

# FREQUENTLY ASKED QUESTIONS

---

## 1.1

### General

#### 1. Who may invest?

Anyone, regardless of nationality, is welcome to invest in the Philippines. With the liberalization of the foreign investment law, 100% foreign equity may be allowed in all areas of investment except those reserved for Filipinos by mandate of the Philippine Constitution and existing laws.

#### 2. What requirements must be complied with before a foreign corporation can do business in the Philippines?

A foreign corporation must first secure the necessary licenses or registrations from the appropriate government bodies. In the case of corporations or partnerships, the necessary incorporation papers from the Securities and Exchange Commission (SEC) must be obtained. In the case of single proprietorship, registration from the Bureau of Trade Regulation & Consumer Protection of the Department of Trade and Industry must be secured.

#### 3. What is the general policy of the government for foreign investments?

The government recognizes the pivotal role of private sector investments and, thus, commits to continuously enhance the business climate. Foreign investments are encouraged to fill in capital gaps, help provide employment, increase production, and provide a base for the overall development of the economy.

Investment rules and regulations have therefore been liberalized to facilitate entry of foreign investments.

#### 4. Are foreigners allowed to lease land?

Foreign investors investing in the Philippines can now lease private lands up to 75 years. Based on R.A. No. 7652, entitled “Investor’s Lease Act”, lease agreements may be entered into with Filipino landowners. Lease period is 50 years, renewable once for another 25 years. For tourism projects, the lease shall be limited to projects with an investment of not less than US\$5M, 70% of which shall be infused in said project within 3 years from signing of the lease contract.

**Frequently Asked Questions on the Revised Rules for the Issuance of Employment Permits to Foreign Nationals (D.O. No. 75-06)**

**1. What is an Alien Employment Permit (AEP)?**

An Alien Employment Permit is a document issued by the Secretary of Labor and Employment through the DOLE-Regional Director, who has jurisdiction over the intended place of work of the foreign national, authorizing the foreign national to work in the Philippines.

**2. Who are required to apply under the revised rules?**

All foreign nationals who intend to engage in gainful employment in the Philippines.

**3. Who are the foreign nationals exempted from securing AEP?**

The following categories of foreign nationals are exempt from securing AEP:

1. All members of the diplomatic service and foreign government officials accredited by and with reciprocity arrangement with the Philippine government;
2. Officers and staff of international organizations of which the Philippine government is a member, and their legitimate spouses desiring to work in the Philippines;
3. Foreign nationals elected as members of the Governing Board who do not occupy any other position, but have only voting rights in the corporations;
4. All foreign nationals granted exemption by law;
5. Owners and representatives of foreign principals whose companies are accredited by the Philippine Overseas Employment Administration (POEA), who come to the Philippines for a limited period and solely for the purpose of interviewing Filipino applicants for employment abroad;
6. Foreign nationals who come to the Philippines to teach, present and/or conduct research studies in universities and colleges as visiting, exchange or adjunct professors under formal agreements between the universities or colleges in the Philippines and foreign universities or colleges; or between the Philippine government and foreign government; provided that the exemption is on a reciprocal basis; and
7. Resident foreign nationals.

**4. Are the holders of 47(a)2, SIRV and SRRV required to secure AEP?**

Yes, if they occupy any position in any establishment in the Philippines.

**5. Where can a foreign national file application for an AEP?**

A foreign national can apply for an AEP with the DOLE Regional Office having jurisdiction over the intended place of work. If the foreign national will be assigned in the different parts of the country, the foreign national can file application with any of the DOLE Regional Offices having jurisdiction in any of the places of work.

**6. What are the requirements in the application for an AEP?**

1. Duly accomplished application form
2. Photocopy of passport, with visa or Certificate of Recognition for refugees
3. Contract of Employment/Appointment or Board Secretary's Certificate of Election
4. Photocopy of Mayor's Permit to operate business
5. Photocopy of current AEP (for renewal)

**7. How much is the fee for each application for AEP?**

A fee of Eight Thousand Pesos (P8,000.00) for each application for AEP with a validity of one (1) year, or a fraction of one year shall be paid to the DOLE-Regional Office upon filing of application. If employment is more than one (1) year, an additional Three Thousand Pesos (P3,000.00) shall be charged for every additional year of validity or a fraction thereof.

**8. How much fee is paid for renewal?**

In case of renewal, the applicant shall pay a fee of Three Thousand Pesos (P3,000.00) for each year of validity or a fraction thereof.

**9. How long will it take to process an AEP?**

An AEP shall be issued within 24 hours or on the following working day after compliance with all the documentary requirements and payment of required fees, and fines if there is any.

**10. Who are not allowed to re-apply for an AEP?**

A foreign national whose application for AEP has been denied/cancelled /revoked shall not be allowed to re-apply in any of the DOLE Regional Offices, unless said foreign national has provided proof that the ground for denial/cancellation/revocation has been corrected.

**11. Is the AEP renewable?**

Yes, a foreign national shall file application for renewal of an AEP on or before its expiration. Application for renewal of expired AEP shall be considered as a new application.

For corporate officers whose election or appointment takes place on or before expiration of AEP, application shall be filed not later than ten (10) working days after election or appointment or before expiration of the AEP.

**12. Can a foreign national renew his/her AEP if the election or appointment takes place after the expiration of AEP?**

Yes, a foreign national shall file application for renewal of AEP on or before the expiration of the AEP. In case the foreign national is not re-elected or re-appointed, the AEP shall be automatically revoked.

**13. Is there a grace period for the submission of the Board Secretary Certificate of Election or Appointment?**

Yes, within ten (10) working days after the date of election or appointment, the foreign national shall submit to the issuing Regional Office the Board Secretary's Certificate of Election or Appointment.

