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Chapter 1: Introduction

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The Republic of the Philippines is an archipelago in Southeast Asia comprising over 7,000 islands, with a total area of approximately 300,000 square kilometres. The Philippines is geographically divided into three major island groups from north to south, namely Luzon, Visayas and Mindanao, and its capital city is Manila. The official languages are Filipino and English.

The Philippine legal system is a hybrid of the civil law and common law traditions, originating from the country's Spanish and American colonisation. The civil law tradition applies in areas such as family relations, property, succession, contract and criminal law. Meanwhile, principles of common law are apparent in constitutional law, procedure, corporation law, taxation, insurance, labour relations, banking and currency.

Chapter 2: The business environment

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2.1 Government structure

The Philippines is a unitary presidential constitutional republic, with the President of the Philippines acting as both the head of state and the head of government.

There are three branches of government in the Philippines: the executive branch, headed by the President; the legislative branch, composed of a bicameral Congress (the Senate and House of Representatives); and the judicial branch, headed by the Supreme Court of the Philippines.

Congress has the legislative power to make laws with respect to foreign investment. This power is limited by the 1987 Constitution of the Philippines, which states that it is the policy of the state to pursue independent foreign policy. The state is also enjoined by the Constitution to protect Filipino enterprises against unfair foreign competition and trade practices.

2.2 Legal system

The primary sources of law in regard to the Philippine legal system are the following: the Constitution, statutes, international treaties and conventions, and judicial decisions that interpret the aforementioned laws.

Chapter 3: Business and corporate structures

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3.1 Common forms of legal entities

Common forms of legal entities in the Philippines include corporations, branches of foreign corporations, partnerships, associations, joint ventures and sole proprietorships. Subject to certain limitations on foreign ownership, foreign investors are allowed to establish any of these legal entities.

The recently enacted Revised Corporation Code (RCC) also allows for the creation of a one-person corporation (OPC), with a single stockholder. However, only a natural person, trust or estate may form an OPC.

3.2 Incorporation process

The Securities and Exchange Commission (SEC) has jurisdiction and supervision over all corporations, partnerships and associations. The SEC has the power to grant franchises and give legal existence to these entities. The SEC has promulgated rules and regulations governing the incorporation process.

3.3 Ongoing reporting and disclosure obligations

All corporations must annually submit a General Information Sheet to the SEC, in the form prescribed by the SEC, within 30 calendar days from the date of the issuance of their SEC licence (for branches of foreign corporations) or within 30 calendar days from the actual annual stockholders' meeting (for domestic corporations).

In addition, all corporations must submit their audited financial statements annually to the SEC, stamped 'received' by the Bureau of Internal Revenue (BIR) or its authorised banks, unless the BIR allows an alternative proof of submission in regard to its authorised banks (eg, bank slips). Corporations must file their audited financial statements on the dates designated by the SEC, based on the memorandum circular that the SEC issues annually.

3.4 Management structures

In the Philippines the general rule is that the board of directors exercises corporate power, conducts all business and controls all properties of the corporation. Under the previous Corporation Code, corporations were required to have a minimum of five directors on the board and a maximum of 15. Under the RCC, however, a corporation may provide for only two directors on the board, while the maximum remains 15.

Directors are elected for a term of one year from among the holders of stocks registered in the corporation's books. Each director is to hold office until their successor is elected and qualified. A director must own at least one share of stock to qualify to be a director.

Certain corporations vested with public interest are required to have independent directors constituting at least 20 per cent of their board. These include, among others, banks, quasi-banks, and public and publicly listed corporations pursuant to the Securities Regulation Code (SRC).

A Philippine corporation must have a president, corporate secretary and treasurer, all voted upon by the board of directors immediately after their election. A corporation may also have other officers as provided in its by-laws. The president must also be a director, but cannot concurrently be the treasurer or corporate secretary. The treasurer must be a Philippine resident, while the corporate secretary must be both a resident and citizen of the Philippines.

In an OPC, the single stockholder is also the president and sole director of the corporation. Furthermore, within 15 days from its incorporation, an OPC may appoint a treasurer, corporate secretary and other officers as it deems necessary and must notify the SEC within five days from the appointment. The single stockholder must also designate a nominee and an alternate nominee who, in the event of the single stockholder's death or incapacity, is to take the place of the single stockholder as director and manage the corporation's affairs.

3.5 Director, officer and shareholder liability

Under the RCC, the directors/trustees or officers of a corporation who act within their authority and in good faith do not become personally liable for the acts of the corporation, except in the following instances:

- they vote or assent to patently unlawful acts of the corporation;
- they act in bad faith or are guilty of gross negligence in directing the affairs of the corporation;
- they have conflicting interests with the corporation, in violation of their duties as directors;
- they consent to the issuance of watered stocks or, despite having knowledge of this, do not file their written objection with the corporate secretary;
- they consent to being held personally liable; or
- by a provision in law, the directors are made to be liable for the acts of the corporation.

Except in instances of fraud or alter ego piercing,[1] Philippine law generally considers a corporation to have a separate and distinct personality from its shareholders. Shareholders enjoy limited liability and are exposed to the corporation's liability only to the extent of their shareholdings.

Chapter 4: Takeovers (friendly M&A)

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The RCC states that a private corporation may invest its funds in any other corporation or business, or for any purpose other than the primary purpose for which it was organised, when approved by the majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds of the outstanding capital stock, at a meeting duly called for the purpose. Notice of the proposed investment and the time and place of the meeting is to be addressed to each stockholder at the place of residence as shown in the books of the corporation, and deposited to the addressee at a post office with postage prepaid, served personally or sent electronically in accordance with the rules and regulations of the SEC on the use of electronic data messages, when allowed by the corporation's by-laws or conducted with the consent of the stockholders. However, where the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in the articles of incorporation, the approval of the stockholders is not necessary. There are no board or stockholder approval requirements for the investee corporation.

As for mergers and consolidations, the RCC provides that two or more corporations may merge into a single corporation, which will be one of the constituent corporations, or may consolidate into a new single corporation, which will be the consolidated corporation.

The board of directors of each corporation, and party to the merger or consolidation, must first approve the plan for the merger or consolidation, setting forth:

- the names of the corporations involved in the proposed merger or consolidation, referred to as the 'constituent corporations';
- the terms of the merger or consolidation and the mode of putting it into effect;
- a statement of the changes, if any, in the articles of incorporation of the surviving corporation in the case of a merger and, in the case of consolidation, all the statements required to be set forth in the articles of incorporation under the RCC; and
- any other provisions with respect to the proposed merger or consolidation as are deemed necessary or desirable.

1 Alter ego piercing is when a corporation's separate juridical personality is disregarded when a corporation is found to be an alter ego of a person or of another corporation (ie, organised, controlled and its affairs conducted so as to make it merely an instrument or conduit of another person or corporation) and is used to commit fraud, illegal acts or inequity against third parties.

Upon approval of the merger or consolidation plan by the majority vote of the board of directors of the constituent corporations, the plan will be submitted for approval by the stockholders of each corporation at separate corporate meetings, duly called for the purpose. Notice of the meetings must be given to all stockholders in the respective corporations. The notice shall state the purpose of the meeting and include a copy or summary of the plan for the merger or consolidation.

The affirmative vote of stockholders representing at least two-thirds of the outstanding capital stock of each corporation is necessary for the approval of the planned merger or consolidation.

After receiving approval from the stockholders, articles of the merger or articles of the consolidation will be executed by each of the constituent corporations, to be signed by the president or vice-president and certified by the secretary or assistant secretary of each corporation, setting forth:

- the plan for the merger or the plan for the consolidation;
- the number of shares outstanding;
- for each corporation, the number of shares or members voting for or against the plan, respectively;
- the carrying amounts and fair value of the assets and liabilities of the respective companies as of the agreed cut-off date;
- the method to be used in the merger or consolidation of accounts of the companies;
- the provisional or pro forma values, as merged or consolidated, using the accounting method; and
- other information that may be prescribed by the SEC.

The articles of the merger or consolidation, signed and certified, are then submitted to the SEC for its approval. However, in the case of the merger or consolidation of banks or banking institutions, loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, the favourable recommendation of the appropriate government agency must first be obtained.

If the SEC is satisfied that the merger or consolidation of the corporations concerned is consistent with the provisions of the RCC and existing laws, it will issue a certificate approving the articles and plans for the merger or consolidation, at which time the merger or consolidation will be effective.

Where the entity to be acquired is a public company,[2] tender offers may apply pursuant to the SRC and its implementing rules, as follows:

- any person or group of persons acting in concert, who intends to acquire 15 per cent of equity securities in a public company in one or more transactions within a period of 12 months, must file a declaration to that effect with the SEC;

2 A public company is defined as a company which (1) has sold a class of its securities to the public pursuant to a registration statement under Section 12 of the SRC; (2) has a class of securities listed for trading on an exchange; (3) has assets of at least PHP 50m and has 200 or more shareholders, each holding at least 100 shares of a class of its equity securities.

- any person or group of persons acting in concert, who intends to acquire 35 per cent of the outstanding voting shares or such outstanding voting shares that are sufficient to gain control of the board in a public company in one or more transactions within a period of 12 months, must disclose such an intention and contemporaneously make a tender offer for the percentage sought to all holders of such securities within the said period. If the tender offer is oversubscribed, the aggregate number of securities to be acquired at the close of such tender offer must be proportionately distributed among the selling shareholders with whom the acquirer may have been in private negotiations, and other shareholders. For the purposes of the rules of the SRC, the last sale that meets the threshold must not be consummated until the closing and completion of the tender offer;
- any person or group of persons acting in concert, who intends to acquire 35 per cent of the outstanding voting shares or such outstanding voting shares that are sufficient to gain control of the board in a public company through the Philippine Stock Exchange (the 'Exchange') is not required to make a tender offer, even if such a person or group of persons acting in concert acquire the remainder through a block sale if, after acquisition through the Exchange trading system, they fail to acquire the target of 35 per cent or such outstanding voting shares that are sufficient to gain control of the board;
- any person or group of persons acting in concert, who intends to acquire 35 per cent of the outstanding voting shares or such outstanding voting shares that are sufficient to gain control of the board in a public company directly from one or more stockholders is required to make a tender offer for all the outstanding voting shares. The sale of shares pursuant to the private transaction or block sale must not be completed prior to the closing and completion of the tender offer; and
- if any acquisition would result in the ownership of over 50 per cent of the total outstanding equity securities of a public company, the acquirer is required to make a tender offer under the rules of the SRC for all the outstanding equity securities to all the remaining stockholders of the said company at a price supported by a fairness opinion provided by an independent financial adviser or equivalent third party. The acquirer in such a tender offer is required to accept all the securities tendered.

