THE E-INVESTMENT PRIMER

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I. INTRODUCTION

The Philippines is currently being packaged as Asia's E-services Hub, with its vast pool of information technology (IT)-trained human resources and wide opportunities for future expansion and development, particularly in the IT field. Recognizing the need to harmonize national development efforts with the fast-paced, knowledge-driven global community, the Philippine government has placed IT services and development as one of its priority programs. In line within this, both the Philippine government and the private sector have been exerting cooperative efforts to fully optimize the country's potential in the IT field.

II. COUNTRY PROFILE

A. LOCATION

Consisting of approximately 7,100 islands, the Philippines is located at the Southeast Asian region and is considered the "Gateway of Asia to the Pacific" due to its strategic location. It is surrounded by Taiwan on the north, South China Sea on the west, the archipelago of Indonesia on the south, and the vast Pacific Ocean on the east. It has a total land area of 300,000 square kilometers, the largest islands being Luzon, Mindanao, Palawan, Negros Island, Cebu, Samar Island, Panay Island, Mindoro Island, and Leyte. Major international airline and shipping companies serve the country as one of their primary destinations.

B. ECONOMIC ENVIRONMENT

The basic economic structure of the Philippines is free enterprise or *laissez-faire*, with minimal intervention from the government. The important role of the private sector is well recognized by the State and finds its way through the policy of harnessing the immense technical and capital resources offered by the business sector. This is shown by the increasing pubic-private sector participation in various infrastructure and development activities.

Concomitant with the phenomenon of market globalization, the Philippines has participated in the General Agreement of Tariff and Trade of the World Trade Organization and the Asian Free Trade Agreement. It has placed several structural reforms which opened up investments in various key sectors, liberalized importation of products and services, deregulated important economic industries, and privatized key government corporations.

Although most of its neighbors have been suffering negative growth rates during the recessionary years in the late 1990s, the Philippines has managed to post positive modest progress during the same period. Currently, the inflation rate is at a controllable 2.9%. The average Filipino household expenditure is placed at approximately US$2,310.00 during the previous year.

The official legal tender in the Philippines is the Philippine peso (PhP). However, under Republic Act 8139, parties to any transaction are allowed to stipulate that a foreign currency be the currency of payment or performance of the obligation. Presently, the average foreign exchange rate between the PhP and the U.S. dollar (US$) is PhP 54.1 to US$1.00.

The services sector continues to be the sector with the highest contribution to the economy, followed by manufacturing and agriculture. With its vast trained human resource and the latter's proficiency in the English language, the service sector of the Philippines is very competitive, particularly in the areas of IT and computer software services.

Major exports of the Philippines include manufactured goods such as semi-conductors and electrical equipment and machinery, garments, minerals and metals, and agricultural products such as coconut products and bananas.

C. GOVERNMENT STRUCTURE

The Philippines prides itself in having a dynamic democracy and representative form of government. Pursuant to the constitutionally declared principle of democratic republican state, the voice of the general public plays a very significant role in the Philippine political environment, as shown by two historic peaceful "People Power" revolutions, both of which toppled what were considered as corrupt and autocratic regimes. The current administration under Pres. Gloria Macapagal-Arroyo promises a commitment to more responsive, morally upright, and transparent governance.

The Philippines has a presidential form of government, with the President as the head of state. The President appoints the various heads of executive departments (called Secretaries) to supervise and administer the daily tasks of running the various aspects of governance. Its lawmaking body, known as the Congress, is composed of two chambers – the Senate, which is composed of twenty-four (24) senators elected at large, and the House of Representatives, which is composed of not more than two hundred fifty (250) congressmen elected by their constituencies in their respective legislative districts and of representatives from various marginalized sectors. The task of interpreting the laws and resolving legal disputes is vested in the Supreme Court, the country's highest judicial tribunal, with various trial courts (i.e., Regional and Municipal/Metropolitan/Municipal Circuit Trial Courts) performing as the courts of preliminary resort or first instance. The country is divided into political subdivisions known as local government units (LGUs, for brevity) (i.e., provinces, municipalities, cities, *barangays*) and each unit is headed by a local chief executive. It should be noted that LGUs are vested with considerable power and authority by the central government, in line with its policy of dispersing development activities in the countryside.

The Philippines is predominantly composed of Christians, with Roman Catholics composing almost 85% of the population. This is due to the almost four centuries of Spanish presence in the country which made the Philippines as Asia's Cradle of Christianity. Moslems, which constitutes 5% of the population, are primarily concentrated in Mindanao.