**14. How long is the validity of an AEP?**

An AEP shall be valid for one (1) year, unless the employment contract, consultancy service, or other modes of engagement provides otherwise, which in no case shall exceed five (5) years.

**15. Can an AEP be suspended?**

An AEP may be suspended by the issuing Regional Office, after due process, based on the following grounds:

1. The continued stay of foreign national may result in damage to the interest of the industry or the country;
2. The employment of the foreign national is suspended by the employer or by order of the Court.

**16. Can a petition for the suspension of AEP be filed with the DOLE?**

Yes, a petition for Suspension of AEP may be filed with the issuing DOLE Regional Office and shall be resolved within thirty (30) calendar days from receipt of the petition.

**17. In what grounds shall an AEP be cancelled or revoked by the Regional Director?**

After due process, the Regional Director may cancel/revoke the AEP based on any of the following grounds:

1. Non-compliance with any of the requirements or conditions by which the AEP was issued;
2. Misrepresentation of facts in the application;

3. Submission of falsified or tampered documents;
4. Meritorious objection or information against the employment of the foreign national as determined by the Regional Director;
5. Foreign national has a derogatory record; and
6. Employer terminated the employment of the foreign national.

**18. Are there remedies for suspension, cancellation or revocation of AEP?**

Yes, an aggrieved party may avail of the following:

1. Motion for Reconsideration with the issuing Regional Office and/or appeal to the Office of the Secretary.
2. A Motion for Reconsideration may be filed, within seven (7) calendar days after receipt of the Suspension/Cancellation/Revocation Order, with the Regional Director who shall resolve the same within ten (10) calendar days from receipt thereof.
3. Orders of the Regional Director may be appealed, within ten (10) calendar days from its receipt, to the Secretary of Labor and Employment whose decision shall be final and unappealable.

**19. Is there a fine imposed to a foreign national working without an AEP?**

Yes, the Regional Director shall have the power to order and impose a fine of Ten Thousand Pesos (P10,000.00) for every year or a fraction thereof to a foreign national found working without an AEP or with an expired AEP.

**Board of Investments/Philippine Economic Zone Authority*****Registration requirements, application procedures and approval*****1. Does our proposed project qualify for registration with the BOI/PEZA?**

To qualify for registration with the BOI for incentive purposes, the proposed foreign investment must be made in any of the following:

a. Preferred areas of investment listed in the current Investment Priorities Plan (IPP). A preferred area may be declared pioneer if it:

i) Involves the manufacturing or processing (not merely assembly or packaging) of goods or raw materials that have not been produced in the Philippines on a commercial scale;

ii) Uses a design, formula, scheme, method, process or system of production or transformation of any element or raw material into another raw material or finished good which is new and untried;

iii) Engages in agricultural activities/services essential to the achievement of the country's self-sufficiency program; and

iv) Produces non-conventional fuels or manufactures equipment which utilize non-conventional sources of energy; provided that the final product in any of the foregoing instances involves substantial use and processing of domestic raw materials.

b. Enterprises engaged in preferred non-pioneer areas and exporting at least 70% of their output.

c. Projects in less-developed areas provided that the activities in all of the above cases are not reserved for Philippine nationals under the Foreign Investment Negative List (FINL).

On the other hand, the projects that may qualify for registration with PEZA are those that involve manufacturing for export and the domestic market, free trade, tourism, information technology, utilities, facilities enterprises, logistics service enterprises providing warehousing and trading operations in the ecozones, and development and operation of ecozones.

**2. How does one file an application with the BOI/PEZA?**

An application shall be made in the form prescribed by the BOI / PEZA in two (2) copies and properly sworn to before a notary

public. A project feasibility study is one of the required supporting documents.

### **3. What possible obstacles would our application meet?**

The obstacles normally encountered in the filing of applications include noncompliance with the criteria set by the BOI, misinterpretation of the coverage of activities listed in the IPP, failure to submit the required project feasibility study and other supporting documents and possible opposition from sectors or enterprises which might be adversely affected by the proposed project. The BOI requires publication of the notice of application and conducts hearings if objections to the application are received.

For PEZA applicants, the usual problem consists of non-compliance with some of the criteria set by PEZA and failure to submit required documents and information.

### **4. How long will it take to obtain BOI/PEZA approval once all requirements are complied with?**

Under the 1987 Omnibus Investments Code, applications filed with the BOI shall be considered automatically approved if not acted upon by the Board within twenty (20) working days from official acceptance thereof, subject to the usual terms and conditions. In the case of PEZA, the processing and evaluation by the appropriate department usually takes about two weeks. The decision on the project is made during the bimonthly meetings of the PEZA Board.

### **5. Assuming approval is obtained, what restrictions are ordinarily attached?**

A list of general and specific terms and conditions is normally attached to the approval letter issued by the BOI/PEZA upon approval of the application for registration. The general conditions include certain management, financial, operational and marketing restrictions which must be properly complied with so as to avoid grounds for cancellation of registration. The specific terms and conditions which may include nationality, operational and reporting requirements vary depending upon the nature of the business enterprise.

### **6. How much time is an investor allowed to start his project?**

The amount of time allowed for starting a registered project depends on the type of the proposed project and the period set by the proponent in the feasibility study with the approval of the BOI/PEZA.

**7. What are the various types of business structure options can I choose from in setting up a business?**

You may set up your business under a variety of organizational structures known as single proprietorship, partnership, corporation, branch office, representative office, regional headquarters and regional operating headquarters.