Chapter 5: Foreign investment

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5.1 Foreign investment control/restriction

The Foreign Investments Act classifies industries into the following: nationalised industries (no foreign ownership is allowed), partially nationalised industries (foreign ownership is limited or subject to certain ceilings) and liberalised industries (which may be 100 per cent owned by foreign investors).

A negative list is published from time to time by the government, which enumerates the nationalised and partially nationalised industries. List A is comprised of industries where foreign equity is limited by mandate of the Constitution or by law. List B is composed of industries where foreign equity is limited to safeguard the following national interests: security, defence, health, morals, and the protection of small and medium-sized enterprises. While List A may be amended anytime to reflect changes in the law, List B may be amended no more than once every two years. The latest, or 12th, negative list was signed into law in June 2022.

The following are some of the industries where foreign ownership is restricted (ie, nationalised industries and partially nationalised industries):

List A:

1. Nationalised industries (no foreign equity)
   - mass media, except recording and internet businesses;
   - the practice of professions, except in cases specifically allowed by law;
   - retail trade enterprises, where the paid-up capital is less than PHP 25m;
   - cooperatives;
   - private security agencies;
   - small-scale mining;
   - the utilisation of marine resources;
   - the ownership, operation and management of cockpits;
   - the manufacture, repair, stockpiling and/or distribution of nuclear weapons, biological, chemical, radiological, and anti-personnel mines; and
   - the manufacture of firecrackers and other pyrotechnic devices.
2. Partially nationalised industries (limited foreign equity)

   Up to 25 per cent foreign equity

   - private recruitment, whether for local or overseas employment; and
   - contracts for the construction of defence-related structures.

   Up to 30 per cent foreign equity

   - advertising.

   Up to 40 per cent foreign equity

   - the procurement of infrastructure projects;
   - the exploration, development and utilisation of natural resources;

- the ownership of private land;
- the operation of public utilities;
- educational institutions, except those established by religious groups and mission boards, for foreign diplomatic personnel and their dependents, and other foreign temporary residents;
- culture, production, milling, processing, trading, except retailing, of rice and corn and acquiring rice corn and their by-products;
- contracts for the supply of materials, goods and commodities to state-owned and municipal corporations;
- facility operators of infrastructure or development facilities requiring a public utility franchise;
- the operation of deep sea commercial fishing vessels;
- the ownership of condominium units; and
- private radio communication networks

List B:

Up to 40 per cent foreign equity

- the manufacture, repair, storage and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance: (1) firearms (from handguns to shotguns), parts of firearms and ammunition, instruments or implements used or intended to be used in the manufacture of firearms; (2) gunpowder; (3) dynamite; (4) blasting supplies; (5) ingredients used in making explosives; and (6) telescopic sights, sniper scopes and other similar devices. However, the manufacture or repair of these items may be authorised by the Chief of the PNP to non-Philippine nationals, provided that a substantial percentage of the output is exported, and the extent of foreign equity ownership allowed will be specified in the said authority/clearance;
- the manufacture and distribution of dangerous drugs;
- sauna and steam bathhouses, massage clinics and other similar activities regulated by law because of the risks posed to public health and morals, except wellness centres;
- all forms of gambling, except those covered by investment agreements with the Philippine Amusement and Gaming Corporation (PAGCOR);
- micro and small domestic market enterprises with paid-in equity capital of less than the equivalent of US$200,000; and
- micro and small domestic market enterprises: (1) that involve advanced technology as determined by the Department of Science and Technology (DOST), or (2) that are endorsed as a startup or a startup enabler by the lead host agencies, namely the Department of Trade

and Industry, the Department of Information and Communications Technology, pursuant to RA No 11337, otherwise known as the Innovative Startup Act, or (3) that have a majority of their direct employees as Filipinos, but in no case will the number of Filipino employees be less than 15, with paid-in equity capital of less than the equivalent of US$100,000.

5.2 Foreign exchange control

The Bangko Sentral ng Pilipinas (BSP) is the central bank and monetary authority of the Philippines. It is the entity that regulates the injection and repatriation of foreign exchange in the Philippines. The Manual of Regulations on Foreign Exchange Transactions (the 'ForEx Manual') issued by the BSP consolidates the rules governing foreign exchange transactions. In summary, foreign investors consider the following in dealing with foreign exchange transactions in the Philippines:

- investments in foreign currency need not be registered with the BSP, as long as no foreign currency will be sourced from the Philippine banking system for the purpose of repatriating funds. While foreign currency may be sourced either from the Philippine banking system or from non-banking institutions, such as foreign exchange dealers, the sources of foreign currency outside the Philippine banking system may be subject to greater exchange rate volatility and liquidity constraints;
- portfolio investments (eg, peso-denominated securities issued onshore by the national government and other public sector entities; the securities of resident enterprises listed with the Exchange; peso time deposits with a local bank with a maturity of at least 90 days; and other peso-denominated debt instruments issued onshore by a private resident and that do not constitute loans requiring BSP approval under the ForEx Manual) must be registered with the BSP through BSP-authorised agent banks; and
- applications for the registration of foreign currency funding for the purpose of foreign direct investment must be filed with the BSP within one year from the date of inward remittance to the Philippines.

5.3 Applicable tax incentives or grants

The fiscal incentives granted to foreign investors depend on the industry and the type of vehicle that the foreign investor invests in, which can fall under incentive regimes established by the following laws:

- Executive Order No 226, or the Omnibus Investments Code of 1987, as amended, by registering with the Board of Investments (BOIs), that is, by becoming a BOI-registered enterprise, or by establishing regional or area headquarters (RHQs) or regional operating headquarters (ROHQs);
- Republic Act No 7916, or the Special Economic Zone (SEZ) Act of 1995, as amended, by registering with the Philippine Economic Zone Authority (PEZA) and being located in a PEZA Economic Zone;

- Republic Act No 7903, by being located in the Zamboanga City SEZ, Republic Act No 7922 by being located in the Cagayan SEZ, Republic Act No 9490, as amended by Republic Act No 10083, by being located in the Aurora Pacific Economic and Freeport Zone and Republic Act No 9728, by being located in the Freeport Area of Bataan;
- Republic Act No 7227, or the Bases Conversion and Development Act of 1992, as amended, by being located in the Subic Bay SEZ, the Clark SEZ, the John Hay SEZ or the Poro Point Freeport Zone;
- Republic Act No 9593, or the Tourism Act of 2009, as amended, by registering with the Tourism Infrastructure and Enterprise Zone Authority and being located in a Tourism Enterprise Zone;
- Republic Act No 7844, or the Export Development Act of 1994, by registering with the Export Development Authority; and
- other special laws that create SEZs or that grant incentives for certain priority industries.

Chapter 6: Restructuring and insolvency in the Philippines

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6.1 Governing law on rehabilitation and insolvency

The Financial Rehabilitation and Insolvency Act of 2010 (FRIA) sets out the rules on insolvency for individuals, sole proprietorships, partnerships and corporations. Banks, insurance companies, pre-need companies and government agencies or units are excluded from the coverage of the FRIA.

The FRIA encourages debtors and their creditors to collectively and realistically resolve and adjust competing claims and property rights.

6.2 Insolvency

The Supreme Court defines ‘insolvency’ simply as the inability to pay one’s debts as they fall due. Under the FRIA, a person is considered ‘insolvent’ when, as a debtor, the person is unable to pay liabilities as they fall due in the ordinary course of business or when the person has liabilities greater than their assets.

An insolvent individual or entity may avail of several remedies, including court-supervised rehabilitation, pre-negotiated rehabilitation and out-of-court restructuring or rehabilitation.

6.3 Restructuring and rehabilitation as a remedy for insolvency

An insolvent debtor may avail themself of out-of-court restructuring or rehabilitation. The Supreme Court defines restructuring, as applied to debts, as a postponement of the maturity and a modification of the essential terms of the debt to make the debtor solvent.

An out-of-court or informal restructuring/workout agreement or rehabilitation plan outlines possible means to restore the economic viability of the debtor and return them to a state of solvency. This agreement requires the consent of the debtor and must be approved by creditors representing a percentage of the obligations and total liabilities of the debtor. For the purpose of finalising negotiations, the debtor and the creditors may agree on a standstill period.

Rehabilitation may also be court supervised or pre-negotiated.

Court-supervised rehabilitation may be initiated by the debtor or a creditor based on specific grounds. After a verified petition for rehabilitation is filed, the court issues a commencement order if the petition is sufficient and, thereafter, initiates the proceedings. The order will state, among others, a declaration that the debtor is under rehabilitation and the appointment of a rehabilitation receiver.

Pre-negotiated rehabilitation may be secured by an insolvent debtor solely or jointly with any of its creditors, by filing a verified petition with the court for the approval of a pre-negotiated rehabilitation plan. The plan must be endorsed or approved by the creditors holding at least two-thirds of the total liabilities of the debtor. If the petition is sufficient, the court will issue an order declaring the debtor to be under rehabilitation and may subsequently approve the rehabilitation plan.

6.4 Scope and effect of stay or suspension order

Under the FRIA, the court may issue a stay or suspension order, which is intended to provide the debtor ample time and opportunity to carry out its restructuring or rehabilitation efforts and emerge from insolvency.

