of the Land.

The laws related to the structure and the power of the BC is the Tariff and Customs Code of the Philippines.

3.1.1 Structure

Section 601 of the Tariff and Customs Code of the Philippines states that the BC shall have one chief and one assistant chief, to be known respectively at the Commissioner and Assistant Commissioner, who shall receive an annual compensation in accordance with the rates prescribed by existing laws. Moreover, Section 608 states that The Commissioner shall, subject to the approval of the department head, issue rules and regulations necessary to enforce the provisions of this Code.

3.1.2 Functions

Section 602 of the Tariff and Customs Code of the Philippines states that the general duties, powers and jurisdiction of the BC shall include:

A. Assessment and collection of the lawful revenues from imported articles and all other fees, charges, and penalties accruing under the Tariff and Customs Code.

B. The prevention and suppression of smuggling and other frauds upon the customs.

²⁶⁰ Bureau of Customs, Department of Finance, "History," <http://customs.gov.ph/about/history/> (Retrieved on 28 October 2014).

C. The supervision and control over the entrance and clearance of vessels and aircraft engaged in foreign commerce.

D. The prohibition and suppression of unnecessary noises, such as explosion of gasoline engines, or other needless and disturbing sounds made by water craft in the ports of the Philippines or in rivers.

E. Prohibiting vessels of over 150 tones in size from entering or dropping anchor in Pasig River.

F. The inspection of Philippine vessels, and supervision over the safety and sanitation of such vessels.

G. The enforcement of quarantine laws for vessels entering Philippine ports.

H. The enforcement of the tariff and customs laws and all other laws, rules and regulations relating to the tariff and customs administration.

I. The licensing of marine officers who have qualified in the examination to be carried on Philippine vessels, the determination of the qualifications of pilots, the regulation of this service, and the fixing of the fees which they may charge.

Moreover, Section 603 gives the BC the right of supervision and police authority over all seas within the jurisdiction of the Philippines and over all coasts, ports, airports and rivers. The authority of the BC may be expanded if necessary such as when a vessel becomes subject to seizure on the high sea or when imported articles are pursued in the Philippines by vehicles on land, water or air.

3.2 Bureau of Internal Revenue (BIR)

An equivalent to Thailand's Revenue Department, BIR was founded in the 17th Century with Chief Royal Accountant, an equivalent of Revenue Committee, who serves as chief arbitrator. His decisions on financial matters were final. During these times, taxes that were collected from the inhabitants varied from tribute or head tax of one gold maize annually; tax on value of jewelries; indirect taxes on tobacco, or wine.

The law related to the structure, authority, and duty of the BIR is the National Internal Revenue Code of 1997.

3.2.1 Structure

BIR consists of Office of the Commissioner of Internal Revenue, Planning and Management Service, Project Management and Implementation Service, with Commissioner as head of the Bureau.

3.2.2 Functions

Section 1 of the Civil Code states that BIR shall be under the supervision of the Department of Finance and its powers and duties include assessment and collection of internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, and fines connected therewith, including the execution of judgments in cases decided in its favor by the Court of Tax Appeals and the ordinary courts.

Section 4 of the Civil Code states that the power to interpret the provisions of this Code and other tax laws shall be under the jurisdiction of the Commissioner, subject to review by the Secretary of Finance. The Commissioner also has the power to decide disputed assessments, refunds of internal revenue taxes or other matters arising under this Code, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

3.3 Construction Industry Arbitration Commission (CIAC)

Construction Industry Arbitration Commission (CIAC) was founded on February 4, 1985 under Executive Order No. 1008 in order to settle disputes and to preserve and promote cooperation between the public and private sectors.

3.3.1 Structure

Section 5 of the Executive Order No. 1008 sets out the composition of the Commission, which shall consist of a Chairman and 2 officers, all to be appointed by the Construction Industry Authority of the Philippine Board.

3.3.2 Functions

Section 6 of the Executive Order No. 1008 states that the Commission shall formulate and adopt an arbitration program for the construction industry, prescribe rules and procedures for construction arbitration, and appoint, replace or challenge arbitrators.

3.4 Department of Trade and Industry (DTI)

The beginning of Department of Trade and Industry (DTI) can be dated back to June 23, 1898 when President Emilio Aguinaldo established four government agencies in the Philippines, namely the Departments of Navy, Commerce, Agriculture, and Manufacturing.