**8. How do these business structures differ from one another?**

**Single/Sole Proprietorship** is a business structure owned by an individual who has full control/authority of his own and owns all the assets, personally owes and answers all liabilities or suffers all losses and enjoys all the profits to the exclusion of others. Must apply for Business Name with the Department of Trade and Industry (DTI) –

- For NCR applicants:

BUSINESS NAME REGISTRATION CENTER  
Department of Trade and Industry – National Capital Region (DTI-NCR)  
Trade and Industry Building  
361 Sen. Gil Puyat Avenue, Makati City  
Email: [btrec@dti.gov.ph](mailto:btrec@dti.gov.ph)  
Website: [www.bnrs.dti.gov.ph](http://www.bnrs.dti.gov.ph)

- For applicants outside NCR  
Apply to the nearest DTI-regional/provincial offices

**Partnership** is treated as a juridical person having a separate legal personality from that of its members. It may either be general or limited, depending on the liability of the partners. It consists of two (2) or more partners. A partnership must register with the Securities and Exchange Commission (SEC) with a minimum capitalization of three thousand pesos (Php 3000.00).

**Corporation** is a juridical person established under the Corporation Code is regulated by the SEC with personally separate and distinct from that of its stockholders. It consists of at least five (5) to fifteen (15) incorporators each of whom must hold at least one share. It must be registered with the Securities and Exchange Commission (SEC). The minimum paid-up capital is five thousand pesos (Php 5,000.00).

**Branch Office** is an extension of a foreign enterprise and has no separate and independent legal personality. It can carry out the business activities of its head office and may derive income from the

Philippines. It is required to inwardly remit US\$200,000.00 to the Philippines as its assigned capital.

**Representative Office** is one which deals directly with the clients of its parent company in the Philippines, but may not derive income from the Philippines. It undertakes activities such as information dissemination, communication center, promotion of the company's products, as well as quality control. It is required to have an initial remittance of at least US\$30,000.00 working capital into the Philippines.

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

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

*What are the areas of investments covered by Foreign Investment Act (FIA)?*

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

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

Below are Negative Lists A & B where:

- **List A:** refers to areas reserved to Filipinos by mandate of the Constitution and Special Laws such as but not limited to:
  - a. Mass Media except recording, practice of licensed profession, retail trade, cooperative and small-scale mining, etc. where foreign ownership is prohibited.
  - b. Advertising, ownership of land, operation and management of public utilities, etc., where only minority foreign ownership is prohibited.
- **List B:** refers to areas that are defense-related, those with adverse effects on public health and morals and domestic market enterprises with paid-up capital of less than US\$200,000.00, provided they involved advance technology as determined by the Department of Science and Technology (DOST) or directly employ at least fifty (50) employees, in which case, the paid-up

capital shall be lowered to US\$100,000.00 only to non-Philippine nationals.

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

- a. If the proposed activity he intends to venture in is not among those listed in the FINL.
- b. If the paid-up capital for domestic market enterprise is at least US\$200,000.00, which may be lowered to US\$100,000.00 if the following conditions are met:
  - i. Introduction of advanced technology; or
  - ii. Employment of at least 50 direct employees.

**11. Where does one apply for registration of investments?**

- a. **For Single/Sole Proprietorship** – Submit an application, together with the required documents, to the Bureau of Trade Regulation and Consumer Protection (DTI-BTRCP), an office under the Department of Trade and Industry.

*Where to file application:*

1. **DTI-BTRCP**

2nd Floor, Trade and Industry Bldg.  
361 Sen. Gil J. Puyat Avenue, Makati City  
Email: [btcrp@dti.dti.gov.ph](mailto:btcrp@dti.dti.gov.ph)

DTI- National Capital Region, Makati City if within Metro Manila; or  
12F Trafalgar Plaza, 105 H.V. De la Costa St.  
Salcedo Village, Makati City  
<http://www.bnrs.dti.gov.ph>

2. Any of the DTI Provincial offices if outside Metro Manila

- b. **For Corporations/Partnerships, Branch and Representative Offices** – Submit application forms together with the required documents at the Securities and Exchange Commission (SEC).

*Where to file application:*

1. **Securities and Exchange Commission**

SEC Building  
EDSA near cor. Ortigas Avenue, Greenhills  
Mandaluyong City if within Metro Manila;  
<http://www.sec.gov.ph>

2. SEC Extension Offices if outside Metro Manila

- c. **For Regional Headquarters and Regional Operating Headquarters** – Submit application form together with required documents at the Board of Investments.

*Where to file application:*

**Board of Investments**

Industry and Investments Building

385 Sen. Gil Puyat Avenue

Makati City, Metro Manila

Email: [perd@boi.gov.ph](mailto:perd@boi.gov.ph)

<http://www.boi.gov.ph>

**12. What requirements must be complied with before an enterprise can enjoy tax benefits?**

For proposed activity of a domestically-incorporated enterprise to qualify for incentives, the firm may file its application with the appropriate investment promotion agencies depending on the project location, as follows:

- Located outside of Economic or Freeport Zones – Board of Investments
- Located in Economic or Freeport Zones
  - Cagayan Economic Zone Authority (CEZA)
  - Clark Development Corporation (CDC)
  - Phividec Industrial Authority (PIA)
  - Philippine Economic zone Authority (PEZA)
  - Subic Bay Metropolitan Authority (SBMA)
  - Zamboanga Economic Zone Authority (ZEZA)

**13. I would like to know more about Board of Investments (BOI) and Philippine Economic Zone Authority (PEZA) Registrations?**

**Board of Investments (BOI)**

To qualify for registration with the BOI, an enterprise may register its activity with the BOI if the proposed activity is listed in the current Investments Priorities Plan (IPP). If not listed, the enterprise may be entitled to BOI incentives if the following conditions are met:

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

- At least 70% of production is for export (enterprises more than 40% of which is foreign owned)

Foreign-owned firms, whose ownership exceeds 40% of the outstanding capital stock and which

Proposes to engage in domestic-oriented activities, may be entitled to incentives if the proposed activity is listed in the current IPP and qualifies as Pioneer.