A stay or suspension order cannot be granted in the following instances:

- cases already pending appeal before the Supreme Court as of the commencement date;
- cases pending or filed at a specialised court or quasi-judicial agency capable of resolving the claim more quickly, fairly and efficiently than through a stay of suspension order;
- in relation to the enforcement of claims against sureties and other persons solely liable with the debtor and third party or accommodation mortgagors, as well as issuers of letters of credit;
- any form of action by customers or clients of a securities market participant to recover or otherwise claim money and securities entrusted to the latter in the ordinary course of the latter's business;
- in relation to actions by a licensed broker or dealer to sell pledged securities of a debtor pursuant to a securities pledge or margin agreement for the settlement of securities transactions;

- in relation to the clearing and settlement of financial transactions through the facilities of a clearing agency or similar entities and reimbursements from regulatory agencies for any transactions settled for the debtor; and
- any criminal action against the individual debtor or owner, partner, director or officer of a debtor.

A stay or suspension order has the effect of:

- suspending all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor;
- suspending all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
- prohibiting the debtor from selling, encumbering, transferring or disposing, in any manner, of any of its property, except in the ordinary course of business; and
- prohibiting the debtor from making any payment in regard to its outstanding liabilities as of the commencement date, except as may be provided in the order.

6.5 Liquidation

Liquidation, which is the process of converting assets into cash, is often the last resort in terms of the insolvency framework. Debtors and creditors undergo this process when there is no substantial likelihood that the debtor may be rehabilitated.

Philippine law on liquidation provides for both voluntary and involuntary liquidation of both individual and juridical debtors. In certain instances, liquidation may be the result of rehabilitation proceedings if there is a failure or non-feasibility of rehabilitation.

6.5.1 Voluntary liquidation

Voluntary liquidation commences as a result of the insolvent debtor's own initiative, either through a separate filing of a verified petition or the submission of a verified motion in ongoing rehabilitation proceedings.

A juridical entity that has become an insolvent debtor may apply for liquidation by filing a petition for liquidation with the court. The petition must be verified, establish the insolvency of the debtor and contain the following:

- a schedule of the debtor's debts and liabilities, including a list of creditors with their addresses, the amount of the claims and collateral or securities, if any;
- an inventory of all the assets, including receivables and claims against third parties; and
- the names of at least three nominees to fulfil the position of liquidator.

An individual may also file for liquidation. Under the FRIA, an individual debtor who, possessing sufficient property to cover all their debts, but foreseeing the impossibility of meeting them when they fall due, may file a verified petition that they are declared in the state of suspension of payments by the court.

The individual must attach to the petition: (1) a schedule of their debts and liabilities; (2) an inventory of the assets; and (3) a proposed agreement with their creditors. With the agreement of the creditors, the court may then order the liquidation of the individual's assets.

6.5.2 Involuntary liquidation

Involuntary liquidation is instigated by the insolvent debtor's creditors. It requires the concurrence of three or more creditors with an aggregate claim of at least PHP 1m or representing at least 25 per cent of the capital stock or partner's contribution, whichever is higher.

This process is commenced through the same means as voluntary liquidation. The petition or motion must show that (1) there are no genuine issues of fact or law in regard to the claims of the petitioner and that the due and demandable payments involved have not been made for at least 180 days or that the debtor has failed generally to meet their liabilities as they fall due and (2) that there is no substantial likelihood that the debtor can be rehabilitated.

In both instances, if the petition or the motion is sufficient in form and substance, the court will issue a liquidation order.

Chapter 7: Employment, termination, occupational safety and health

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7.1 Management prerogative

Employers are free to regulate all aspects of employment, such as hiring practices, working hours, discipline and dismissal, and are allowed to exercise their management prerogatives, provided they do so in good faith and without infringing employees' rights.

7.2 Termination of employment

The Labor Code grants both the employee and employer the right to terminate the employer–employee relationship under certain conditions.

7.2.1 Employee-initiated termination

An employee may terminate their employment by resigning with or without just cause. Should an employee resign without just cause, they must serve written notice on the employer at least one month in advance. Otherwise, the employer may hold the employee liable for damages. The notice requirement, however, need not be observed if the employee resigns for any of the following just causes:

- a serious insult by the employer or their representative has occurred impacting on the honour and person of the employee;
- inhuman and unbearable treatment has occurred in regard to the employee by the employer or their representative;
- the commission of a crime or offence by the employer or their representative has occurred against the person of the employee or any of their immediate family members; or
- other analogous causes.

7.2.2 Employer-initiated termination

On the other hand, an employer may terminate an employee only for just or authorised causes, in accordance with the constitutionally protected right of workers to security of tenure. Procedural due process must always be observed by the employer when terminating an employee's employment. The failure to comply with these requirements constitutes illegal dismissal. An employee who is illegally dismissed is entitled to full back pay and reinstatement, without loss of seniority.

If reinstatement is not possible, the employee is granted separation pay in lieu of reinstatement. Additionally, the employer is liable for damages and attorney's fees.

Termination for just cause occurs when an employee has committed any of the following:

- serious misconduct or wilful disobedience of the employer's lawful orders in connection with the employee's work;
- gross and habitual neglect of their duties;
- fraud or wilful breach of trust;
- the commission of a crime or offence by the employee against their employer, the employer's immediate family or duly authorised representatives; or
- other analogous causes.

Dismissal due to a just cause is valid if it complies with the procedural due process requirement of two written notices. The first written notice must specify: (1) any of the just causes under the Labor Code, (2) a detailed statement of the facts and circumstances forming the basis for the charge against the employee, and (3) a directive allowing the employee to submit a written explanation within a reasonable period of time, which cannot be less than five days from receipt of the notice.

Subsequently, the employer must afford the employee sufficient opportunity to be heard. A formal hearing or conference becomes mandatory only if requested by the employee in writing, in cases of substantial evidentiary dispute, in accordance with a company rule or practice, or under similar circumstances warranting a formal hearing or conference.

The second written notice should confirm that all the relevant circumstances involving the charge have been considered and that sufficient grounds have been established to justify the termination of employment.

An employee dismissed for just cause is typically not entitled to separation pay unless provided for in a company policy or a collective bargaining agreement.

Termination for authorised causes refers to the grounds in the Labor Code that employers may invoke, even if the employee has not committed any wrongful acts or omissions. This type of termination entitles the employee to separation pay.

<table>
<tr><th>Authorised Cause</th><th>Amount of Separation Pay</th></tr>
<tr><td>Installation of a labour-saving device</td><td rowspan="2">At least one month of pay or at least one month of pay for every year of service, whichever is higher; a fraction of six months' service is considered as one year.</td></tr>
<tr><td>Redundancy</td></tr>
<tr><td>Retrenchment to prevent losses</td><td>One of month pay or at least one-half of a month of pay for every year of service, whichever is higher; a fraction of six months' service is considered as one whole year.</td></tr>
<tr><td>Closure or cessation of the business</td><td>If the closure or cessation of business operations is not due to serious business losses, the employee is entitled to separation pay equivalent to one month of pay or at least one-half of a month of pay for every year of service, whichever is higher; a fraction of six months' service is considered as one whole year.

If the closure is due to serious business losses or financial reverses, no separation pay is required to be paid.</td></tr>
<tr><td>Disease that a competent public health authority has certified as incurable within six months, even with proper medical treatment, and where continued employment is prohibited by law or prejudicial to the employee's health, as well as to the health of co-workers</td><td>At least one month's salary or one-half of a month's salary for every year of service, whichever is higher; a fraction of six months' service is considered as one whole year.</td></tr>
</table>

Termination for an authorised cause must be in good faith and must be supported by facts and circumstances that substantiate the actual existence of the conditions necessitating the dismissal. Such terminations are regarded as measures of last resort, requiring the employer to demonstrate that no viable alternatives, including cost-cutting measures, remain feasible.

Due process for authorised causes is satisfied when the employee and the appropriate Regional Office of the Department of Labor and Employment (DOLE) are served with a written notice specifying the grounds for termination at least 30 days before the termination comes into effect.

Under DOLE Department Order No 147-15, the 'Last-In, First-Out Rule' applies in cases involving the installation of labour-saving devices, redundancy and retrenchment, unless an employee volunteers to be terminated from their employment. However, it is worth noting that this rule is not mandatory as the employer still retains the prerogative to determine whose employment to terminate, so long as it is not done arbitrarily.

7.3 Telecommuting

Telecommuting refers to work that takes place from an alternative workplace with the use of telecommunications or computer technologies. The terms and conditions relating to telecommuting arrangements must be mutually agreed upon by both parties, ensuring they meet or exceed the minimum labour standards mandated by law. These terms encompass working hours, entitlement to leave and social welfare benefits, and security of tenure. Employers must ensure that telecommuting employees receive equitable treatment compared to on-site employees and that they are subject to the same company rules and policies, or by an existing collective bargaining agreement.

7.4 Occupational health and safety standards

The Occupational Safety and Health Standards (the 'OSH Standards') Law, or Republic Act No 11058, mandates that employers, their contractors and their subcontractors provide their workers with a place of employment that is free from hazardous conditions that are causing or are likely to cause death, illness or physical harm. Employers are required to register their business with the Regional Labor Office 30 days before operations commence. They must also implement an occupational safety and health programme, which includes specific policies, guidelines and information, depending on the number of workers employed by the establishment. Additionally, employers are required to submit various safety and health reports and notifications to the DOLE, such as annual medical reports, OSH committee reports and work accident or injury reports. Failure to comply with the OSH Standards may result in fines ranging from PHP 20,000 to PHP 100,000 per day until the violation is corrected, with additional penalties for repeated or multiple violations.