D. PHILIPPINE MACROENVIRONMENT

1. Population[1]

Projected population growth is expected to hit 83 million by 2004 with a disproportionately large number of young people as against more senior citizens. Households will continue to expand in number of members and income, but earning parity is expected to drop; given current prognoses for real GDP growth to 2011 based on the earlier discussion trends in the size and productivity of the labor force, it is expected that the real average household income will increase 1.8 % per annum to 2006 and then 1.7 % per annum to 2011 bolstered by the expected increase in gross salary

2. Consumption

The average household is currently spending 76 % of its total expenditure on food, clothing and housing with growth in discretionary expenses expected because of projected increases in disposable income for households. It is expected that expenditure of all households on "transport and communications" and "recreation and education" may grow at over 4.2 % per annum for the next 5 years..

3. Social

Filipino consumers are now less concerned about a worsening economy than they were in July 2002. People remain optimistic that personal economic situations will improve in the next 12 months. In terms of peace and order, Filipinos want the government to put an end to the insurgency problem, illegal drugs, kidnapping, the Moro insurgency, rape, robbery, child abuse and terrorism. Other concerns respondents want the government to address are employment, salaries and wages, and corruption in government.

4. Physical Infrastructure[2]

Government projects are on track; road improvements and active measures to curb road traffic are seen to improve business productivity. The completion of mass transit projects will increase

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[1] National Statistics Office; National Statistical Coordination Board: information regarding Philippine demographics has been taken from Quickstat from NSO's most requested statistics. Published every month, it contains the previous month's estimates of CPI and inflation rate plus the most recent foreign and domestic trade figures. It also contains statistics on labor and employment, manufacturing indices, family income and expenditures, population statistics and private building construction. All statistics presented for the demographics are the results of various censuses and surveys conducted, and administrative forms processed by the NSO.
Net migration rate is defined by the CIA as the difference of persons entering and persons leaving a country. Current Philippines net migration rate for 2002 as compiled in the CIA World Factbook is –1 migrant(s) / 1000 population.
Roncesvalles, Carina I. 2003: Tough Year For Disputes Resolution; Job security remains the principal factor that workers consider before they enlist any move, BusinessWorld: February 28, 2003
Joe Lopez. Jobs and safety sacrificed in global airline industry. World Socialist Web, 13 November 1998
Torrijos, Elena R. Terrorism is main consumers' worry - survey, Philippine Daily Inquirer, December 28, 2002.
Balaba, Rommer M. Consumption pattern hurts potential investments in RP. BusinessWorld Publishing Corporation, February 3, 2003
Dumlao, Doris C. Survey says Filipinos see recovery in '03, Philippine Daily Inquirer, September 14, 2002
Serfino, Dennis C. and Jennifer B. Austria. Blue Christmas for most retailers; Consumers optimistic of 2004 - survey, Manila Standard, December 28, 2002
Recovery of global economy not seen till 2004 – survey, Business World, September 16, 2002
Lugo, Leotes Marie T. Filipinos happy with life despite economic downturn, Business World, September 19, 2002

[2] Sources: Department of Public Works & Highways [http://www.dpwh.gov.ph]; Department of Science and Technology [http://www.dost.gov.ph]; Republic of the Philippines Official Website [http://www.gov.ph]; LRT Authority [http://lrta.gov.ph]; Business World Internet Edition [http://www.bworld.com.ph]; The Economy, February 28-March 1, 2003, Manila Bulletin Online [http://www.mb.com.ph]; The Manila Times [http://www.manilatimes.net];

domestic travel Suspension of opening of NAIA Terminal 3 will cosset incumbent ground handlers from market changes

5. Technological[3]

Increased market adoption of wireless devices, particularly in the field of telecommunications (use of bluetooth, WiFi, satellite services, et al.) will improve overall communications and logistics in terms of real-time communications of needs and services. Increased spending on information and communications technologies by large enterprises will force firms to comply with systems integration requirements, in order to actively participate in supply chains

6. Economic[4]

The 2003 GDP forecast of 4.2% is achievable because of increased government spending and increased output by manufacturing and ICT firms. GNP is expected to grow at about rough 3.9%. The industrial sector is expected to expand between 3.4 – 4.4% in 2003 from 4.1% in 2002, driven by construction and manufacturing activity. Growth will be highest in the logistics (transportation, communication and storage), mining and manufacturing industries

Agriculture is projected to rise between 3.0 – 4.0% in 2003 from 3.5% in 2002, notwithstanding the expected recurrence of a mild El Niño. In 2003, the service sector is set to be the fastest growing sector and a major source of economic growth.

Trade will also be boosted by the expansion of large local retailers in regions outside Metro Manila and healthy domestic demand.

Financial services are expected to further gain from the recent approval of bank assurance rules by the Monetary Board allowing the sale of insurance products by and also from the recent approval of the Special Purpose Vehicle Act that will strengthen the banking sector by disposing of bad loans and infusing greater liquidity through the sale of such non-performing assets.