### **Philippine Economic Zone Authority (PEZA)**

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

Enterprises that may qualify for registration with PEZA are those that will manufacture and export 100% of their production. Permission has to be sought if the enterprise located within the zone will export below 100% and in most cases, PEZA has allowed 30% of production in the domestic market.

There are 98 operating proclaimed Special Economic Zones in the country. Five of those are proclaimed Tourism Economic Zones, namely:

- 1) Boracay Eco-Cultural Tourism Economic Zone
- 2) Fort Ilocandia Tourism Economic Zone
- 3) Island Cove Tourism Economic Zone
- 4) Misibis Resort and Spa Tourism Economic Zone
- 5) Pamalican Island Tourism Economic Zone

## **14. What is classified Pioneer?**

- 1) **Tourist accommodation facilities** (hotels, apartels, tourist inns and pension houses)

The following may qualify for pioneer status:

- Projects costing at least the Philippine Peso equivalent of US\$ 100,000.00/room;
- Projects locating in less developed areas (LDAs); or
- Hotel modernization projects (that are considered as expansion projects) with a project cost of at least the Philippine Peso equivalent of US\$ 10,000.00/room.

- 2) **Resorts** that include special interest activities (that may or may not have accommodation facilities) such as but not limited to eco-tourism, agri-tourism, theme parks, conventions and exhibition/trade.

The following may qualify for pioneer status:

- Projects locating outside Metro Manila must have project cost of at least the Philippine Peso equivalent of US\$ 10.0 million;
- Projects located in Metro Manila must have project cost of at least the Philippine Peso equivalent of US\$ 20.0 million;
- Projects locating in LDA must have project cost of at least the Philippine Peso equivalent of US\$ 5.0 million/project; or
- Agricultural and ecological tourism projects with a minimum lot area of fifty (50) hectares
- Application for registration shall be endorsed by the Department of Tourism.

Application for registration shall be endorsed by the Department of Tourism.

- 3) **Retirement Villages** with a minimum area of twenty (20) hectares may qualify for pioneer status.

**4) Healthcare and Wellness Products and Services**

- a) Hospital/Medical Services (Tertiary care hospital and specialized services as endorsed by the Department of Tourism (DOT)

The following may qualify for pioneer status:

- Tertiary hospitals with a minimum capacity of 100 beds or with investment cost of at least the Philippine Peso equivalent of US\$10.0 million.
- Specialized services with project cost of at least the Philippine Peso equivalent of US\$ 10.0 million.

Prior to availment of ITH, hospitals classified for 'medical tourism' must be accredited by the Department of Tourism

- b) Ambulatory Surgical Services (comprehensive ophthalmologic, dermatologic, cosmetic, and reconstructive surgeries, etc.)

Projects that cost at least the Philippine Peso equivalent of US\$2.0 million may qualify for pioneer status.

Application for registration must be endorsed by the DOT.

- c) Dental Services (orthodontic procedures, dental implants and cosmetic dentistry)

Projects that cost at least the Philippine Peso equivalent of US\$1.0 million may qualify for pioneer status.

- d) Other Human Health and Wellness Services including Rehabilitation and Recuperation Services

- Health Spa ('destination spa' or a 'resort/hotel spa')

'Destination spa' or 'resort/hotel spa' projects that will apply 'hilot' or any indigenous Filipino healing modality as endorsed by the DOT may qualify for pioneer status.

- Rehabilitation and Recuperation Services

To qualify for registration, it must have a minimum investment of US\$ 1.0 million, excluding the cost of land.

- 5) **Healthcare and Wellness Products** (manufacture of drugs and medicines in accordance with the Philippine National Drug Formulary (PNDF), food supplements limited to Vitamin A, iron and iodine compounds either mixed, coated or incorporated in appropriate medium added to flour, rice, sugar, oil as required by Food Fortification Law (RA 8976) and salt as required by ASIN Law (RA 8172), herbal medicines, and active substances of these drugs.

Projects that cost at least the Philippine Peso equivalent of US\$ 20 million may qualify for pioneer status.

Prior to availment of ITH, the firm shall submit a License to Operate (LTO) issued by BFAD.

## 15. What incentives are available to registered enterprises?

### Board of Investments (BOI)

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

### *Fiscal Incentives*

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

BOI-registered enterprise shall be exempt from the payment of income taxes reckoned from the scheduled start of commercial operations, as follows:

- New projects with a pioneer status for six (6) years;
- New projects with a non-pioneer status for four (4) years;
- Expansion projects for three (3) years. As a general rule, exemption is limited to incremental sales revenue/volume;
- New or expansion projects in less developed areas (LDAs) for six (6) years, regardless of status;
- Modernization projects for three (3) years, as a general rule, exemption is limited to incremental sales revenue/volume.

#### B) Tax credit on raw materials, supplies and semi-manufactured products;

#### C) Additional deduction from taxable income for labor expense (cannot be simultaneously enjoyed with the ITH incentive);

#### D) Additional deduction from taxable income for necessary and major infrastructure works (cannot be simultaneously enjoyed with the ITH incentive);

#### E) Exemption from wharfage dues and export tax, duty, impost and fees.

#### F) Modified Duty Rate for Capital Equipment by virtue of E.O. No. 528

Effective June 17, 2006, BOI registered enterprises of good standing with project registered as new or expanding under Executive Order No. 226, otherwise known as Omnibus Investments Code of 1987, may import machinery equipment, spare parts and accessories at zero percent (0%) duty classified under AHTN Chapters 40, 59, 68, 69, 70,73, 76, 82, 83, 84, 85, 87,89, 90, 91 and 96 of the Tariff and Customs Code of the Philippines.