Chapter 8: Tax law

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8.1 Tax reform legislation

The Philippines has introduced major tax reform legislations in the last six years:

- in 2018, the Tax Reform for Acceleration and Inclusion or the 'TRAIN Law' was passed to introduce reforms on individual income, estate and donor's tax, value-added tax (VAT) and excise taxes;
- in 2021, the Corporate Recovery and Tax Incentives for Enterprises Act or the 'CREATE Law' paved the way for reforms to corporate income tax and the rationalisation of tax incentives, among other amendments to the Tax Code. More specifically, the CREATE Law lowered the income tax rate, widened the tax base, and reduced tax distortions and leakages; and

- in 2024, the Ease of Paying Taxes or the 'EoPT Law' was signed into law, with the aim of modernising tax administration and improving its efficiency and effectiveness by providing mechanisms that encourage full and easy compliance.

8.2 Income tax applicable to individuals

The Philippines imposes income tax on resident citizens based on their worldwide income. However, income earned outside the Philippines by overseas Filipino workers is exempt. Non-resident citizens and foreigners, whether resident in the Philippines or not, are taxed only on income from sources within the Philippines.

8.2.1 Compensation income earners

Individuals earning purely compensation-related income are subject to tax, in accordance with the following tax schedule:

Income in Philippine pesos (PHP)*	Tax due and tax rate
Under 250,000	0 per cent
Over 250,000, but under 400,000	15 per cent of the excess over 250,000
Over 400,000, but under 800,000	22,500 + 20 per cent of the excess over 400,000
Over 800,000, but under 2,000,000	102,500 + 25 per cent of the excess over 800,000
Over 2,000,000, but under 8,000,000	402,500 + 30 per cent of the excess over 2,000,000
Over 8,000,000	2,202,500 + 35 per cent of the excess over 8,000,000

*Approximately USD 1.00 = PHP 59.00.

The compensation received by an employee is subject to withholding tax, using the graduated income tax rates displayed above. The employer acts as the withholding agent.

8.2.2 Self-employed individuals

Self-employed individuals and professionals have the option to avail themselves of an eight per cent tax on gross sales and other non-operating income in excess of PHP 250,000 in lieu of the graduated income tax rates and percentage tax.

8.2.3 Mixed-income earners

Taxpayers earning both compensation-related income and income from a business or the practice of a profession are subject to the following taxes:

- all income in the form of compensation, according to the applicable graduated income tax rates; and

- all income from the relevant business or the practice of a profession:
  - if the total gross sales and other non-operating income do not exceed the VAT threshold, the graduated rates prescribed on taxable income or eight per cent income tax based on gross sales or gross receipts and other non-operating income in lieu of the graduated income tax rates and the percentage tax may be applied; or
  - if the total gross sales and other non-operating income exceeds the VAT threshold, the graduated income tax rates apply.

8.3 Income tax applicable to corporate entities

The income taxes applicable to businesses depend on the type of business entity.

8.3.1 Domestic corporation

A domestic corporation is taxed on its income derived from sources within and outside the Philippines. Among the principal income taxes imposed on domestic corporations are:

- corporate income tax (CIT) of 25 per cent on net taxable income or 20 per cent if the total assets do not exceed PHP 100m and the total net taxable income does not exceed PHP 5m;
- a minimum corporate income tax (MCIT) of two per cent of the gross income is imposed on corporations regardless of their actual net income;
- capital gains tax (as discussed below); and
- withholding taxes, which are collected in regard to certain payments received or paid. Dividends received by a domestic corporation from another domestic corporation are not subject to tax.

8.3.2 Resident foreign corporations

Generally, a resident foreign corporation is taxable in the same manner and at the same rates as a domestic corporation. However, the tax base for income earned by resident foreign corporations is limited to income derived from sources within the Philippines. Branch offices of foreign corporations, including regional operating headquarters (ROHQs), are generally considered resident foreign corporations.

Profits remitted abroad by a branch office, including ROHQs, are subject to a 15 per cent tax rate, based on the total profits applied or earmarked for remittance. However, profits from qualified activities remitted by a branch office or an ROHQ registered with the Philippine Economic Zone Authority (PEZA) are exempt from taxes.

8.3.3 Non-resident foreign corporations

A non-resident foreign corporation not engaged in trade or business in the Philippines is taxable in regard to dividends, interest, royalties, rent and business income derived from all sources within the Philippines. Income received by non-resident foreign corporations is subject to a final withholding tax (as discussed below).

8.3.4 Representative offices (ROs) and regional or area headquarters (RHQs)

By their nature as support or administrative centres, ROs and RHQs do not derive income in the Philippines, hence they are not considered taxable corporations or entities under the Tax Code.

8.4 Other taxes

8.4.1 Capital gains tax (CGT)

Capital gains tax is a tax imposed on the gains presumed to have been realised by the seller from a sale, exchange or other disposition of capital assets located in the Philippines.

The sale of real property is generally subject to six per cent CGT. If the seller of shares (not listed on the stock exchange) is an individual or corporation (domestic, resident or non-resident foreign corporation), the sale is subject to 15 per cent CGT, based on the capital gain regardless of the amount.

8.4.2 Income tax on passive income

Final withholding tax (FWT) is generally a tax on passive income and constitutes a full and final payment of the income tax due. The payee is not required to file an income tax return for the particular income subject to FWT, as the liability for the payment of tax rests primarily on the payor as the withholding agent. The following are types of income subject to FWT:

- dividends;
- interest;
- royalties;
- rent; and
- capital gains on the sale of real property.

Business profits received by a non-resident foreign corporation are subject to 25 per cent FWT. Dividends are subject to FWT ranging from 15 to 25 per cent, while FWT rates for interest and royalties range from 20 to 25 per cent. Rent from sources within the Philippines paid to a non-resident foreign corporation are also subject to 25 per cent FWT.

A tax exemption or reduction in the tax rate may be available based on a tax treaty signed by the Philippines with over 40 countries and tax jurisdictions.

8.4.3 Value-added tax (VAT)

VAT is a tax on consumption levied on the sale, barter, exchange or lease of goods or properties and services in the Philippines and on the importation of goods into the Philippines. The current VAT rate is 12 per cent of the purchase price or consideration.

VAT is an indirect tax which may be shifted or passed on to the buyer, transferee, or lessee of goods, properties or services. Any person or entity who, in the course of trade or business, sells, barters, exchanges, or leases goods or properties and renders services, is subject to VAT, if the aggregate amount of annual gross sales or receipts exceeds PHP 3m, and as such is required to file and pay VAT.

The law provides that certain goods and services may be VAT zero-rated or VAT exempt.

8.4.4 Excise tax

Excise taxes are charged for specific goods and services, such as alcohol, tobacco, fuel and airline tickets.

8.4.5 Documentary stamp tax (DST)

DST is an excise tax levied on documents, instruments, loan agreements and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident. The amount of tax is either fixed or based on the par or face value of the document or instrument. The tax is paid by the person making, signing, issuing, accepting or transferring the documents. However, whenever one party to the taxable document enjoys an exemption from this tax, the other party who is not exempt is directly liable for the tax.

8.4.6 Customs duty

Goods imported into the Philippines are generally subject to customs duty, plus 12 per cent VAT on the importation or excise tax in regard to the importation of certain goods.

8.4.7 Local taxes

Local taxes, fees and charges are imposed by local government units (ie, province, municipality, city or barangay), subject to guidelines and limitations provided by Congress. Local taxes normally include business, community and real property taxes.

Chapter 9: Intellectual property

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9.1 Patents

Philippine law, primarily the Intellectual Property Code of the Philippines (Republic Act No 8293 or the 'IP Code'), grants protection and exclusive rights to an inventor over any technical solution to a problem which is new, involves an inventive step and is industrially applicable. Such technical solution (an 'invention') may be a product, process or an improvement thereof.

An invention that is patented is granted protection and exclusive rights for a period of 20 years from the filing date of the patent application. During the life of the patent, patent owners have the right to prevent others from making, using or selling their invention (if the invention is a product) or from using the process or from manufacturing, dealing in, using, selling or offering for sale, or importing any product obtained directly or indirectly from such process (if the invention is a process). Patent owners also have the right to assign, transfer or license the patent.

The application process for a patent involves the following stages:

1. filing the application;
2. a formality examination;
3. a prior art search;
4. publication for opposition;
5. a substantive examination; and
6. the granting of a patent.

The average processing time taken by the Intellectual Property Office of the Philippines (IPOPHL) for the issuance of a patent is 48 months.

9.2 Trademarks

The IP Code likewise grants protection and exclusive rights to the owner of a trademark. A trademark as defined under the IP Code is any visible sign capable of distinguishing the goods or services of a business.

Generally, a trademark is registrable in the Philippines if it is distinct and is not immoral, deceptive nor misleading.

A registered trademark is granted protection and exclusive rights during the period of its registration. The term of registration is ten years from the date of registration and is renewable for a

period of ten years at a time. However, to maintain the registration, a Declaration of Actual Use must be submitted, in accordance with the following schedule:

- within three years from the filing of the application for the registration of the trademark, the international registration date or subsequent designation date, as the case may be;
- within one year from the fifth anniversary of the registration of the mark or the statement on the granting of protection;
- within one year from the date of renewal of the registration; and
- within one year from the fifth anniversary of each renewal.

The owner of a registered trademark has the right to prevent others from using trademarks which are identical or similar to the registered trademark if such use would result in a likelihood of confusion. Philippine jurisprudence recognises that the scope of protection in terms of registered trademarks extends to market areas within the normal expansion of business of the trademark owner.

The owner of a registered trademark also has the right to assign, transfer or license the registered trademark.

The application for the registration of a trademark involves the following stages:

1. filing the application;
2. a formality and substantive examination;
3. publication for opposition; and
4. the issuance of a certificate of registration.

The average processing time taken by the IPOPHL in regard to an application for the registration of a trademark is between three and four months.

9.3 Copyright

The IP Code likewise governs copyright. Under the IP Code, protection granted to authors, artists and other types of creators over their original work is granted automatically from the moment of creation of such work. As such, registration of an original work is not necessary. Creators of copyrightable work, however, may opt to apply for registration of their original work with the IPOPHL. 'Original work' refers to an intellectual creation in the literary, scientific or artistic domain and includes computer programs and mobile apps.

