

BOARD OF INVESTMENTS

# Frequently Asked Questions

## 1. What are the various structural options that I could choose from in setting up a business?

You may set up your business under several organizational structures known as single proprietorship, partnership, corporation, branch office, representative office, regional headquarters, or regional operating headquarters.

## 2. Can a foreign investor be allowed to own a 100% of a business entity?

Yes, one hundred percent (100%) foreign equity may be allowed in all areas of investments under the Foreign Investments Act (FIA) R.A. 7042 except those included in the Regular Foreign Investment Negative List (FINL).

## 3. What are the areas of investments covered by the Foreign Investments Act (FIA)?

The FIA covers all investment areas, except banking and other financial institutions, which are governed and regulated by the Bangko Sentral ng Pilipinas (BSP).

The Foreign Investment Negative List covers areas of economic activity whose foreign ownership is limited to a maximum of forty percent (40%) of the outstanding capital stock in the case of a corporation or capital in the case of partnership.

*Below are further descriptions on the Negative Lists A & B:*

**List A:** refers to areas reserved to Filipinos by mandate of the Constitution and Special Laws such as but not limited to:

- a. Mass Media, except recording, practice of licensed profession, retail trade, cooperative and small-scale mining, etc. where foreign ownership is prohibited; and,
- b. Advertising, ownership of land, operation and management of public utilities, etc., where only minority foreign ownership is prohibited.

**List B:** refers to areas that are defense-related, those with adverse effects on public health and morals and domestic market enterprises with paid-up capital of less than US\$200,000, provided they involved advanced technology as determined by the Department of Science and Technology (DOST) or directly employ at least fifty (50) employees, in which case, the paid-up capital shall be lowered to US\$100,000 only to non-Philippine nationals.

## 4. When can foreigners do business or invest in a domestic enterprise up to 100% of its capital?

- A. Full entry of non-Filipinos is feasible if the proposed activity is not among those listed in the FINL;
- B. When the paid-up capital for domestic market enterprise is at least US\$200,000 which may be lowered to US\$100,000 and if the following conditions are met:
  - Introduction of advanced technology; or
  - Employment of at least 50 direct employees.

## 5. Where does one apply for registration of business?

- A. For Single/Sole Proprietorship (Filipino or foreign national) – You may go online at <http://www.bnrs.dti.gov.ph> to register your business name.

For other inquiries on Business Name (BN) Registration, consider the following:

- For concerns regarding Business Name policies, clarification on requirements, call (632) 751-3330;
  - For technical concerns such as page cannot be displayed, problem in viewing look-up table, etc., please call (632) 729-8681;
  - Send emails to [bnrshelpdesk@dti.gov.ph](mailto:bnrshelpdesk@dti.gov.ph);
  - Visit the DTI-National Capital Region, Makati City if within Metro Manila, located at the 12F Trafalgar Plaza, 105 H.V. Dela Costa St., Salcedo Village, Makati City;
  - Approach any DTI Provincial office (if outside Metro Manila) with contact information supplied at <http://www.business.gov.ph>.
- A. A foreign national should secure first ACR-Icard with the Bureau of Immigration before securing DTI permit and/or opening an account in any commercial bank.
- B. For Corporations/Partnerships, Branch and Representative Offices - Submit application forms together with the required documents at the Securities and Exchange Commission (SEC). The SEC is located at the SEC Building, EDSA corner Ortigas Avenue, Greenhills, Mandaluyong City. Its contact number is (632) 584-0923; 584-9225. For concerns outside Metro Manila, SEC has Extension Offices. Online information could be generated from <http://www.sec.gov.ph>.
- C. For Regional Headquarters and Regional Operating Headquarters - Submit application form together with required documents at the Board of Investments via the Resource-Based Industries Department., Industry and Investments Building, 385 Sen. Gil Puyat Avenue, Makati City, Metro Manila. Said office could be reached through telephone number (632)895-3997

## 6. What requirements must be complied with before an enterprise can enjoy tax benefits?

To qualify for incentives, the proposed activity of a domestically-incorporated enterprise should be listed in the Investment Priorities Plan (IPP). The firm must register with the appropriate investment promotion agency/ies depending on the project's location, to wit:

- A. Location outside of Economic or Freeport Zones
- Board of Investments (BOI)
  - Regional BOI in ARMM
- B. Located in Economic or Freeport Zones
- Aurora Pacific Economic Zone and Freeport (APECO)
  - Bases Conversion and Development Authority (BCDA)
  - Freeport Area of Bataan (FAB)
  - Phividec Industrial Authority (PIA)
  - Philippine Economic Zone Authority (PEZA)
  - Subic Bay Metropolitan Authority (SBMA)

- Tourism Infrastructure and Enterprise Zone Authority (TIEZA)
- Zamboanga Economic Zone Authority (ZEZA)

## 7. What are other relevant information that should be noted about registering with the Board of Investments (BOI) and Philippine Economic Zone Authority (PEZA)?