3.4.1 Structure

The Secretary of DTI has the highest authority in the Department and must be appointed by the President of the Philippines. The Secretary shall advise the President on matters related to trade, investments, and industry, and on the issuance of related laws. The Secretary also has the authority to establish policies and standards for the effective, efficient, and economical operations of the Department in accordance with government policies. There are five Undersecretaries who are also Presidential appointees at the advice of the Secretary. Their functions are as follows.

- A. To advise the Secretary in the issuance of Department orders.
- B. To supervise the offices, services, and individuals under DTI's authority and responsibility.
- C. To coordinate the functions and activities under DTI's authority.

Moreover, there are also 5 Assistant Secretaries who are also Presidential appointees at the advice of the Secretary. Their functions are as assigned by the Secretary and the Undersecretaries.

3.4.2 Functions

The DTI is responsible for creating a competitive and technologically-advanced industry sector in accordance to the Philippine Development Plan (PDP) 2011-2015. The DTI has the objective of improving the business environment by increase productivity and manufacturing capacity.

The powers and functions of the DTI are stated in the Executive Order 133. Section 3 states that DTI is responsible for planning and coordinating activities of the government concerning the following issues:

- A. Trade, industry and investments;
- B. Promote, initiate, or conduct Annual Trade and Industry Development Planning Conferences between government and the private sector, to be held at the beginning of the third quarter of the budget year;
- C. Maintain a trade and industry database
- D. Develop and maintain an integrated computerized marketing information system for trade, industry and international investments
- E. Encourage and support the formation of People's Economic Councils at regional, provincial and municipal levels as well as other trade, industry and consumer protection institutions or associations;
- F. Formulate and implement programs to strengthen industries, particular those in rural areas, promote manufactured goods for export, and develop small and medium scale industries; and
- G. Take the primary role in negotiating and reviewing existing international trade agreements, particularly those affecting commodity quotas limiting existing exports of Philippine products in order to renegotiate for more favorable terms.

B. Investment Agencies

3.5 Intellectual Property Office of the Philippines

The Intellectual Property Office (IPO) is the agency which oversees issues related to intellectual property in the Philippines. The IPO was founded by Republic Act No. 8293 or Intellectual Property Code of the Philippines, effective since 1 January 1998 by the abolition of Bureau of Patents, Trademarks, and Technology Transfer which were the IPO's predecessor.

3.5.1 Structure

Section 6 of the Republic Act No. 8295 states that the IPO shall be headed by a Director General who shall be assisted by two deputy director generals. The IPO is divided into six Bureaus, namely Bureau of Patents; Bureau of Trademarks; Bureau of Legal Affairs; Documentation, Information and Technology Transfer Bureau;

Management Information System and EDP Bureau; and Administrative, Financial and Personnel Services Bureau.

3.5.2 Functions

Section 5 of Republic Act No. 8295 states that IPO shall have the following functions to administer and implement the State policies, including to examine applications for patent for inventions and register industrial designs; examine applications for the registration of marks, geographic indication, integrated circuits; Register technology transfer arrangements and settle disputes involving intellectual property registration; and coordinate with government agencies and the private sector to formulate plans to strengthen the protection of intellectual property rights.

3.6 Land Registration Authority (LRA)

An equivalent of Thailand's Department of Lands, the LRA is an agency under the Department of Justice. Similar to most government agencies, the LRA was founded by Executive order No. 292 or the Administrative Code of 1987 which sets out the functions and structure of the LRA²⁶¹.

3.6.1 Structure

Section 29 states that the LRA shall be headed by an Administrator who shall be assisted by two Deputy Administrators, all of whom shall be appointed by the President upon the recommendation of the Secretary of Justice.

3.6.2 Functions

LRA is mandated to issue decrees of registration and certificates of titles and register documents, patents and other land transactions for the benefit of landowners, and to provide a trustworthy record of land ownership.

²⁶¹ Book IV/ Title III/ Chapter 9

C. Economics and Financial Agencies

3.7 Central Bank of the Philippines or Banko Sentral Pilipinas (BSP)

The purpose of Central Bank of the Philippines is to maintain the stability of the Peso to facilitate sustainable economic growth. The Central Bank is also responsible for promoting and maintaining financial stability and foreign currency exchange.