The term of protection of copyright is generally the lifetime of the author, artist or creator plus 50 years. Owners of copyright have the exclusive right to use the original work or to authorise others to use such work based on agreed terms. They likewise have to right to authorise or prohibit others from reproducing their original work in other forms.

Copyright transfers and assignments may likewise be registered with the IPOPHL.

9.4 Utility model

The IP Code also governs utility models. A utility model is any technical solution to a problem which is new and is industrially applicable. In contrast to an invention, a utility model may not include an inventive step.

A registered utility model is granted protection for a period of seven years from the filing date of the application, without the possibility of renewal.

The application for registration of a utility model involves the following stages:

1. filing the application;
2. a formality examination;
3. publication of the application; and
4. the issuance of a certificate of registration.

The average processing time taken by the IPOPHL in regard to an application for the registration of a utility model is two months.

9.5 Industrial designs

The IP Code also governs industrial designs. An industrial design is any composition involving lines or colours or any three-dimensional form that gives a special appearance to and can serve as a pattern for an industrial product or handicraft. To be registrable, the industrial design must be a new or original creation.

A registered industrial design is granted protection for a period of five years from the filing date of the application. The registration of an industrial design may be renewed for not more than two consecutive periods of five years each.

The application for the registration of an industrial design involves the following stages:

1. filing the application;
2. a formality examination;
3. publication of the application; and
4. the issuance of a certificate of registration.

The average processing time taken by the IPOPHL in regard to an application for the registration of an industrial design is five days.

9.6 Intellectual property treaties

The Philippines has acceded to the following intellectual property treaties:

- the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled;
- the Beijing Treaty on Audiovisual Performances;
- the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (2012);
- the World Intellectual Property Organization's (WIPO) Copyright Treaty (2002);
- the WIPO's Performances and Phonograms Treaty (2002);
- the Patent Cooperation Treaty (2001)
- the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1984);
- the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (entered into the treaty in 1981);
- the Convention Establishing the World Intellectual Property Organization (1980);
- the Paris Convention for the Protection of Industrial Property Rights (1965);
- the Berne Convention for the Protection of Literary and Artistic Works (1951); and
- the Agreement on Trade-Related Aspects of Intellectual Property Rights (the 'TRIPS Agreement') (1994).

Chapter 10: Financing

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10.1 Regulation of banking and financial services

The Bangko Sentral ng Pilipinas (Philippine Central Bank or BSP) acts as the central monetary authority that regulates money, banking and credit within the Philippines.

The BSP is an independent, government-owned corporation tasked with regulating finance companies, bank operations, non-bank financial institutions engaged in quasi-banking activities and other similar entities, in order to promote and maintain monetary stability.

The BSP exercises regulatory powers over the banking sector by issuing rules and regulations. Absent an authorisation from the BSP, a person or entity cannot legally engage in banking operations or quasi-banking functions in the Philippines.

10.2 General classification of banks

Banks are generally classified into the following categories:

- universal banks, which are banks that have authority to exercise the powers and functions of a commercial bank and also have the power to act as an investment house and the power to invest in non-allied enterprises;
- commercial banks, which are banks that are authorised to engage in commercial banking (ie, issue letters of credits, accept drafts, discounting and negotiation of negotiable instruments, accept and create demand deposits), in addition to having general corporate powers;
- rural banks, which are banks that are created for the purpose of comprehensive rural development by making credit available to those in rural areas;
- thrift banks, which includes savings and mortgage banks, private development banks, and stock savings and loan associations;
- cooperative banks, which are banks that primarily provide financial, banking and credit services to cooperative organisations and their members;
- Islamic banks, which banks with objectives and operations in accordance with the principles of Sharia law;
- digital banks, which are banks that offer financial products and services through digital platforms and electronic channels, without the need for physical branches; and
- other classifications of banks as determined by the Monetary Board of the BSP.

10.3 Modes of entry for foreign banks

The Philippines allows full entry of foreign banks into the Philippine banking system. The Monetary Board may authorise foreign banks to operate in the Philippine banking system through any of the following modes of entry:

- by acquiring, purchasing or owning up to 100 per cent of the voting stock in an existing bank;
- by investing in up to 100 per cent of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; or
- by establishing branches with full banking powers.

The acquisition of a domestic bank by a foreign individual or a non-bank corporation is subject either to a 60 per cent or 40 per cent limit in terms of the acquisition of stock, depending on the type of bank being acquired.

10.4 Qualification for foreign banks

A foreign bank that intends to operate in the Philippines must be:

- widely owned and publicly listed in its country of origin, unless the foreign bank applicant is owned and controlled by the government of its country of origin; and
- established, reputable and financially sound.

If a foreign bank is owned and controlled by a holding company, the aforementioned requirements may apply to the holding company. Moreover, the BSP will also consider the following factors in selecting the foreign banks that are allowed to enter the Philippine banking system:

- the geographical representation and complementation offered;
- any strategic trade and investment relationships between the Philippines and the home country of the foreign bank;
- the relationship between the applicant bank and the Philippines;
- the demonstrated capacity, global reputation in terms of financial innovation and stability relating to the competitive environment of the applicant bank;
- the reciprocity rights enjoyed by Philippine banks in the applicant's home country; and
- the willingness of the foreign bank to fully share banking technology.

The subsidiary or branch of a foreign bank is also required to comply with the minimum capital requirements applicable to domestic banks within the same category.

10.5 Qualifications of subscribers, directors and officers of banks

All the incorporators, subscribers, directors and officers of the bank, present or proposed, must have the following qualifications:

- be persons of integrity, of good credit and standing in the business community, and must possess technical expertise in the field of banking and finance;
- have adequate financial strength to pay the proposed costs related to the bank and/or infuse additional capital when needed;
- not have been convicted of any crime involving moral turpitude, and unless otherwise allowed under provisions of law, not be officers or employees of government agencies, instrumentalities, departments or offices charged with the supervision or granting of loans to banks;
- not be an appointed or elected public official, full or part-time, and at the same time serving as an officer of a bank, except when such service is incidental to the financial assistance provided by the government or a government-owned or controlled corporation to the bank, or except in cases allowed under existing laws;
- hold the qualifications provided in the Manual of Regulations for Banks; and
- be subject to any the disqualifications detailed in the Manual of Regulations for Banks.

10.6 Registration of direct foreign equity investment in a domestic corporation

Inward foreign investment must be registered with the BSP within one year: (1) from the date of the actual funding (eg, inward remittance of foreign exchange) or payment for the investment (if in cash) or (2) from the date of the actual transfer of assets to the Philippines or payment for the investment (if in kind).

Registration is necessary if the foreign investor intends to source the foreign exchange requirement needed to service the repatriation of capital and remittance of cash dividends/profits/earnings accrued on a foreign investment from the Philippine banking system (ie, authorised agent banks or their affiliate or subsidiary foreign exchange corporations).

Without the required BSP registration, the foreign investor may source foreign exchange from internally generated revenue or from outside the Philippine banking system, such as from foreign exchange dealers, money changers and remittance agents.

The registration of inward investment must be supported by proof of funding and proof of an actual investment made by the non-resident investor. After complying with the requirements to register the inward remittance, a BSP registration document is issued in the name of the domestic corporation.

10.7 Registration of foreign loans

Foreign loans must be registered with the BSP if the company intends to source foreign currency from the Philippine banking system in connection with the repayment of the principal amount or the interest on the foreign loan.

Without the required BSP registration, the borrower may still source foreign exchange from internally generated revenue or from outside the Philippine banking system, such as from foreign exchange dealers, money changers and remittance agents.

In order to register a private sector foreign loan, the borrower must:

- submit a notice to the BSP supported by a copy of the signed covering agreement, within one month from the date of signing;
- send a notification to the BSP of any changes in the loan's financial terms and conditions or in the event of the cancellation (whether partial or in full) of the loan, commitment or agreement, within 15 banking days from the availability of the information, the signing of the amended or supplemental agreement, effectivity date, as the case may be, for monitoring purposes;
- apply for loan registration with the BSP within one month from the drawdown date for short-term loans and within six months from the utilisation of the proceeds for medium and long-term loans and the submission of a foreign borrowings plan for medium and long-term loans;

- in the event that the signing date and drawdown occur simultaneously, the notice and the application for the loan registration may be filed simultaneously.

After complying with the requirements to register the loan, a BSP registration document is issued in the name of the domestic corporation.

Chapter 11: Privacy and data protection laws

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Rapid advancements in machine learning have led to the increased recognition, by both businesses and consumers, of the importance and commercial value of data, including the ability to control what, when and how personal data is used. The Data Privacy Act (DPA) was enacted with a view to balancing the protection of the right to privacy with the necessity of maintaining the free flow of information that consequently promotes innovation and growth. The DPA governs the collection and processing of personal information in the Philippines.

11.1 Data privacy compliance

The DPA applies to the processing of all types of personal information and to any natural or juridical person involved in personal data processing, regardless of whether they are established in the Philippines, for as long as they use equipment located in the Philippines.

Data processing refers to any operation or any set of operations performed involving personal data including, but not limited to, the collection, recording, organisation, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of such data. The processing of personal information is conducted by either a personal information controller (PIC) or by a personal information processor (PIP). PIC refers to a natural or juridical person, or any other body, that processes data, or instructs another person to process personal data on its behalf; and makes decisions in regard to what information is collected, or the purpose or extent of its processing (ie, has control over the processing). PIP refers to any natural or juridical person, or any other body, who processes personal data upon the instruction of a PIC or on the basis of an outsourcing agreement with a PIC.