### A. Board of Investments (BOI)

To qualify for registration with the BOI, a company should be organized under Philippine laws as a domestic entity. An enterprise may register its activity if the same is listed in the current Investments Priorities Plan (IPP). If not listed, the enterprise may also be entitled to BOI incentives for as long as the following conditions are met:

- At least 50% of the production is for export (for enterprises with 60% Filipino/40% foreign ownership); or
- At least 70% of production is for export (for enterprises with more than 40% of foreign-ownership).

Foreign-owned firms, whose ownership exceeds 40% of the outstanding capital stock and which proposes to engage in domestic-oriented activities, may be entitled to incentives if the proposed activity is listed in the current IPP and qualifies under Pioneer status (refer to ensuing description).

### B. Philippine Economic Zone Authority (PEZA)

The Special Economic Zone Act of 1995 as amended, mandates the PEZA to operate, administer, manage and develop Special Economic Zones or Ecozones.

Enterprises that may qualify for registration with PEZA are domestic company, subsidiary and branch office that will manufacture and export 100% of their production and/or services.

Permission has to be sought if the enterprise located within the zone will export below 100% and in most cases PEZA has allowed up to 30% of production for the domestic market.

So far, there are 98 proclaimed Special Economic Zones that are operating in the country. Details could be drawn from <http://www.peza.gov.ph>.

## 8. What is a Pioneer status?

A. A preferred area of investments may be declared Pioneer if the activity:

- Involves the manufacturing or processing (not merely assembly or packaging of goods or raw materials that have not been produced in the Philippines on a commercial scale; or
- Uses a design, formula, scheme, method, process or system of production or transformation of any element or raw material or finished good which is new and untried; or
- Engages in agricultural activities/services essential to the achievement of the country's self-sufficiency program; or
- Produces non-conventional fuels or manufactures equipment which utilize non conventional sources of energy; or
- Conforms to other specific criteria as provided for in the annually drawn Investments Priorities Plan.

## 9. What probable incentives are made available to registered enterprises?

### A. Board of Investments (BOI)

An enterprise registered with the BOI, pursuant to the 1987 Omnibus Investments Code (Executive Order No. 226) is entitled to, among others, the following incentives subject to certain terms and conditions:

- **Income Tax Holiday (ITH)**  
BOI-registered enterprise shall be exempt from the payment of income taxes reckoned from the scheduled start of commercial operations, as follows:
  - New projects with a pioneer status for six (6) years;
  - New projects with a non-pioneer status for four (4) years;
  - Expansion projects for three (3) years, the exemption of which, as a general rule, is limited to incremental sales revenue/volume;
  - New or expansion projects in less developed areas (LDAs) for six (6) years, regardless of status;
  - Modernization projects for three (3) years, the exemption of which, as a general rule, is limited to incremental sales revenue/volume.
- Tax credit on raw materials, supplies and semi-manufactured products (for export producers only);
- Additional deduction from taxable income for labor expense (cannot be simultaneously enjoyed with the ITH incentive);
- Additional deduction from taxable income for necessary and major infrastructure works (cannot be simultaneously enjoyed with the ITH incentive);
- Exemption from wharfage dues and export tax, duty, impost and fees.
- **Modified Duty Rate for Capital Equipment** by virtue of E.O. No. 528  
Since June 17, 2006, BOI registered enterprises of good standing with project registered as new or expanding under the Omnibus Investments Code of 1987 may import machinery, equipment, spare parts and accessories that are subject to zero percent (0%) duty for export-oriented enterprises and one percent (1%) duty for domestic-oriented enterprises. The products fall under Chapters 40, 59, 68, 69, 70, 73, 76, 82, 83, 84, 85, 87, 89, 90, 91 and 96 of the Tariff and Customs Code of the Philippines.

The capital equipment incentive provided under E.O. No. 313 (Modifying the Nomenclature and the Rates of Import Duty on Certain Imported Articles under Section 104 of the Tariff and Customs Code of 1978, as amended) shall be availed of by a registered enterprise for a period of five (5) years from its effectivity, or until June 16, 2011.

Certain non-fiscal incentives are also available to the registered enterprise, among which are: (a) employment of foreign nationals; (b) guaranteed repatriation of foreign investments and earnings thereon; and, (c) importation of consigned equipment for an unlimited period subject to the posting of re-export bond.