The capital equipment incentive provided under E.O. 313 shall be availed of by the registered enterprise for a period of five (5) years from its effectivity or until 16 June 2011.

### *Non-fiscal Incentives*

Certain non-fiscal incentives are also available to the registered enterprise, among which are: employment of foreign nationals; guaranteed repatriation of foreign investments and earnings thereon;

and importation of consigned equipment for an unlimited period subject to the posting of re-export bond.

### **Philippine Economic Zone Authority (PEZA)**

#### *Investment incentives for Ecozone Developers/Operators*

- A) Income Tax Holiday (ITH)
  - 4 years for IT Parks/Buildings located outside of Metro Manila
  - 6 years for manufacturing located in less developed area;
- B) Incentive under the Build-Operate-Transfer Law, which included government support for accessing Official Development Assistance and other sources of financing;
- C) Provision of vital off-site infrastructure facilities;
- D) Option to pay a special 5% Gross income Tax, in lieu of all national and local taxes;
- E) Permanent resident status for foreign investors and immediate family members;
- F) Employment of foreign nationals;
- G) Assistance in the promotion of economic zones to local and foreign locator enterprises;

#### *Incentives for Ecozone and IT locators*

- A) Income Tax Holiday (ITH)
  - New registered pioneer firms – six (6) years from commercial operations;
  - New registered non-pioneer firms – four (4) years from commercial operation;
  - Expanding firms – three (3) years from commercial operation of the expansion;
  - After the ITH period, the option to pay a special 5% Tax on Gross Income, in lieu of all national and local taxes;
- B) Exemption from duties and taxes on imported capital equipment, spare parts, supplies, raw materials;
- C) Tax Credit on Domestic Breeding Stock and Genetic Materials – an ecozone export enterprise which purchases breeding stocks and genetic materials from a domestic producer shall be entitled to a tax credit equivalent to 100% of the value of national internal revenue taxes and customs duties that would have been waived on the breeding stocks and genetic materials had these items been imported;
- D) Domestic sales allowance equivalent to 30% of total sales;
- E) Exemption from wharfage dues and export taxes, imposts and fees;
- F) Employment of foreign nationals;

- G) Simplified import and export procedures;
- H) Other incentives under Executive Order No. 226 (Omnibus Investments Code of 1987), as may be determined by the PEZA Board.

#### *Other Incentives Programs*

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

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

Two other special economic zones were created under two separate special laws. These are the **Cagayan Special Economic Zone Authority (CEZA)** and the **Zamboanga Economic Zone Authority (ZEZA)**. The incentives granted to those that will locate in these ecozones are similar to the incentives granted to PEZA ecozone enterprises.

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

#### **Regional Headquarters (RHQ)**

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

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

#### *Regional Headquarters (RHQ) Incentives*

1. Exemption from income tax;
2. Exemption from branch profits remittance tax;
3. Exemption from value-added tax;
4. Sale or lease of goods and property, and services to the RHQ are zero-rated;

5. Exemption from all kinds of local taxes, fees or charges imposed by a local government unit, except real property tax on land improvements and equipment;
6. Tax and duty free importation of equipment and materials for training and conferences needed and solely used for the RHQ functions, and which are not locally available, subject to prior BOI approval;
7. Importation of brand new motor vehicle but subject to payment of taxes and duties.

### **Regional Operating Headquarters (ROHQ)**

The Regional Operating Headquarters may engage in any of the following qualifying services:

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

#### *Regional Operating Headquarters (ROHQ) Incentives*

1. Subject to preferential income tax of 10% on taxable income;
2. Exemption from all kinds of local taxes, fees or charges imposed by a local government unit, except real property tax on land improvements and equipment;
3. Tax and duty free importation of equipment and materials for training and conferences needed and solely used for the ROHQ functions, and which are not locally available, subject to prior BOI approval;
4. Importation of brand new motor vehicle but subject to payment of taxes and duties.

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

**17. What are the incentives given to expats working for RHQ/ROHQ?**

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

**18. How does a company remit its profits and dividends and repatriate capital abroad?**

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

**19. What are the investment rights of a former natural born Filipino?**

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

**20. What are the basic rights and guarantees given for the safety of foreign investments?**

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

### **Right to REPATRIATION OF INVESTMENTS**

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

### **Right to REMITTANCE OF EARNINGS**

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

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

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

### **Right to FREEDOM FROM EXPROPRIATION**

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

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

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

## **21. As an investor, what visa can be issued to me?**

The Special Investor Resident Visa (SIRV) entitles the holder to reside in the Philippines for an indefinite period as long as his investment subsists. Any alien, except restricted nationals under the

Foreign Service Code, may apply for an SIRV provided he meets the following requirements:

- a) He has not been convicted of a crime involving moral turpitude.
- b) He is not afflicted with any loathsome, dangerous or contagious disease.
- c) He has not been institutionalized for mental disorder or disability.
- d) He is willing to invest the amount of at least US\$50,000.00 for tourism projects in the Philippines.

### **ALLOWABLE FORMS OF INVESTMENT**

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

- a) In existing corporations:
  - Publicly-listed companies
  - Companies engaged in Investment Priorities Plan (IPP) Projects, or
  - Companies engaged in the manufacturing and service sectors.
- b) In new corporations:
  - Companies to be engaged in the manufacturing and service sectors, or
  - Companies to be engaged in IPP Projects.

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

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

## **Entry Visa**

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

## **Work Permits**

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

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

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

**Securities and Exchange Commission****1. Can the application for registration with the BOI/PEZA and the SEC be filed simultaneously, or must one wait for the BOI/PEZA approval before going to the SEC?**

Registration with the BOI/PEZA is required only for purposes of availing tourism investment incentives. It is preferable to first seek approval from the BOI/PEZA before filing an application with the SEC.