The main responsibility of the Central Bank of the Philippines is setting policy and direction on financial matters, banking, and credits. The Central Bank regulates the banks and exercises legal authority over financial institutions that are not banks.

3.7.1 Structure

Section 6 of the New Central Bank Act (Republic No. 7653) sets out the composition of the Monetary Board who exercises the power of Central Bank. The Monetary Board is composed of seven members appointed by the President of the Philippines for a term of six years. The Governor of the Central Bank shall be the Chairman of the Monetary Board and his appointment shall be subject to confirmation by the Commission on Appointments.

3.7.2 Functions

Under the New Central Bank Act (Republic No. 7653), the Central Bank of the Philippines has the following functions.

A. Liquidity Management. The BSP formulates monetary policy aimed at influencing money supply consistent with its primary objective to maintain price stability.

B. Currency issue. The BSP has the exclusive power to issue the national currency. All notes and coins issued by the BSP are fully guaranteed by the Government and are considered legal tender for all private and public debts.

C. Lender. The BSP lends to non-bank institutions to maintain liquidity.

D. Financial Supervision. The BSP supervises banks and exercises regulatory powers over non-bank institutions performing quasi-banking functions.

E. Management of foreign exchange rates policies.

3.8 Securities and Exchange Commission

The Securities and Exchange Commission (SEC) was established on October 26, 1936 under the Commonwealth Act No. 83 or the Securities Act. The SEC was then reorganized in 2000 under the Republic Act 8799 also known as the Securities Regulation Code.

3.8.1 Structure

Chapter 2 of the Securities Regulation Code states that this Code shall be administered by the SEC, which shall be composed of a Chairperson and four Commissioners, all of which shall be appointed by the President for a term of seven years each and who shall serve as such until their successor shall have been appointed. The Commissioners must be natural-born citizens of the Philippines, at least 35 years of age and at least 40 years of age for the Chairperson and be of good moral character, of unquestionable integrity and of known patriotism.

3.8.2 Functions

Section 5 of Securities Regulation Code states that SEC has the supervision authority over all corporations, partnerships or associations who are the grantees of licenses or permits issued by the Government, and to approve, reject, or require amendments to registration statements, and registration and licensing applications.

3.9 The National Economic and Development Authority

The National Economic and Development Authority (NEDA) is an independent body under the supervision of the President. It is an agency responsible for development and the economy of the country. It was established under Executive Order no. 230 signed by the President in 1987.

3.9.1 Structure

Section 4 of Executive Order no. 230 states that NEDA shall have a Board composed of the following 11 members:

- A. The President as Chairman;
- B. Director-General of the NEDA, appointed by the President (Section 8) as Vice-Chairman;
- C. Executive Secretary;
- D. Secretary of Finance;
- E. Secretary of Trade and Industry;
- F. Secretary of Agriculture;
- G. Secretary of Environment and Natural Resources;
- H. Secretary of Public Works and Highways;
- I. Secretary of Budget and Management;
- J. Secretary of Labor and Employment;
- K. Secretary of the Interior and Local Government.

3.9.2 Functions

Section 5 of the Executive Order no. 230 states that NEDA shall have the following functions:

A. NEDA shall primarily be responsible for the coordination and full integration social and economic policies, plans and programs, on the basis of the following:

- The State aims to achieve economic growth;
- Development leading to the attainment of the above mentioned goal is a multi-faceted process that calls for the coordination, involvement and integration of policies, plans, programs and projects of all sectors of society;
- In the formulation of basic policies, plans, programs and projects, there shall be maximum participation by and consultation with concerned private sector groups, community organizations and beneficiaries and local government units in order to ensure that priority needs of all parties are incorporated into such policies, plans, programs and projects and must state the importance of the needs of each sector and such policies, projects and plans will be developed into a national economic plan in the future;

- Socio-economic policies, plans, programs and projects must be properly coordinated with both national and regional bodies before adoption

B. Coordinating the formulation of policies, plans and socio-economic development projects, including medium-term public investment programs and the monitoring and evaluation of the implementation of such policies, plans and projects.