### B. Philippine Economic Zone Authority (PEZA)

PEZA offers the following Investment Incentives for Ecozone Developers /Operators:

- **Income Tax Holiday**
  - 4 years for IT Parks/Buildings located outside of Metro Manila;
  - 6 years for manufacturing located in less developed area;

- Incentives under the Build-Operate-Transfer Law, which includes government support for accessing Official Development Assistance and other sources of financing;
- Provision of vital off-site infrastructure facilities;
- Option to pay a special 5% tax on Gross Income earned, in lieu of all national and local taxes;
- Permanent resident status for foreign investors and immediate family members;
- Employment of foreign nationals;
- Assistance in the promotion of economic zones to local and foreign locator enterprises;

For Ecozone and IT Locators, the following incentives could be extended:

- Income Tax Holiday (ITH)
  - New registered pioneer firms
    - Six (6) years from commercial operation;
  - New registered non-pioneer firms
    - Four (4) years from commercial operation;
  - Expanding firms
    - Three (3) years from commercial operation of the expansion;
  - After the ITH period, the option to pay a special 5% tax on Gross Income, in lieu of all national and local taxes;
- Exemption from duties and taxes on imported capital equipment, spare parts, supplies, raw materials;
- Tax Credit on Domestic Breeding Stock and Genetic Materials – an ecozone export enterprise which purchases breeding stocks and genetic materials from a domestic producer shall be entitled to a tax credit equivalent to 100% of the value of national internal revenue taxes and customs duties that would have been waived on the breeding stocks and genetic materials had these items been imported;
- Domestic sales allowance equivalent to 30% of total sales;
- Exemption from wharfage dues and export taxes, imposts and fees;
- Employment of foreign nationals;
- Simplified import and export procedures;
- Other incentives under Executive Order 226 (Omnibus Investments Code of 1987), as may be determined by the PEZA Board.

Enterprises allowed to operate within the Subic Bay Freeport (SBF) shall, in lieu of paying all other taxes, pay a final tax of 5% of gross income provided their income from local (non-export) sales shall not exceed 30% of their income from all sources.

Enterprises locating within the Clark Special Economic Zone (former American Airbase at Clark Field) and Poro Point Special Economic and Freeport Zone (formerly Wallace Air Station and its adjoining areas) are granted incentives similar to those given SBF enterprises.

Five other special economic zones were created under separate special laws. These are the Cagayan Special Economic Zone Authority (CEZA), Zamboanga Economic Zone Authority (ZEZA), Freeport Area of Bataan (FAB) and Tourism Infrastructure and Enterprise

Zone Authority (TIEZA) and Aurora Pacific Economic Zone. The incentives granted to those that will locate in these ecozones are similar to the incentives granted to PEZA ecozone.

## 10. What are the activities that an RHQ / ROHQ can engage in?

### A. Regional Headquarters (RHQ)

The activities of the RHQ are limited to acting as a supervisory, communications and coordinating center for its subsidiaries affiliates and branches in the region.

It is neither allowed to derive any income from sources in the Philippines and to participate in any manner in the management of any subsidiary or branch office it might have in the Philippines nor to solicit or market goods and services whether on behalf of its mother company or its branches, affiliates, subsidiaries or any other company.

Incentives for RHQ

- Exemption from corporate income tax;
- Exemption from branch profits remittance tax;
- Exemption from value-added tax;
- Sale or lease of goods and property, and services to the RHQ are zero-rated;
- Exemption from all kinds of local taxes, fees or charges imposed by a local government unit, except real property tax on land improvements and equipment;
- Tax and duty free importation of equipment and materials for training and conferences needed and solely used for the RHQ functions, and which are not locally available, subject to prior BOI approval;
- Importation of brand new motor vehicle but subject to payment of taxes and duties.

### B. The Regional Operating Headquarters (ROHQ) may engage in any of the following qualifying services:

- General administration and planning
- Business planning and coordination
- Sourcing/procurement of raw materials components
- Corporate finance advisory services
- Marketing control and sales promotion
- Training and personnel management
- Logistics services
- Research and development services and product development
- Technical support and maintenance
- Dataprocessing and communications
- Business development

Incentives for ROHQ

- Subject to preferential income tax rate of 10% on taxable income;
- Exemption from all kinds of local taxes, fees or charges imposed by a local government unit, except real property tax on land improvements and equipment;
- Tax and duty free importation of equipment and materials for training and conferences needed and solely used for the ROHQ functions, and which are not

locally available, subject to prior Board of Investments (BOI) approval;

- Importation of brand new motor vehicle but subject to payment of taxes and duties.