**2. How long after the submission of the application and all the required documents will approval be obtained?**

The processing and approval of the papers take around fifteen (15) working days from official acceptance of the application.

**3. Is there any requirement that directors be residents?**

A majority of the directors must be residents of the Philippines. The number of directors must be at least five (5) but not more than fifteen (15). Hence, if there are 5 directors, at least 3 must be residents.

**4. Is a domestic corporation subject to a minimum subscription and payment on such subscription?**

At least 25% of the authorized capital stock of a domestic corporation must be subscribed and at least 25% of the subscription must be paid. However, subscriptions by alien individuals or foreign entities must generally be fully paid. Partial payments of subscriptions by aliens may be allowed subject to certain conditions.

**Bangko Sentral ng Pilipinas*****Inward Remittance and Registration of Foreign Investments, Repatriation of Capital, Remittance of Dividends*****1. Can foreign investment funds be inwardly remitted outside of the banking system?**

Yes. However, said funds cannot be registered as foreign equity investment with the SEC and the BSP. Capital repatriation and dividend remittances can only be serviced using foreign exchange sourced outside of the domestic banking system.

**2. Is registration of foreign investment with the BSP required?**

BSP registration is necessary only if the investor wants to make sure that the repatriation of capital and the remittance of dividends, profits and earnings can be made using foreign exchange sourced from the Philippine banking system. Otherwise, BSP registration is not necessary.

**3. Is inward remittance of foreign investment required to be converted immediately to Philippine Pesos?**

An investor is required to convert his inward remittance of foreign investment to Philippine pesos for purposes of registration with the SEC and the BSP.

**4. What are the current regulations regarding profit remittances and repatriation of capital?**

No current regulations are imposed on dividend and profit remittances as well as on foreign investments capital repatriation. Foreign investors can freely remit their dividends and profits using their own foreign exchange sourced outside the domestic banking system. But if the foreign exchange is sourced from the local banking system, prior registration with BSP is required.

Authorized Agent Banks (AABs) are authorized to sell and to remit the equivalent foreign exchange at the exchange rate prevailing at the time of actual remittance (representing sales/divestment proceeds or dividends/profit of duly registered foreign investment) upon presentation of the Bangko Sentral Registration Document (BSRD) and other applicable documentary requirements.

**Royalties, Technical Service Agreements, Etc.*****IPO Registration of Technology Transfer Agreement, Taxation of Royalties and Service Fees*****1. Can we charge royalties and similar fees?**

Royalties and similar fees can be charge to operations provided payments for said fees are covered by a technology transfer agreement (TTA) certified by the Documentation, Information and Technology Transfer Bureau (DITTB) of the Intellectual Property Office (IPO) that said technology transfer agreement conforms with the provision of the Intellectual Property Code (IPC).

The IPC provides certain restrictions in the terms and condition of the TTA particularly those that will adversely affect free competition and trade. It also prescribes certain mandatory provision that should be included in the TTA. Non-conformity with any of these provisions of the ICP shall render the TTA unenforceable, subject to some exceptions. For instance, if the agreement contains one or two of the restrictive clauses, the licensing contract must be approved by the registration with the DITTB.

Approval of royalties/fees for the licensing of patents, know-how and trade secrets is now liberalized unlike before when extensive evaluation of fees is required if royalty fees exceeded 5% of net sales.

**2. Are these taxable in the Philippines?**

Royalties and similar fees are taxable at the rate of 33% in 1999 to be reduced to 32% effective 2000 when payable to a non-resident foreign corporation. However, the tax rates for the royalties payable to residents of foreign countries with which the Philippines has a tax treaty vary according to the terms of the respective treaties.

**3. What rules govern the reimbursement of cost incurred abroad?**

Reimbursement of actual cost incurred abroad for operations such as maintaining offices, advertising, commission, etc. are allowed provided they are duly supported by documents and that benefits are actually derived by the paying company.

**4. What constitute “technology transfer arrangements”?**

“Technology transfer arrangements” refer to contacts or agreements involving the: transfer of systematic knowledge for the manufacturing of a product or the application of a process, rendering of a service, including management contracts; and the transfer, assignment or

licensing of all forms of intellectual property rights, including licensing of computer software, except computer software developed for mass market.

**5. How long does it take to obtain government approval?**

Within ten (10) days from the filing of the request for certification of compliance, the DITTB conduct a summary evaluation of the TTA. If the TTA conforms with the Prohibited Clauses and Mandatory Provisions of the IPC, the DITTB issues a Certificate of Compliance. Otherwise, the DITTB notifies the parties of any violation and requires them to comply with the IPC if they wish to obtain a Certificate of Compliance.

**6. Do we have to get the Bangko Sentral approval to remit the royalty or agreed fees to the foreign company? What documentary support is required?**

With the liberalization of foreign exchange rules, remittance of royalties, fees or similar payments to a foreign company, net of the applicable taxes, may be made through AABs without need of BSP approval.

The following documents may be required by the AABs to prove the legitimacy of the transaction: (a) copy of the certification by DITTB of the IPO; and (b) proof of payment of withholding tax.

**Taxes*****Income and Business Taxes*****1. Are non-resident aliens and non-resident foreign corporations receiving income from sources within the Philippines required to register with the BIR?**

No, tax due from them shall be remitted/paid to the BIR by the payor who shall constitute as the withholding agent of the tax (RMC 39-95).

**2. What are the income tax rates in the Philippines?**

The income tax rates depend upon the classification of the taxpayers.