D. Labor and Immigration Agencies

3.10 Bureau of Immigration (BI)

An equivalent to Thailand's Immigration Bureau, the BI has a long history dating back to the days under U.S. rule in 1899. It was once a part of Bureau of Customs before being separated into an agency under Department of Justice. In 1987, the BI's power is stated in Book IV/ Title III/ Chapter 10 of the Executive Order No. 292 or the Administrative Code of 1987 which is the law that gives administrative authority to government agencies in the Philippines.

3.10.1 Structure

Section 31 states that the structural organization of the BI shall be headed by a Commissioner who shall be assisted by two Associate Commissioners. Moreover, the BI shall have nine internal divisions as follows:

- A. Administrative Division
- B. Finance and Management Division
- C. Immigration Regulation Division
- D. Verification and Compliance Division
- E. Management Information System Division
- F. Intelligence Division
- G. Airport Operations Division
- H. Legal Division
- I. Alien Registration Division

3.10.2 Functions

The BI has two types of functions, general and special ones.

General functions include:

- A. Acts as the law enforcement arm of the Department of Justice and the President in ensuring that all foreigners within the Philippines' territorial jurisdiction comply with existing laws;
- B. Assists local and international law enforcement agencies in protecting the stability and peace of the country from threats caused by foreigners, including the residence and departure of all foreigners;
- C. Acts as chief repository of all immigration records.

Special functions include:

- A. Regulation of the entry, stay, and exit of foreign nationals in the country;
- B. Monitoring of the entry and exit of Filipino citizens to ensure compliance with the law;
- C. Issuance of immigration documents, identification cards for aliens and visas;
- D. Issuance of the special permits in relation to the enforcement of all immigration laws;
- E. Extension of stay of temporary visitors or implementation of changes of status as provided by law;
- F. Administrative determination of citizenship and related status;
- G. Investigation, detention, arrest and punishment of aliens violating the law;
- H. Cancellation of immigration documents upon violation of laws;
- I. Accreditation of learning institutions that can accept foreign students;
- J. Accreditation of law firms, travel agencies and other individuals or organizations transacting with the BI.

3.11 Department of Labor and Employment (DOLE)

An equivalent of Thailand's Ministry of Labor, DOLE was founded in 1933. Executive order No. 292 or the Administrative Code of 1987 sets out the structure and functions of the DOLE in Book IV/ Title VII/ Chapter 1.

3.11.1 Structure

Section 4 states that the DOLE shall consist of the Office of the Secretary, the Undersecretaries and Assistant Secretaries, the Services and Staff Bureaus, and the Regional Offices.

3.11.2 Functions

Section 3 sets out the DOLE's functions as follows:

- A. Enforce social and labor legislation to protect the working class and regulate the relations between the worker and employers;
- B. Formulate and recommend policies, plans and programs for manpower development, training, allocation, and utilization;
- C. Recommend legislation to enhance the nation's labor force;
- D. Protect and promote the interest of every citizen desiring to work in the country or overseas by securing for him/her the most equitable terms and conditions of employment, including social and welfare services;
- E. Regulate the employment of aliens, including the enforcement of a registration or work permit system for aliens, as provided for by law;
- F. Formulate general guidelines concerning wage and income policy;
- G. Recommend necessary adjustments in wage structures to make it consistent with national economic and social conditions;
- H. Provide for safe, decent, humane and improved working conditions and environment for all workers;
- I. Maintain a harmonious, equitable and stable labor relations system;
- J. Uphold the right of laborers and employees to organize and promote free collective bargaining as the foundation of the labor relations system;
- K. Provide and guarantee a fair settlement for labor disputes.

3.12 The National Labor Relations Commission (NLRC)

NLRC is an agency that is responsible for dispute settlement related to labor relations. The agency is under the Department of Labor and Employment (DOLE) and is founded by Executive order No. 292 or the Administrative Code of 1987, which is the law that sets out the DOLE's structure. The NLRC is covered by Book IV/ Title VII/ Chapter 1/ Section 25 as an agency under the DOLE. Subsequently, the structure and function of the NLRC are further elaborated under the Republic Act No. 6715 in 1989.

3.12.1 Structure

Section 5 of the Republic Act No. 6715 states that the NLRC shall be composed of 15 members as follows:

- A. The Chairman and the four members who shall be public officials and be appointed by the Secretary of Labor and Employment.
- B. Five members each who shall represent workers' organizations.
- C. Five members each who shall represent employers' organizations.

Upon assumption into office, the members nominated by the workers and employers organizations shall divest themselves of any affiliation with or interest in the federation or association to which they belong.