Personal information refers to information, whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or could, in conjunction with other pieces of data, directly and certainly identify an individual. Personal information is classified as sensitive when it refers to information: (1) about an individual's race, ethnic origin, marital status, age, colour or religious, philosophical or political affiliations; (2) about an individual's health, education, genetic or sexual life, or to any proceeding for any offence committed or alleged to have been committed by such an individual, the disposal of such proceedings or the sentence issued by any court in regard to such proceedings; (3) issued by government agencies peculiar to an individual, which includes, but is not limited to, social security numbers, previous

or current health records, licences including their denial, suspension or revocation, and tax returns; or (d) specifically established by an executive order or an act of Congress which must be kept classified.

Data subject refers to individuals whose personal information is collected.

PICs and PIPs are required to appoint or designate a data protection officer (DPO), who is accountable for ensuring compliance with the DPA and all laws and regulations relating to privacy and data protection.

11.1.1 Lawful bases for processing

The processing of personal information is permitted unless otherwise prohibited by law. Section 12 of the DPA enumerates conditions that would render the processing of personal information lawful. On the other hand, the processing of sensitive personal information is prohibited except when any of the conditions in Section 13 of the DPA apply.

Of these conditions, only consent-based processing has been extensively discussed and elaborated upon by the National Privacy Commission (NPC) in its opinions. In 2023, the NPC released Guidelines on Consent, providing guidance on valid consent, and how consent must be obtained and managed in accordance with the DPA. The NPC also published Guidelines on Legitimate Interest, providing guidance for entities who rely on legitimate interest to justify the processing of personal information.

11.1.2 Registration with the NPC

PICs and PIPs who meet any of the following conditions are required to register with the NPC: (1) have at least 250 employees; (2) process the sensitive personal information of at least 1,000 individuals; (3) process information likely to pose a risk to the rights and freedoms of the data subjects, including those that involve either information that would be likely to affect national security, public safety, public order or public health; information required by applicable laws or rules to be confidential; or vulnerable data subjects (eg, minors, the mentally ill, asylum seekers and elderly patients); or automated decision-making; or profiling; or (4) are government agencies or instrumentalities.

PIC and PIP registration with the NPC is completed by registering the entity's DPO and registering the PIC or PIP's data processing systems.

The DPO is in charge of creating the entity's account on the NPC's Registration System (NPCRS), in order to register their appointment and register the data processing system. It is worth noting that the email address used for registration with the NPCRS must be a specific email address dedicated to the position of the DPO in the entity and not an email personally linked with the person appointed as DPO. After the DPO has successfully created the PIC or PIP's NPCRS account, the DPO may proceed to register, and provide the relevant information on the data processing system, as follows:

- a description of the relevant data processing systems, including the name of the system;

- the manner, basis and purpose of the data processing;
- a description of the category or categories of data subjects and the data relating to them;
- the recipients or categories of recipients to whom the personal data might be disclosed;
- whether the system is outsourced or subcontracted and the details of any such third party;
- any existing policies relating to the data life cycle, data privacy and information security;
- any data processing certifications attained by the PIC or PIP, including related to personnel;
- whether there are any cross-border data transfers or data sharing agreements in existence with other parties; and
- notifications regarding any automated decision-making operations.

11.1.3 Notification of a personal data breach

The DPA defines a personal data breach as a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed. A personal data breach may be in the nature of: (1) a confidentiality breach resulting from the unauthorised disclosure of or access to personal data; (2) an integrity breach resulting from the alteration of personal data; and/or (3) an availability breach resulting from the loss or accidental or unlawful destruction of personal data.

PICs must notify the concerned data subjects and the NPC of personal data breaches that satisfy all of the following elements: (1) a breach that involves sensitive personal information or any other information that may be used to enable identity fraud; (2) when there is reason to believe that the information may have been acquired by an unauthorised person; and (3) where the PIC believes that a data breach is likely to give rise to a real risk of serious harm to the affected data subject. The NPC's data breach notification management system includes a self-assessment tool that allows PICs to determine whether a notification to the NPC is mandatory.

This obligation to notify remains with the PIC even if the processing is outsourced or subcontracted to a PIP. PICs must notify the concerned data subjects and the NPC within 72 hours from when the PIC gains knowledge or there is reasonable belief that a breach has occurred. Notification may only be delayed to the extent necessary to determine the scope of the breach, prevent further disclosures and restore reasonable integrity to the system. However, if the breach involves ten or more data subjects or the disclosure of sensitive personal information which could harm or otherwise adversely affect the data subject, the PIC must notify the NPC within the 72-hour period based on the available information and submit a full report to the NPC within five days.

PICs and PIPs are required to implement a security incident management policy, which includes a personal data breach response procedure and measures that are intended to prevent or minimise the occurrence of personal data breaches. PICs and PIPs are also required to submit an annual security incident report to the NPC.

11.2 Enforcement

The DPA allows for extraterritorial application and enforcement, as long as the entity collects personal or sensitive personal information from Philippine citizens or residents.

The DPA provides for several types of enforcement action for violations of its provisions, namely the imposition of civil, administrative and criminal penalties, and the issuance of cease and desist orders (CDOs). As a note, while the NPC may directly impose civil and administrative penalties, and issue CDOs, the NPC cannot directly impose criminal penalties and may only recommend prosecution for crimes to the Department of Justice.

11.2.1 Civil penalties

Data subjects are entitled to indemnification for any damages sustained due to inaccurate, incomplete, outdated, false, unlawfully obtained or unauthorised use of their personal information. Restitution is determined in accordance with the provisions of the New Civil Code.

11.2.2 Administrative penalties

PICs or PIPs who fail to comply with the DPA may be subject to administrative fines, depending on the gravity of the infraction. The total imposable fine for a single act, whether resulting from a single or multiple infractions will not exceed PHP 5m. The categories of infractions are as follows:

- grave infractions are subject to a penalty equivalent 0.5 to three per cent of the violating entity's annual gross income for the immediately preceding year from when the infraction occurred. Grave infractions involve the data of 1,001 or more data subjects. Repetition of the same infraction, whether classified as grave, major or other, is also considered to be a grave infraction;
- major infractions are subject to a penalty equivalent to 0.25 to two per cent of the violating entity's annual gross income for the immediately preceding year from when the infraction occurred. Major infractions involve the data of one to 1,000 data subjects; and
- other infractions, such as the failure to register with the NPC when mandatory or provide updated information to the NPC when required, are subject to a penalty that ranges from PHP 50,000 to PHP 200,000. The failure to comply with any order, resolution, decision or implementing issuance from the NPC is subject to a fine not exceeding PHP 50,000.

11.2.3 Criminal penalties

Certain types of violations of the DPA are punishable with imprisonment ranging from six months to seven years and fines ranging from PHP 100,000 to PHP 5m. The imposable penalties are dependent on the type of violation and the type of personal information involved.

If the offender is a juridical person, the penalty will be imposed on the responsible officers who participated in or, by gross negligence, allowed the commission of the crime.

11.2.4 CDO

A CDO is a type of injunction that requires the PIC or PIP to stop the detailed act of processing personal information as stated in the order or the conduct of any act or practice in violation of the DPA. The NPC is authorised to issue a CDO without the necessity of a prior hearing if the NPC determines that the grounds upon which the verified application are based upon exist. CDOs are immediately executory and enforceable upon receipt by the PIC or PIP.

Chapter 12: Competition law

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The Philippine Competition Act (PCA) generally prohibits three practices: anti-competitive agreements; the abuse of a dominant position; and anti-competitive mergers.

12.1 Prohibited activities

12.1.1 Anti-competitive agreements

Prohibited anti-competitive agreements can be classified into the following:

- hardcore cartel agreements, price-fixing agreements and bid manipulation agreements between or among competitors, which are per se prohibited;
- agreements among competitors that have the object or effect of substantially preventing, restricting or lessening competition by: setting, limiting or controlling production, markets, technical development or investment; or dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means; and
- other agreements that have the object or effect of substantially preventing, restricting or lessening competition.

12.1.2 Abuse of a dominant position

An entity is considered dominant if it enjoys a position of economic strength that allows it to control the relevant market independently from its competitors, customers, suppliers or consumers. The Philippine Competition Commission (PCC) can also consider other factors in evaluating whether an entity is dominant, and there is a rebuttable presumption of market dominance if the market share of an entity in the relevant market is at least 50 per cent or any other threshold that may be set by the PCC.

When an entity is deemed to be dominant, its performance of certain acts will be considered an abuse of such a dominant position and could subject the entity to penalties. Examples of an abuse of a dominant position include:

- predatory pricing;
- imposing barriers to entry or barriers to growth;
- imposing tying or bundling obligations in transactions;
- discriminating in regard to pricing and terms and conditions;
- imposing unfair prices; and
- limitation in terms of markets, production or technical development.

12.2 Consequences of a breach

The entry into prohibited anti-competitive agreements and the commission of abuses of a dominant position have severe consequences.

12.2.1 Remedies

The PCC may issue behavioural and structural remedies such as injunctions, require divestment and disgorgement of excess profits. However, structural remedies are only imposed where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome than a structural remedy.

12.2.2 Administrative fines

The PCC may impose administrative fines of up to PHP 110m for the first offence, and between PHP 110m and PHP 275m for the second offence, on entities found to have entered into prohibited anti-competitive agreements or committed abuses of a dominant position.

12.2.3 Criminal penalties

Fines of between PHP 50m and PHP 250m may be imposed by the courts on entities that enter into the defined anti-competitive agreements between competitors that are either prohibited per se or that have the object of substantially preventing, restricting or lessening competition by setting, limiting or controlling production, markets, technical development or investment, or by dividing or sharing the market. Directors and management personnel of such entities who have knowingly and wilfully participated in the criminal offences may be sentenced to imprisonment for between two and seven years.

Treble damages may be imposed by the PCC or courts, as the case may be, where the violation involves the trade or movement of basic necessities and prime commodities.

12.3 Pre-merger and pre-acquisition notification

The PCA imposes mandatory notification requirements on covered transactions. Parties to a transaction will be prohibited from closing until the transaction is cleared by the PCC or the lapse of 30 days from the date that the substantive review (or the Phase 1 review) of the transaction commenced, if no action is taken by the PCC. Within the 30-day period, the PCC can request additional information on the transaction, and such a request will have the effect of triggering a Phase 2 review and extending the review period by 60 days, but in no instance will the review period exceed 90 days from commencement of the Phase 1 review unless the statutory periods are waived by the parties.