**A. Individual Taxpayers**

- i)** Resident foreign individuals (aliens) and non-resident citizens are subject to the graduated tax rates of 5% to 32% but only for income derived from all sources within the Philippines. The top rate of 32% applies to taxable income in excess of Php500,000.00.
- ii)** Non-resident aliens are taxed at 25% of gross income from sources within the Philippines if their stay within the country does not exceed 180 days in a calendar year. Otherwise, they are taxed on the basis of graduated rates as in (1) above.
- iii)** Aliens who are employed by regional or area or regional operating headquarters of multinational corporations, offshore banking units, and petroleum service contractors and subcontractors are subject to income tax at 15% of their gross income from such employers (e.g. salaries, annuities, honoraria and allowances)
- iv)** Net capital gains realized during each taxable year from the sales of shares of domestic stocks not traded in the Philippine Stock Exchange (PSE) are taxed at the rate of 5% on the first Php100,000.00 gains and 10% on the excess over Php100,000.00. For domestic shares listed and traded in the PSE, the tax is 1/2 of 1% of the gross selling price or gross value in money of the shares of stock sold.

Likewise, there is a tax in shares in stocks sold, exchanged or otherwise disposed through initial public offering at the rates of 1%, 2% and 4%, depending on the proportion of the shares sold, exchanged or otherwise disposed to the total

outstanding shares after listing of the shares of closely held corporations.

Capital gains on sale of real property are taxed at 6% of gross selling price or fair market value, whichever is higher.

- v) Passive income items like interest, dividends, royalties, prizes and other winnings are also taxed at different rates. For instance, dividends received by citizens and residents from a corporation and the share of an individual partner in a taxable partnership are taxed at 10%. If the dividends are paid to non-residents, the tax is 20% for those engaged in trade or business and 25% for non-residents not engaged in trade or business. Interest on foreign loan contracted on or before August 1, 1986 are taxed at 20%.

## **B. Corporate Taxpayers**

- i) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable on Philippine-sourced income at 35% of net taxable income. A foreign engaged in trade or business in the Philippines (also called resident foreign corporation) is taxed based on net income. On the other hand, a foreign corporation not engaged in trade or business in the Philippines (also known as a nonresident foreign corporation ) is taxed based on gross income received.
- ii) Profits remitted by a branch of a foreign corporation to its home office are taxed at the rate of 15%. However, this tax does not apply to a Philippine branch registered with PEZA. Dividends declared by a domestic corporation to its foreign parent are generally taxed at 35%. However, if the home country of the recipient corporation allows an additional credit of 20% as tax deemed paid in the Philippines, the tax is reduced to 15%. Dividends remitted to countries that do not impose a tax on offshore dividends qualify for this rate.

Most of the tax treaties concluded by the Philippines with other countries allow preferential rates of 10% on branch profit remittances and on dividends. Such rate usually applies if the payor-subsiary is registered with the BOI or if the beneficial owner of the dividends is a company which holds a certain percentage of the capital of the payor subsidiary. Otherwise, the tax on dividends in 15%.

- iii) All corporations, whether domestic or foreign, are subject to capital gains tax on the sale of shares of stock in the same

manner as individual taxpayers. Sale of lands and/or buildings treated as capital assets by domestic corporations is likewise subject to capital gains tax at 6% based on the gross selling price or fair market value, whichever is higher, of such lands and/or buildings.

Other income items such as interest and royalties are taxed at various rates. Dividends received by a domestic or resident foreign corporation from a domestic corporation are not taxable.

- iv) A minimum corporate income tax of 2% of the gross income as of the end of the taxable year is imposed on a corporation which is subject to normal income tax of 35% beginning on the fourth taxable year immediately following the year in which such corporation was registered with the Bureau of Internal Revenue, when the minimum income tax is greater than the normal income tax for the taxable year.

Any excess of the minimum corporate income tax over the normal income tax as computed shall be carried forward and credited against the normal income tax for the three immediately succeeding taxable years.

- v) Every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation by permitting earnings and profits accumulate instead of being divided or distributed, is taxed at the rate of 10% for each taxable year on the improperly accumulated taxable income.
- vi) In general, an employer ( individual or corporation) shall pay a final tax of 32% on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file) unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer.
- vii) As per Labor Code Republic Act no. 9178, Barangay Micro-Business Enterprises (BMBEs) are exempt from income taxes and minimum wage requirements if their total assets do not exceed P3 million.

### **3. What business taxes are we subject to?**

Both the national government and the local government impose business taxes. The rates vary depending on the type of business.

## A. National Tax

### i) Value Added Tax (VAT)

Twelve percent (12%) VAT is imposed on importation of goods and sale, barter, exchange or lease of goods, properties and services in the Philippines, subject to certain exceptions. Goods or properties mean all tangible and intangible objects, including real property, patents, trademarks and similar rights and movable and personal goods. Services cover performance of all kinds of services in the Philippines for a fee.

Exports are generally subject to 0% VAT. VAT exempt goods include such items as books, fertilizers, livestock and poultry feeds and agricultural and marine food products in their original state.

Subject to the 70% cap is the offsetting of input tax as against output tax. This means that the maximum input tax that will be credited against the output tax must not exceed 70% of the output. The input tax here includes the carried-over input tax from the previous quarter. Offsetting only happens if input tax is greater than output tax.

Input taxes on capital goods, apart from the mentioned 70% cap, are also subject to a 5-year amortization or the estimated useful life or whichever is lower, if aggregate acquisition cost (VAT exclusive) in a calendar month exceeds Php1,000,000.00.

### ii) Percentage tax on certain businesses

Bank and other non-bank financial intermediaries	0% to 7%
Life insurance companies	5%
Common carriers, radio and television franchisees	3%
Gas and water utilities	2%
Others	Ranging from 3% to 30%

### iii) Excise Tax

Excise tax is imposed on alcohol, tobacco, petroleum, and mineral products, cinematographic films, automobiles, jewelry, etc. at varying rates.