3.12.2 Functions

Section 9 states that NLRC shall have the original and exclusive jurisdiction to hear and decide, within 30 calendar days after the submission of the case by the parties for decision, the following cases involving all workers, whether agricultural or non-agricultural:

- A. Unfair labor practice cases;
- B. Termination disputes;
- C. Cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

- D. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
- E. Cases arising from any legal strikes and lockouts;
- F. Claims for employee's compensation, social security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving more than 5,000 pesos.

Conclusion

Similar to the legal system and the laws on trade and investment, the government agencies in the Philippines are influenced by the colonial period under the United States of America from 1898-1946. Many agencies have history dating back to or were founded during the colonial period, until the civil service reform by Executive Order No. 292 or Administrative Code of 1987 by President Corazon Aquino in 1987 established new government agencies and reorganized the structure and functions of the bureaucracy to a more systemic manner.

The Philippines are a resource-abundant country, with key resources for production such as minerals and human resources with English language and vocational skills. There is also a sizable population which can serve as a large market for goods and services. The Philippines, therefore, is a very attractive destination for investment and doing business, especially after the formation of ASEAN Economic Community (AEC) in 2015. At the same time however, the Philippines have a number of limitations, especially the legal system which imposes considerable constraints on foreigners, whether in land ownership, investment in various business, and prohibiting foreign workers from collective bargaining or strikes. Nevertheless, the Philippines do open the door for foreign reciprocity which can be useful for Thai investors, entrepreneurs, and labor, if the Thai government can amend laws or make agreements related to trade and investment rights with Philippine nationals.

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ANNEX

Annex A: Minimum wage in the Philippines per area

Cordillera Administrative Region (CAR)

Sector/Condition	Baguio City, Municipalities of Banguet, La Trinidad, Itogon, Sablan and Tuba (BLIST)	Other area within region
Minimum wage (under W.O. No. RBCAR-16, effective since 3 Feb 2014)		
Non-Agriculture (Non-Agriculture)	280.00	263.00
Agriculture (Agriculture)	268.00	247.00
Retail/Services		
More than 15 workers	280.00	263.00
less than 15 workers	268.00	247.00

Region I : Ilocos

Sector/Condition	Minimum wage (Under W.O. No. RBI-16 effective 5 Feb 2014)
Non-Agriculture (Non-Agriculture)	
Large	253.00
Medium	244.00-253.00*
Small	233.00
Micro	213.00
Agriculture (Agriculture)	
Plantation	233.00
Non-Plantation	213.00
Fishery Sector (Commercial Fishing)	253.00

Note * Depends on property value

Region II: Cagayan Valley

Sector/Condition	Isabela	Cagayan	Nueva Vizcaya	Quirino and Batanes
Minimum wage (Under W.O. No. RBII-16 effective 5 January 2014)				
Non-Agriculture	255.00	252.00	248.00	247.00
Agriculture	243.00	240.00	236.00	235.00
Retail/Services				
more than 10 workers	247.00	244.00	240.00	239.00
less than 10 workers	223.00	222.00	219.00	219.00

Region III: Central Luzon

Sector/Condition	Bulacan, Bataan, Nueva Ecija, Pampanga, Tarlac and Zambales	Aurora
Minimum wage (Under W.O. No. RBII-17 effective 11 October 2555)		
Non-Agriculture	-	285.00
property value over 30 million pesos	336.00	-
property value under 30 million pesos	329.00	-
Agriculture		
Agriculture (plantation)	306.00	270.00
Agriculture (non-plantation)	290.00	258.00
Retail/Services		
more than 16 workers	325.00	-
less than 16 workers	311.00	215.00