A favourable recommendation by a governmental agency with a competition mandate, arising directly from its evaluation of the proposed merger or acquisition's potential anti-competitive effects, gives rise to a disputable presumption that the transaction does not violate the PCA or its rules.

If the PCC determines that the M&A agreement will have an anti-competitive effect, it may prohibit the implementation of the agreement outright; prohibit the implementation of the agreement unless modifications are made to its terms; or prohibit the implementation of the agreement unless the relevant parties enter into other agreements.

Non-compliance with the notification requirement will result in the imposition of a fine of between one and five per cent of the value of the transaction, in addition to the agreement being deemed void.

12.4 *Motu proprio* review

The PCA empowers the PCC to review mergers and acquisitions *motu proprio* (or on its own initiative) if it has reasonable grounds to believe that the merger or acquisition is likely to substantially prevent, restrict or lessen competition, even if the transaction does not fall under the compulsory notification requirement. A *motu proprio* review follows the same process for notified mergers, except for the review periods which are 75 days for Phase 1 and 120 days for Phase 2.

12.5 Pre-notification consultation and letters of non-coverage

Parties to a merger or acquisition subject to the compulsory notification requirement may consult with the Mergers and Acquisitions Office (MAO) prior to notification to seek guidance on the information required by the notification form, discuss the potential relevant markets in terms of the merger or acquisition and clarify any questions relevant to the MAO's processes.

If the parties believe that the transaction is not subject to the compulsory notification requirement in regard to the following grounds, they may ask the MAO for a formal confirmation of the exemption from the compulsory notification requirement:

- transactions that do not breach the notification thresholds;
- internal restructuring when the acquiring and acquired entities have the same ultimate parent entity and the restructuring does not lead to a change in control;

- consolidation of ownership when there is no change in control; or
- land acquisitions that are not for the purpose of obtaining control by one or more entities through a contract or other means.

Chapter 13: Dispute resolution

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13.1 Structure of the Philippine judicial system

The Philippine judicial system has several levels, including the Supreme Court, appellate courts and trial courts.

The Supreme Court is the highest tribunal in the country. Composed of the Chief Justice and fourteen Associate Justices, it has the power of judicial review over judgments and orders by appellate and trial courts. The Supreme Court may also review actions by the Executive Branch.

The Supreme Court has the exclusive authority to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts, and admission to the practice of law. It oversees the judiciary and ensures the efficient administration of justice.

The appellate courts consist of the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals.

The Court of Appeals is the primary appellate court in the Philippines that has the power to review judgments and orders by regional trial courts and lower courts in criminal, civil and special proceedings cases. On the other hand, the Sandiganbayan (the 'People's Advocate') is a special court with the power to hear graft and corruption cases and other crimes committed by public officials and employees. Meanwhile, the Court of Tax Appeals has limited appellate jurisdiction over tax assessments, customs duties and other tax-related issues.

The trial courts consist of two levels: regional trial courts and other lower courts, consisting of metropolitan trial courts, municipal trial courts in cities and other municipal circuit trial courts.

Regional trial courts are courts with general jurisdiction, similar to courts of first instance in other judicial systems. Metropolitan and municipal trial courts have limited jurisdiction over crimes punished by penalties below six years of imprisonment, violations of local ordinances, collection cases amounting to PHP 2 million or less, civil actions over properties with an assessed value of PHP 400,000 or less, and ejectment cases.

Incorporated in the Philippine judicial system are Sharia district courts and Sharia circuit courts. These courts are stationed in Muslim-dominated provinces in the southern Philippines. Sharia courts deal with cases involving Islamic personal and family laws, such as marriage, divorce and inheritance applicable to Muslim Filipinos.

13.2 Arbitration

Philippine law encourages the resolution of disputes or controversies through arbitration. Through this mechanism, disputing parties agree to submit their dispute for resolution by one or more arbitrators who make the decision binding on the matter. Arbitration clauses are usually stipulated in complex and high-value business contracts. In the case of construction contracts, an arbitration clause is usually stipulated, which refers any dispute or controversy to the Construction Industry Arbitration Commission.

During arbitration, a sole arbitrator or arbitral tribunal may also enforce, upon request, interim measures of protection if it is deemed reasonable and necessary. Also, upon the promulgation of a judgment, the decision by the arbitrator or arbitral tribunal is binding between the parties and is generally considered final and executory.

13.3 Other modes of alternative dispute resolution (ADR)

Through Republic Act No 9285 or the Alternative Dispute Resolution Act of 2004, various ADR mechanisms are now being used, such as mediation, conciliation, arbitration, or any combination thereof, as a means of achieving a speedy and efficient resolution of cases.

Several Philippine government agencies are tasked with the enforcement and promotion of ADR mechanisms, namely:

- the Office of Alternative Dispute Resolution (OADR), within the Department of Justice, is the primary agency responsible for promoting, developing and implementing ADR in the Philippines;
- trial courts are mandated in various civil and criminal cases to utilise systems for court-annexed mediation or a judicial dispute resolution process allowing litigants to first resolve their issues among themselves. The Supreme Court, through the Philippine Mediation Center, oversees court-annexed mediation programmes;
- the Cooperative Development Authority (CDA) is given quasi-judicial power to adjudicate disputes concerning cooperatives: one of its authorities is to conduct conferences held by a hearing officer to determine whether the case falls within its power to be resolved using ADR;
- the Philippine Construction Industry Arbitration Commission (CIAC) is authorised to use arbitration procedures to resolve the rising number of litigation cases involving contractual claims within the construction industry;
- the Department of Agrarian Reform Adjudication Board (DARAB) is mandated to provide a forum for the settlement of agrarian disputes to be resolved through either mediation or arbitration;
- the National Conciliation and Mediation Board (NCMB) is tasked with resolving certain labour disputes involving unionised workers and the management of the employer wherein a conference is conducted for conciliation proceedings;

- the National Labor Relations Commission (NLRC) is mandated to settle or adjudicate, through arbitration, labour disputes involving unfair labour practices, terminations, breach of labour standards with a claim for reinstatement, the legality of strikes and lockouts, money claims arising from employer–employee relationships, and other damages arising from such relationships;
- the Bureau of Labor Relations (BLR) is mandated to resolve, through conciliation, mediation and voluntary arbitration, inter-union and intra-union disputes arising from conflicts in regard to union representation, the cancellation of union registration, the administration of union funds, a petition for election of union officers and the violation of union members' rights;
- the Insurance Commission (IC) is tasked with resolving disputes in the insurance industry using conciliation and mediation as the primary methods of dispute resolution;
- the Bureau of Trade Regulation and Consumer Protection (BTRCP) was created to investigate, arbitrate and resolve complaints from consumers involving violations of the Consumer Act in the Philippines and disputes involving untrue, deceptive or misleading advertisements; the sale of paints and paint materials; fraudulent advertising, mislabelling and misbranding; monopolies and combinations in regard to the restraint of trade; and the importation and disposition of falsely marked articles, price tags and product standards.

At the community level, the barangay justice system, led by the Barangay Captain and the Barangay Justice Committee, uses mediation and conciliation to resolve minor disputes within the barangay (village) before they reach formal judicial processes.

Chapter 14: Public–private partnerships (PPP) and construction law

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14.1 PPP projects

The Philippines recently enacted the PPP Code to provide an enabling environment for the private sector to mobilise its resources to finance, design, construct, operate and maintain infrastructure or development projects.

The PPP Code establishes a more competitive, stable and predictable policy framework that is more conducive of local and foreign investments in PPP projects. It codifies and aligns the rules governing different types of PPP projects, including the Build–Operate–Transfer (BOT) scheme and its variants, such as joint ventures, toll operation agreements, lease agreements and all other contractual arrangements. It institutes reforms to address bottlenecks and challenges in the implementation of PPP projects, while strengthening mechanisms for transparency and competition.

Under the PPP Code, a foreign-owned firm may participate in a PPP project as a private proponent, contractor or facility operator. A foreign contractor to be engaged by the private proponent must be duly licensed by an accreditation institution in the contractor's country of origin equivalent to the Philippine Contractors Accreditation Board (PCAB). Once the private proponent is awarded a PPP project, the foreign contractor must secure a licence from the PCAB.

14.2 Licensing requirements for foreign contractors

The Contractors' License Law was enacted to regulate and ensure that only qualified and reliable local and foreign contractors are allowed to undertake construction in the Philippines.

The said Act created the PCAB, which is vested with the authority to issue, suspend and revoke licences for contractors and to put into effect the classification of contractors in a manner that is consistent with the established usage and procedures relation to the construction industry.

The implementing rules adopted by the PCAB designated and instituted two types of licences that any contractor may apply for, namely:

- a regular licence, which authorises the licensee to engage in general engineering and building construction contracting, but is reserved for and issued only to constructor firms of Filipino sole proprietorship, or partnerships/corporations with at least 60 per cent Filipino equity participation and duly organised and existing under and by virtue of the laws of the Philippines; and
- a special licence, which is required for a joint venture, consortium or foreign contractor and authorises them to only engage in the construction of a single specific undertaking or project.

In a recent decision, however, the Supreme Court struck down the above classification. According to the Supreme Court, the striking down of the restrictions on foreign contractors will encourage healthy competition and open up opportunities for development and innovation, so that domestic industries will be globally competitive. At the time of writing, the PCAB has yet to release the updated licence classifications, which are expected to align with the decision by the Supreme Court.

14.3 Foreign participation in government infrastructure projects

The participation of foreign contractors in government infrastructure projects is regulated by the Government Procurement Reform Act (GPRA) and its implementing rules and regulations.