ROHQ is allowed to offer qualifying services only to its affiliates, branches or subsidiaries as declared in its registration with the Securities and Exchange Commission (SEC). It is not allowed to directly and indirectly solicit or market goods and services whether on behalf of their mother company, branches, affiliates, subsidiaries or any other company.

#### Incentives for Expatriates

- Multiple Entry Visa:
  - Expatriates, including spouse and unmarried children below 21 years old will be issued this type of visa;
  - Non-immigrant visa will be processed within 72 hours from submission of documents to the Bureau of Immigration;
  - Validity period of 3 years extendible for another 3 years;
  - Exemption from payment of fees except reasonable administrative costs;
  - Exemption from securing Alien Certificate of Registration;
- Withholding tax of 15% on compensation income applicable to both alien and Filipino executives holding managerial and technical positions;
- Tax and duty free importation of used household goods and personal effects;
- Travel tax exemption
  - Personnel and their dependents.

### 12. How does a company remit its profits and dividends and repatriate capital abroad?

Enterprises seeking to remit its profits and dividends or repatriate its capital abroad may register their inward remittance with the Bangko Sentral ng Pilipinas (BSP) after registration with the SEC or BTRCP. For this purpose, BSP rules and regulations covering procedures for registration of foreign investments are observed.

### 13. What are the investment rights of a former natural born Filipino?

The Foreign Investments Act (FIA) recognizes the rights of former natural born Filipinos. They are granted same investment rights as Filipino citizens in activities such as cooperatives, thrifts banks and private development banks, rural banks and financing companies. In addition, under Section 1 of the FIA as amended by RA 8179, "Any natural born citizen who has lost his citizenship, and who has legal capacity to enter into a contract under Philippine laws may be a transferee of a private land to be used by him for business or other purposes up to a maximum area of five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land."

### 14. What are the basic rights and guarantees given for the safety of foreign investors?

All investors and enterprises are entitled to the basic rights and guarantees provided in the Philippine Constitution, such as:

#### A. Right to REPATRIATION OF INVESTMENTS

In the case of foreign investments, the right to repatriate the entire proceeds of the liquidation of the investment in the currency in which the investment was originally made at the exchange rate prevailing at the time of repatriation.



#### **B. Right to REMITTANCE OF EARNINGS**

In the case of foreign investments, the right to remit earnings from the investments in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance.

#### **C. Right to FOREIGN LOANS AND CONTRACTS**

The right to remit, at the exchange rate prevailing at the time of remittance, such as may be necessary to meet the payment of interest and the principal on foreign loans and foreign obligations arising from technological assistance contracts.

#### **D. Right to FREEDOM FROM EXPROPRIATION**

There shall be no expropriation by the government of the property represented by the investments or of the property of enterprises except for public use or in the interest of national welfare and defense and upon payment of just compensation. In such cases, foreign investors of enterprises shall have the right to remit sums received as compensation for the expropriated property in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance.

#### **E. Right to NON-REQUISITION OF INVESTMENT**

There shall be no requisition of the property presented by the investment or of the property of enterprises, except in the event of war or national emergency and only for the duration of such. Just compensation for the requisitioned property may be remitted in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance.

### **15. As an investor, what visa can be issued?**

A. The Special Investor Resident Visa (SIRV) entitles the holder to reside in the Philippines for an indefinite period as long as his investment subsists. Any alien, except restricted nationals under the Foreign Service Code, may apply for an SIRV provided he meets the following requirements:

- A. He has not been convicted of a crime involving moral turpitude.
- B. He is not afflicted with any loathsome, dangerous or contagious disease.
- C. He has not been institutionalized for mental disorder or disability.
- D. He is willing and able to invest the amount of at least US\$75,000.00 in the Philippines.

B. SVEG – Special Visa for Employment Generation (E.O. 758)– The SVEG is a special visa issued to a qualified non-immigrant foreigner who shall actually employ and maintain at least ten (10) Filipinos in a lawful and sustainable enterprise, trade or industry. Qualified foreigners who are granted the SVEG shall be considered special non-immigrants with multiply entry privileges and conditional extended stay, without need of prior departure from the Philippines.

The privileges of this Executive Order may extend to the qualified foreigner's spouse and dependent unmarried child/children below eighteen (18) years of age whether legitimate, illegitimate or adopted.