A zero percent (0%) excise tax is imposed on diesel fuel, kerosene and bunker fuel oil. Locally extracted natural gas and liquefied natural gas are exempt.

- iv) Overseas communication tax and stamp tax on certain documents, instruments and related transactions like issuance of shares of stock, evidence of indebtedness, transfer of real property, lease contract, insurance policies, etc. are also considered as national taxes.

#### **B. Local tax on certain businesses**

- i) Manufacturers, wholesalers, distributors, dealers and contractors are subject to local business tax at graduated rates on certain amounts of gross sales/gross receipts or percentage taxes at maximum rates not exceeding 2% on the amounts not subject to graduated taxes depending on the place where business is conducted.
- ii) Banks and other financial institutions – percentage tax at maximum rates not exceeding .5% of their gross receipts depending on the locality of the business.
- iii) Others – varying rates

Aside from the above business taxes, there are other taxes levied by local government units such as:

- Real Estate Tax
- Community Tax

#### **4. What are the advantages and disadvantages of a branch vis-à-vis a domestic subsidiary?**

The advantages and disadvantages from legal and tax viewpoints of a branch compared to a domestic subsidiary are as follows:

- a. Branch offices are taxed only on their net income from sources in the Philippines while subsidiaries are taxed on their worldwide income. In both cases, however, a relief from double taxation may be granted subject to the provisions of applicable tax treaties. (Refer to the questions on taxes applicable to corporate taxpayers.)
- b. There are generally fewer formalities involved in opening a branch than incorporating a subsidiary.

c. In terms of staffing, a subsidiary normally requires a complete set of corporate officers whereas a branch is able to operate with only a resident agent, who may also be the general manager, as its officer.

d. Since a subsidiary has a separate juridical personality, a foreign parent company is protected from contractual and other liabilities incurred by its Philippine subsidiary; the liabilities of the branch office extend to that of its home office.

e. A branch is allowed to claim, as deduction for income tax purposes, allocated head office expenses subject to certain requirements, while a subsidiary is not allowed to claim the same.

f. Profit remittance by a branch registered with the PEZA is exempt from branch profit remittance tax while dividend remittance by a subsidiary is taxable.

**5. What effect will a tax treaty with my country have on the tax rates?**

A tax treaty is designed primarily to eliminate double taxation on foreign investors who otherwise have to pay taxes in the Philippines and in their home countries on the same income.

## Joint Ventures

### *Foreign Equity, Control, Officers and Directors, Applicable Tax Policies*

- 1. If we enter into a joint venture with Philippine investors, will the SEC allow us to hold 51% or more of its equity?**

The SEC will allow foreign equity in excess of 50% provided the area of activity involved is not covered by the seventh regular foreign investments negative list.

- 2. If we are restricted to a 40% equity holding, how can we obtain control of the operations?**

In general, control of an enterprise goes to the group which has the power to determine its policies and the manner in which the enterprise is to be run, and such assurance of control is obtained through majority ownership of the voting capital stock of the corporation. There are, however certain arrangements that could provide a minority group with working control, such as diffusion of majority ownership and licensing agreements.

- 3. Are there any requirements that directors and other officers must be Filipino citizens and/or residents?**

The majority of the directors must be residents of the Philippines and the secretary must be a resident Filipino citizen. Although not required by law, the SEC, as a matter of policy, also requires the treasurer to be a resident. However, in the case of banks and domestic air carriers, at least two-thirds of the members of the board of directors must be citizens of the Philippines. For a firm engaged in a nationalized or partially nationalized activity, the maximum number of foreign directors must not exceed the proportion of actual foreign equity in the firm, and all of its executive and managing officers must be Filipino citizens.

- 4. How are joint ventures taxed?**

An unincorporated joint venture is taxed like a corporation. The shares of the joint venture partners will no longer be taxable to them because they partake of dividends, if paid to a domestic or resident corporation. However, an unincorporated joint venture formed for the purpose of undertaking a construction project or engaging in petroleum operations is not subject to the corporate income tax. Only the joint venture partners will be taxed on their respective shares.

## **Rules on Borrowing**

### ***Foreign and Domestic Credit***

#### **1. Can we finance our project through foreign borrowings?**

The government prefers foreign equity investments to foreign borrowings. In general, foreign borrowings require prior approval of and/or registration with the BSP in order that repayment of principal and remittance of interest may be serviced using foreign exchange purchased from the Philippine banking system. Under present rules, loans that may qualify for prior Bangko Sentral approval registration are those intended to finance the following types of projects:

- a. Export oriented projects;
- b. BOI-registered projects;
- c. Projects listed in the Investments Priorities Plan;
- d. Projects listed in the Medium-Term Public Investment Program; and other projects that may be declared priority under the country's socio-economic development plan by the National Economic Development Authority or by Congress.

All the above loans, regardless of maturity, shall exclusively finance foreign exchange requirements of eligible projects, provided that loans of direct and indirect exporters and public sector borrowers may finance both foreign exchange costs and up to 50% of the total peso costs component of their respective projects. Peso borrowings can be availed by foreign companies as a financing means provided it meets the requirements stipulated by the Monetary Board evidenced by the BSP-Inter Agency Committee certification.

#### **2. Are we subject to certain debt-to-equity ratio requirements?**

All enterprises registered with the BOI, PEZA and the other economic zone authorities are required to maintain a debt-to-equity ratio of at least 75:25 during the entire duration of their registration with the concerned government agency.

#### **3. Can a foreign company borrow from a private individual or private non-financial institution?**

Yes. A foreign company can borrow from a private individual or private nonfinancial institution.