As a general rule, only local contractors are allowed to participate in government procurement for locally funded infrastructure projects. A local contractor is defined as including a duly licensed Filipino citizen or sole proprietorship; cooperatives duly organised under the laws of the Philippines; and Philippine partnerships, corporations and joint ventures that are at least 60 per cent Filipino owned.

As an exception, however, foreign contractors may participate in government procurement of infrastructure projects in the following instances:

- the procurement of infrastructure projects funded by foreign grants and Official Development Assistance (ODA);
- when provided for under any treaty or international or executive agreement; and
- in regard to joint ventures in which Filipino ownership or interest is less than 60 per cent, but greater than 25 per cent, where the structures to be built require the application of techniques and/or technologies that are not adequately possessed by/within the remit of the Philippine partner.

14.4 Construction contracts

Standard forms of construction contracts crafted by the International Federation of Consulting Engineers (FIDIC), which have gained global acceptance by foreign and local contractors, may be adopted during the execution of contracts for government infrastructure projects.

Key revisions to the conditions in standard FIDIC contracts include changes to the conditions of the contracts in order to align with applicable procurement rules, such as, for instance, the GPRA, ODA rules, treaties, international agreements or executive agreements.

Chapter 15: Other

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15.1 Financial consumer protection

Financial products or services refer to products or services developed or marketed by a financial service provider, including savings, deposits, credit, insurance, pre-need and health maintenance organisation products, securities, investments, payments and other similar products or services, regardless of whether the financial product or service is accessed and delivered through traditional offline channels or through digital channels. Under the Financial Products and Services Consumer Protection Act (FPSCPA), the BSP, Insurance Commission (IC) and the SEC are mandated to, in relation to financial service providers within their jurisdiction, (1) formulate standards and rules that govern financial products and services guided by internationally accepted standards and practices; (2) conduct market surveillance and examinations and monitor such markets; (3) enforce the FPSCPA and other laws against non-compliant financial service providers; and (4) provide efficient and effective financial consumer complaints handling mechanisms, among other similar powers.

The FPSCPA places specific obligations on financial service providers, including:

- the continuous evaluation of financial products and services to ensure that these products and services are appropriately designed and delivered to their target markets, including the adoption of clear cooling-off policies for financial products and services identified by the BSP, IC and SEC;
- the adoption of policies on the use of clear and concise language to ensure that their communications with clients are transparent, up to date and accurate;
- the adoption of policies to ensure the fair and respectful treatment of clients, through ensuring that discrimination based on protected attributes does not occur in regard to the selection of clients and abusive collection or debt recovery practices are not employed in respect of financial consumers; and
- compliance with the information security standards and requirements under the DPA in relation to any data collected from clients.

15.2 Regulation of payment systems

A payment system provides channels for the transfer of funds among banks and other institutions to discharge obligations arising from economic and financial transactions across the entire economy. The National Payment Systems Act (NPSA) mandates the BSP to oversee payment systems used in the Philippines and to exercise supervisory and regulatory powers over such payment systems to ensure the stability and effectiveness of the monetary and financial system. The law requires that the operator of payment systems (OPS) register with the BSP. The OPS is defined as person who performs any of the following functions: (1) maintains the platform that enables payments or fund transfers, regardless of whether the source and destination accounts are maintained by the same or different institutions; (2) operates the system or network that enables payments or fund transfers to be made through the use of a payment instrument; (3) provides a system that processes payments on behalf of any person or the government; and (4) any other activities identified as such by the Monetary Board. There are no restrictions on the foreign ownership of OPS.

The BSP has the power to designate payment systems that pose or have the potential to pose systemic risk. Operators of designated payment systems (ODPSs) are required under the NPSA to be incorporated as stock corporations. ODPSs are subject to more stringent reporting requirements and other regulatory controls, such as minimum capital requirements and appropriate governance and risk management systems, due to their importance in the financial system.

Upon a finding that an entity is acting as an OPS without the requisite BSP licence, the Monetary Board will issue a directive to the OPS that it must (1) register as an OPS with the BSP and (2) stop operating as a payment system until it obtains the necessary BSP licence. Should the entity still fail to comply with this directive, the BSP may impose other penalties and sanctions, such as fine of between PHP 200,000 and PHP 2m and/or imprisonment from two to ten years, or the administrative sanctions on BSP-supervised entities detailed in Section 37 of the New Central Bank Act, as amended.

15.3 Electronic money and virtual assets

The BSP defines electronic money or e-money as monetary value represented by a claim on its issuer provided that it fulfils the following conditions:

1. it is electronically stored in an instrument or device;
2. it is issued against the receipt of funds of an amount not lesser in value than the monetary value issued;
3. it is accepted as a means of payment by persons or entities other than the issuer;
4. it is withdrawable in cash or a cash equivalent; and
5. it is issued in accordance with Section 702 of the Manual of Regulations for Banks.

E-money issuers (EMIs) may be banks, non-bank financial institutions or other non-bank institutions registered with the BSP as a monetary transfer agent. Entities that intend to operate as an EMI must first secure the approval of the BSP prior to beginning their operations. There are no foreign equity restrictions applicable to EMIs.

A virtual asset, on the other hand, is any type of digital unit that can be digitally traded or transferred; can be used for payment or investment purposes; and are not issued or guaranteed by any jurisdictions nor have legal tender status. Virtual asset service providers (VASPs) are entities who offer services or engage in activities that provide the facility for the transfer or exchange of virtual assets, such as the exchange between virtual assets and fiat currencies; the exchange between one or more virtual assets; the transfer of virtual assets in general; and the safekeeping and/or administration of virtual assets or instruments that enable control over the virtual assets. VASPs are required to secure a licence from the BSP prior to starting their operations. However, the BSP has suspended the granting of VASP licences for a period of three years, beginning from 1 September 2022, in light of the varied risks associated with virtual assets that may undermine financial stability. After the three-year suspension, the BSP will re-evaluate whether continued suspension is necessary or whether there are sufficient market developments to justify the granting of new VASP licences.

15.4 Anti-money laundering compliance

The Anti-Money Laundering Act (AMLA), as amended, explicitly criminalises money laundering in the Philippines. Under the AMLA, the Anti-Money Laundering Council (AMLC) was created and authorised to: require and receive reports on covered and suspicious transactions; initiate investigations of covered or suspicious transactions and other money laundering activities; institute civil forfeiture proceedings through the Office of the Solicitor General; and freeze money instruments or properties alleged to be the proceeds of an unlawful activity, among others. Covered institutions are required to report covered transactions (ie, those that meet certain thresholds) and suspicious transactions (ie, those that are attended by circumstances that lead to a reasonable belief that the funds are the proceeds of a criminal activity) to the AMLC.

Covered institutions or persons refers to natural and juridical persons supervised or regulated by the BSP, IC or SEC. Amendments to the AMLA have resulted in the inclusion of other entities in the definition of covered institutions. These inclusions are referred to as Designated Non-Financial Business and Professions, which include: dealers in precious metals and stones; casinos, including internet and ship-based casinos; real estate developers and brokers; and offshore gaming operators and their service providers; in addition to company service providers and persons engaged in the management of client money and finances, including lawyers, accountants and other professionals.

Covered transactions and their threshold amounts are summarised in the table below.

Type of transaction	Threshold amount
Cash or equivalent monetary instrument	More than PHP 500,000 in one banking day
Transactions associated with jewellery dealers, dealers in precious metals and dealers in precious stones, in cash or another equivalent monetary instrument	More than PHP 1m
Casino cash transaction	More than PHP 5m or equivalent in another currency
Cash transactions involving real estate developers or brokers	More than PHP 7.5m or its equivalent in another currency

'Suspicious transactions' refer to transactions, regardless of the amount involved, where any of the following suspicious circumstances exist:

- there is no underlying legal or trade obligation, purpose or economic justification for the transaction;
- the client is not properly identified;
- the amount involved is not commensurate with the business or financial capacity of the client;
- taking into account all the known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under the AMLA;
- any circumstance relating to the transaction that is observed to deviate from the profile of the client and/or the client's past transactions with the covered institution;
- the transaction is in any way related to an unlawful activity or offence under the AMLA that is about to be, is being or has been committed; or
- any transaction that is similar or analogous to any of the foregoing.

Notwithstanding the provisions set out in Republic Act No 1405, or the Bank Secrecy Law, and other laws, the AMLC has the authority to inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon the order of any competent court based on an *ex parte* application in cases of violations of the AMLA, provided that probable cause has been established that the deposits, investments or related accounts are involved in a money laundering offence.

15.5 Anti-financial account scams

The Anti-Financial Account Scamming Act (AFASA) was passed as a response to the increasing incidence of cybercrime schemes employed by criminals for fraudulent activities. Financial accounts, as defined under the AFASA, include typical deposit, trust, investment or credit card accounts with banking institutions; transaction accounts maintained with banking and non-banking financial institutions; e-wallets; and any other account used to avail financial products or services as defined under the FPSCPA. Money mules and the use of social engineering schemes are explicitly punished under the law.

Money mules refer to the following acts undertaken for the purpose of receiving, depositing or withdrawing proceeds that are known to be derived from crimes, offences or social engineering schemes:

1. using, borrowing or allowing the use of a financial account;
2. opening a financial account under a fictious name or the identity of another;
3. buying or renting a financial account;
4. selling or lending a financial account; or
5. recruiting or inducing another to perform (1) to (4).

Social engineering schemes refer to schemes undertaken to obtain sensitive identifying information (such as usernames, passwords, bank account details, etc) of another, through deceit or fraud, for the purpose of unauthorised access and control over such person's financial accounts. This includes situations where the criminal misrepresents themselves as acting on behalf of an institution, such as a bank, or making false representations to solicit sensitive identifying information; and using electronic communications to obtain another's sensitive identifying information.

Additionally, the BSP is authorised to investigate and inquire into financial accounts that may be involved in an AFASA violation, notwithstanding the bank secrecy laws. Furthermore, only injunctions issued by the Court of Appeals and the Supreme Court may curtail investigations initiated by the BSP.