Region IV-A: Calabarzon

Indicator	Sector			
	Non-Agriculture	Agriculture		Retail/Services With no more than 10 workers
		Plantation	Non-Plantation	
Minimum wage (Under W.O. No. RBIVA-16 effective 1 May 2014)				
Growth Corridor Area				
Cavite – Bacoor, Imus Laguna – Biñan City, Laguna Techno Park, San Pedro Rizal – Cainta, Taytay	362.50	337.50	317.50	259.00
Cavite – Carmona, Cavite City, Dasmariñas City, Gen. Trias, Rosario Laguna – Cabuyao, Calamba City, Los Baños, San Pablo City, Sta. Cruz, Sta. Rosa City Rizal – Antipolo City	340.50	315.50	295.50	255.00
Batangas - Batangas City, Bauan, Lipa City, LIMA Technology Center, San Pascual, Sto. Tomas Tanauan City Cavite – Gen. Mariano Alvarez, Kawit, Silang, Tagaytay City, Tanza, Trece Martirez City Quezon - Lucena City Rizal - Rodriguez, Tanay	335.50	310.50	290.50	255.00
Batangas – Balayan, Calaca, Calatagan, Lemery Mabini, Nasugbu, Rosario, San Jose Quezon – Candelaria, Sariaya Rizal - Angono, Binangonan, San Mateo	316.50	291.50	261.00	244.00

Batangas - San Juan Cavite - Indang, Naic, Noveleta, Ternate Laguna - Paete, Pakil Quezon - Tiaong Rizal - Pililia				
	305.50	261.00	261.00	231.00
Indicator	Sector			
	Non-Agriculture	Agriculture		Retail/Services With no more than 10 workers
		Plantation	Non-plantation	
Batangas - Taysan Rizal - Teresa	300.50	261.00	261.00	230.00
Resourced-based Area				
Batangas - Agoncillo, Alitagtag, Balete, Cuenca, Ibaan, Laurel, Lian, Lobo, Malvar, Mataas na Kahoy, Padre Garcia, San Luis, San Nicolas, Sta. Teresita, Taal, Talisay, Tingloy, Tuy Cavite - Alfonso, Amadeo, Gen. Aguinaldo, Magallanes, Maragondon, Mendez-Nuñez Laguna - Alaminos, Bay, Calauan, Cavinti, Famy, Kalayan, Liliw, Luisiana, Lumban, Mabitac, Magdalena, Majayjay, Nagcarlan, Pagsanjan, Pangil, Pila, Rizal, Sta. Maria, Siniloan, Victoria Rizal – Baras, Cardona, Jala-Jala, Morong				
	296.50	261.00	261.00	226.00
Quezon – Agdangan, Alabat, Atimonan, Buenavista, Bardeos, Calauag, Catanauan, Dolores, Gen. Luna, Gen. Nakar, Guinayangan, Gumaca, Infanta, Jomalig, Lopez, Lucban, Macalelon, Mauban, Mulanlay, Padre Burgos, Pagbilao, Panukulan, Patnanungan, Perez, Pitogo, Plaridel, Polilio, Quezon, Real, Sampaloc, San Andres, San Antonio, San Francisco, San Narciso, Tagkawayan, Tayabas, Unisan				
	261.00	261.00	255.00	219.00

Region IV-B: Mimaropa

Indicator	Highly Urbanized City (Puerto Princesa)	Calapan City, Puerto Galera, El Nido and Coron	First Class Municipalities of Mimaropa	Other areas within region
Minimum wage (Under W.O. No. RBIVB-06 effective 1 February 2013)				
Non-Agriculture				
More than 10 workers	275.00	270.00	260.00	255.00
No more than 10 workers	215.00	210.00	207.00	205.00
Agriculture	225.00	225.00	215.00	215.00

Region V: Bicol

Indicator / Sector	Minimum wage (Under W.O. No. RBV-16 effective 10 January 2014)
Non-Agriculture	
More than 10 workers	260.00
No more than 10 workers	236.00
Handicraft	236.00
Agriculture	236.00

Region VI: Western Visayas

Indicator / Sector	Minimum wage (Under W.O. No. RBVI-21 effective 29 November 2013)
Non-Agriculture/Industry/Commercial	
More than 10 workers	287.00
No more than 10 workers	245.00
Agriculture	
Plantation	255.00
Non-Plantation	245.00

Region VII: Central Visayas

Indicator / Sector	Class A	Class B	Class C	Class D
Minimum wage (Under W.O. No. RBVII-18 effective 21 March 2014)				
Non-Agriculture	340.00	320.00	310.00	295.00
Agriculture				
Non-sugar industry	322.00	305.00	290.00	275.00
Sugar industry	290.00	290.00	290.00	290.00
Sugar Mills	310.00	310.00	310.00	310.00

Note: Class A = Cities of Carcar, Cebu, Danao, Lapulapu, Mandaue, Naga, Talisay, and Municipalities of Compostela, Consolacion, Cordova,