#### **ALLOWABLE FORMS OF INVESTMENT**

For purposes of securing an SIRV, only ownership of shares of stocks in the following shall be accepted as eligible forms of investment, to wit:

#### **A. In existing corporations:**

- Publicly-listed companies
- Companies engaged in Investment Priorities Plan (IPP) Projects, or
- Companies engaged in the manufacturing and service sectors.

#### **B. In new corporations:**

- Companies engaged to be engaged in the manufacturing and service sectors, or,
- Companies engaged to be engaged in IPP Projects

The government has liberalized visa requirements for foreign entrants to encourage foreign participation in the economic development of the Philippines. Among the liberalized rules are the following provisions:

- A. Foreign stockholders, investors, representatives of investment houses, land developers and tourism developers are among the categories entitled to the special visa incentive, which grants privileges to certain foreign nationals.
- B. Aliens entitled to enter the country under the provision of a treaty of amity, commerce and navigation may be admitted as non-immigrants. They are given treaty-trader visas for the sole purpose of carrying on substantial trade between the Philippines and the state of which they are nationals.
- C. Foreign technicians may be admitted to the Philippines with a pre-arranged employment visa if their employers can prove that the skills they possess are not available in the country.

### **Entry Visa**

Foreign nationals may come to the Philippines for reasons of business, pleasure or health with a temporary visitor's visa. This visa allows stays for periods of 59 days, extendable for a maximum of one year. To extend their stay, visitors must register with the Bureau of Immigration or with the office of the municipal or city treasurer in areas outside Manila. Executive Order No. 408 allows foreign nationals, except those of specifically restricted nationalities, to stay in the Philippines for up to 21 days without a visa.

### **Work Permits**

In general, a foreign national seeking employment in the Philippines, whether resident or non-resident, must secure an Alien Employment Permit (AEP) from the Department of Labor and Employment (DOLE). An AEP is valid for one year from the date of issue and may be renewed subject to the approval of the DOLE. Executives of area or regional headquarters and OBUs, as well as treaty trader visa holders, are exempt from the requirement to obtain alien employment certificates.

A local employer who wishes to employ a foreign national must apply on the foreign national's behalf with the DOLE for the permit. The petitioning company must prove that the foreign national possesses the required skills for the position and that no Filipino is available who is competent, able and willing to do the specific job for which the foreign national is desired.

To ensure a proper transfer of technology, the DOLE requires the employers of foreign nationals to provide an Understudy Training Programme (UTP) and to designate at least two Filipino understudies. The functions of these employers must be deemed permanent, and they must require skills or expertise that are scarce in the Philippines.

## Special Residents

The SRRV is managed by the Philippine Retirement Authority (PRA). Its primary role is to promote and grant the SRRVs to would-be retirees, and to offer a range of services, benefits, and comfort that would make their stay worthwhile.

## Benefits

Once you are an SRRV Visa holder, it opens the door to vast opportunities and benefits. These include:

- Option to Retire Permanently
  - You may live, work and study in the Philippines
- Multiple Entry Privileges
  - You may travel outside the Philippines and re-enter anytime
- Exemptions from:
  - Income tax over your pension and annuities;
  - Exit and re-entry permits of the Bureau of Immigration;
  - Annual registration requirement of the Bureau of Immigration;
  - Customs Duties and Taxes with regard to the importation of household goods and personal effects up to US\$7,000.00;
  - Travel tax, if you stay in the Philippines is less than one year from the last entry date; and
  - I-Card

For more details, you may log on to [www.pra.gov.ph](http://www.pra.gov.ph).

## Treaty Traders Visa *(applicable only to Japanese, Germans and Americans)*

This visa is issued to a foreigner who:

- A. seeks to develop and direct the operations of the company in the Philippines
- B. is not applying for a non-immigrant visa in order to avoid the requirements or limitations applicable to an immigrant
- C. intends to leave the country upon the completion of his contract
- D. is employed by an actual company and not by a bogus organization

If an applicant is from the United States of America (USA), he must prove that

- A. he is engaged in a trade according to the trade and commerce agreements of the Philippines and the United States
- B. he intends to leave the country upon the completion or termination of his contract
- C. his employer is a foreign national or the company he intends to work with is foreign-owned; and he must hold a supervisory or an executive position
- D. he holds special qualifications as a supervisor or executive officer of a foreign company (if underage)

Note: The Treaty Trader's Visa is valid for one year.

**At the Board of Investments,  
we offer total investment management solutions**

- Supplying knowledge-based market information
  - Analyzing your business feasibility
    - Handholding your concerns
    - Linking you to the service chain
- Matching you with foreign and local businesses
- Nurturing your expansion and diversification
  - Profiling industries



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