
A General Guide to Doing Business In the Philippines

Client paper

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I. General Rule; Foreign Ownership of Business

Foreigners may *do business* in the Philippines and are accorded basic protection by law. Specifically, foreign investors enjoy a right to the repatriation of their investment and a right against expropriation by government (except for public use or in the interest of national welfare or defense and upon payment of just compensation).

The extent of allowed foreign participation depends on the proposed economic activity to be engaged in, some of which are indeed reserved for Philippine nationals or entities with a minimum degree of ownership by Philippine nationals. Businesses where there are restrictions on foreign investment¹ generally fall into two categories: (1) areas which are expressly reserved by law or the Constitution for Philippine citizens or (2) areas which are deemed to be strategic. The list of strategic industries² is not permanent.

On the other hand, up to 100% ownership of a foreign national is allowed in a *domestic market enterprise*³ in non-restricted areas provided that: (i) it meets the minimum paid-up capitalization of USD 200,000.00⁴ and (ii) the foreign national's country of origin accords parity rights to Philippine nationals.

II. Entities

A. Representative Office

A representative office is one established to deal directly with the clients of its parent company. It should be fully subsidized by the parent and may not derive income from its activities in the Philippines.

The law requires an initial inward remittance of US \$30,000.

B. Regional or Area Headquarters, Regional Operating Headquarters and Regional Warehouses

¹Limitation of participation or absolute prohibition

² List B of the Foreign Investment Negative List

³ As opposed to an export enterprise (which requires 60% of goods or services to be sold outside of the Philippines).

⁴ The required capitalization may be reduced where: (i) if its activity involves advanced technology, or (ii) if it employs at least 50 direct employees as certified by the appropriate regional office of the Department of Labor and Employment

To supervise or coordinate the activities of its subsidiaries, branches or affiliates, a Multinational company may set up a regional or area headquarters. Like a regional office, the regional headquarters may not (i) derive income in the Philippines, (ii) manage a subsidiary or branch office in the Philippines (iii) market goods or services. Expenses must be financed entirely by the head office or parent company from external sources in an acceptable foreign currency. A minimum initial inward remittance is US \$50,000 and thereafter an annual remittance of US \$50,000 is required to maintain the Regional Headquarters.

The Regional Headquarters is not subject to income tax or VAT. It is also exempt from all local licenses, fees, and charges, except real property tax on land improvements and equipment. Materials necessary for training and conferences may be imported into the country tax and duty free.

A Regional Operating Headquarters (ROHQ) , on the other hand, is established to serve a multinational companies' affiliates, subsidiaries, or branches whether within or outside the Philippines.

Unlike a Regional Headquarters, an ROHQ is allowed to derive income in the Philippines exclusively from the following:

- a. General administration and planning
- b. Business planning and coordination
- c. Sourcing/procurement of raw materials and components
- d. Corporate finance advisory services
- e. Marketing control and sales promotion
- f. Training and personnel management
- g. Logistics services
- h. Research and development services and product development
- i. Technical support and maintenance
- j. Data processing and communication
- k. Business development

An initial inward remittance of least US \$200,000 is required for an ROHQ.

Provided that a ROHQ will be established simultaneously and provided further, a multinational company may also establish a regional warehouse in the Philippines to engage exclusively in the following activities:

- a. serving as a supply depot for the storage, deposit, and safekeeping of spare parts, components, semi-finished products, and raw materials
- b. filling up transactions and sales made by its head office or parent company; and

c. serving as a storage or warehouse of goods purchased locally by the head office but for export abroad.

Likewise, a Regional warehouse may not engage in trade or directly solicit business, promote any sale, enter into any contract for the sale or disposition of goods in the Philippines and may not derive income from sources within the Philippines.

C. Offshore Banking Unit (“OBU”)

A foreign bank may operate an OBU in the Philippines. The OBU may be a branch, subsidiary, or affiliate of a foreign banking corporation authorized by the Bangko Sentral ng Pilipinas (“BSP”) to conduct business with funds from external sources.

D. Domestic Corporation and Branch of Foreign Corporation

Finally, foreign investors may be set up as a domestic corporation or as its Philippine branch. A domestic corporation is generally taxed on its net income from all sources at the rate of 30 percent. On the other hand, a branch (which is considered a *resident foreign corporation*) is taxed only on net income from all sources within the Philippines.