Liloan, Mingalanilla, San Fernando or expanded Metro Cebu

Class B = Cities of Toledo, Bogo and rest of Municipalities in Cebu Province except Bantayan and Camotes Islands

Class C = Cities and municipalities in Bohol and Negros Oriental Provinces

Class D = Municipalities in Siquijor Province and municipalities in Banyatan and Camotes Islands

Region VIII: Eastern Visayas

Indicator / Sector	Minimum wage
	(Under W.O. No. RBVIII-17 effective 16 October 2555)
Non-Agriculture	260.00
Agriculture (excluding sugar industry)	241.00
Retail/Services	
No more than 10 workers	229.00
Handicraft sector	238.00
Sugar industry	
Sugar mills	262.00
Plantation	235.00
Non-Plantation	220.50

Region IX: Zamboanga Peninsula

Indicator / Sector	Minimum wage
	(Under W.O. No. RBIX-18 effective 18 June 2013)
Non-Agriculture (private hospital, school, security companies, cleaning service, and retail/service more than 30 workers)	280.00
Agriculture (including rubber plantation)	
Plantation	255.00
Non Plantation	235.00
Retail/Services	
No more than 30 workers	260.00
Handicraft	235.00

Region X: Northern Mindanao

Indicator / Sector	Wage			
	Class 1	Class 2	Class 3	Class 4
Minimum wage (Under W.O. No. RBX-17 effective 1 January 2014)				
Non-Agriculture	306.00	301.00	296.00	291.00
Agriculture	294.00	289.00	284.00	279.00
Indicator	Class 5 (sugar industry) ^a			
Land preparation (effective 1 January 2014)				
Roamplow				
Moalboard - labor Component	419.00 / 10,000 sq.m.			
Animal Plowing				
Premium Rate of Animal	279.00 / day			
- Normal Soil				
- Coarse and Hilly	1,814.00 / 10,000 sq.m.			
- Coarse and Hilly				
Harrowing /Karas - labor Component	3,292.00 / 10,000 sq.m.			
Harrowing /Karas - labor Component	120.00 / 10,000 sq.m.			
Planting Basal Including Peeling	820.00 / lacsca			
Hauling Cane Points				
Loading Only	112.00 / lacsca			
Loading and Unloading	195.00 / lacsca			
Cutting Cane Points				
Sinsillo	558.00 / lacsca			
Gupod	446.00 / lacsca			
Peeling	195.00 / lacsca			
Cutting Cane Points With Peeling	921.00 / lacsca			
Fertilizing				
Tagad	84.00 / bag			
Bubod	56.00 / bag			
Weeding				
High density	2,000.00 / 10,000 sq.m.			
Medium density	1,533.00 / 10,000 sq.m.			
Low density	1,000.00 / 10,000 sq.m..			
Hilling-up with 1-m distance between roll	463.00 / 1 pass / 10,000 sq.m.			
Cutting and Loading Zero Trash	195.00 / ton			
Cultivation				
Peeling and Replanting	929.00 / lacsca			
Trash Scattering, Burning and Cutting Stump	725.00 / 10,000 sq.m.			

Davao Region

Indicator / Sector	Minimum wage
	(Under W.O. No. RBXI-18 effective 1 June 2014)
Non-Agriculture	312.00
Agriculture (including rubber plantation)	302.00
Retail/Services	
More than 10 workers	312.00
No more than 10 workers	281.00

Soccsksargen

Indicator / Sector	Minimum wage
	(Under W.O. No. RBXII-18 effective 1 Aug 2014) ^a
Non-Agriculture	270.00
Agriculture (including rubber plantation)	252.00
Retail/Services	250.00

Caraga

Indicator / Sector	Minimum wage
	(Under W.O. No. RBXI-18 effective 1 June 2014)
Non-Agriculture	268.00
Agriculture (including rubber plantation)	
Plantation	258.00
Non Plantation	238.00
Retail/Services	
No more than 10 workers	238.00
More than 10 workers	268.00

Autonomous Region in Muslim Mindanao

Indicator / Sector	Minimum wage
	(Under W.O. No. RBXII-18 effective 1 Aug 2014)
Non-Agriculture	
Production/commercial/education	250.00
Agriculture	
Plantation/non Plantation	250.00