Investments are expected to climb between 2.6 – 3.1% as additional financing resources for small and medium enterprises (SMEs) and housing sector drives stronger investment demand.

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[3] Alma Buelva. Bullish on Bluetooth. The Philippine Star, September 27, 2002.
www.emarketer.com

[4] 4.2% growth in 2003. PRIVATE SECTOR SEEN TO REGAIN STRENGTH NEXT YEAR – NEDA
"2002 Economic Performance and Prospects for the next 18 Months" presented by Romulo L. Neri, Secretary of Socioeconomic Planning, December 26, 2002
"IMF again lowers '03 outlook for RP" - Business World, January 27, 2003
"Nomura says '03 growth to be below gov't forecast" – Business World, January 27, 2003
"ADB expects 3.9% growth for Philippine Economy" – Business World Internet Edition, February 11, 2003
ADB Asia Economic Monitor 2003 February 2003 Update
The Wallace Business Forum, Inc. – Briefing to De La Salle University Graduate School of Business 6 December 2002
Profile of the Philippine Economy, December 2002 to January 2003
"Bankers see resilient growth" – Business World February 11, 2003
Excerpt from Profile of the Philippine Economy December 2002 to January 2003
Highlights of the meeting of the Monetary Board on Monetary Policy Issues held on December 19, 2002 (from BSP website)
"IMF again lowers '03 outlook for RP" - Business World, January 27, 2003
"Nomura says '03 growth to be below gov't forecast" – Business World, January 27, 2003
ADB Asia Economic Monitor 2003 February 2003 Update
"2002 Economic Performance and Prospects for the next 18 Months" presented by Romulo L. Neri, Secretary of Socioeconomic Planning

Exports are forecast to rise between 5.2 – 5.7% on the back of strengthening world semiconductor demand and the expansion of the country's export markets in Asia, as well as the continued export growth to traditional markets such as Europe and the Americas.

Meanwhile, imports are projected to grow between 5.0 and 5.5% in support of the economic expansion and expected improvement in semiconductor exports.

However, in view of possible adverse agricultural output, instability of fuel prices and war, inflation is expected to increase to around 5% for the coming months

Interest rates will go up due to domestic sourcing of funds and a weaker peso; war jitters and increased oil prices are expected to push peso value down by as much as 6%

The government's commitment to a low interest rate regime augurs well for domestic industries. At the very least, it allows industries to service their debts at a lower cost, although the ultimate goal of said policy is to encourage new investments especially from the private sector.

The IMF expects a higher budget deficit this year equivalent to 6.2% of GDP

7. Labor and Employment[5]

Trends indicate that the labor market will continue to be an employers' market; the country is expected to exhibit an increasingly negative net migration rate over the next ten years

Women will continue to increase participation in the labor force, accounting for half of the Filipino workforce by the year 2005. Major growth is seen for women in the managerial and professional sectors as well as services and administrative support.

Increase in educational levels does not assure increase in number of skilled workers adequate to meet industry demands

E. FORECASTS

1. Economic Environment

The Philippine Government is confident that the 2003 Gross Domestic Product (GDP) forecast of 4.2% will be met, according to the National Economic Development Authority (NEDA). The report takes into account the resiliency of the private sector particularly Services in providing the confidence to the government that the GDP forecast would be attained. The telecommunications sector is geared for expansion and retail giants are also expanding in anticipation of competition that will be brought by foreign retailers. It was noted that there are two important policies that will provide the manufacturing sector to have some leeway in coping with the oil price increase. The minimum wage increase remains stable given the low inflation rate in 2002 and 2003 and tariffs for capital goods and other imported goods are reduced to zero %.

[5] "Lack of new jobs, conservative business outlook expected to bring higher unemployment this year" by: Arnold S. Tenorio, Senior Reporter
Elfren S. Cruz, Business World January 21, 2003

The forecast for 2003 based on the "2002 Economic Performance and Prospects for the next 18 Months":

2. Philippine GNP and GDP Forecasted Rates

	2002 Actual	2003 Forecast
GNP g.r.	5.2	4.5-5.4
GDP g.r.	4.6	4.2-5.2
Agriculture	3.5	3.0-4.0
Industry	4.1	3.4-4.4
Services	5.4	5.2-6.2

To sustain economic growth, some structural reforms were needed including, agricultural modernization; grains reform program, improvement in port services and liberalization of the airline industry. Other recommended policy directions were as follows:

- Pursuing competitive enhancing trade measures;
- Reducing fiscal deficit;
- Continuing financial market reforms;
- Investing in education, training and health;
- Creating high-wage and high skill jobs through human capital investments and technological progress; and
- Promoting a culture of good governance in the public and private sectors

Other analysts, however, forecast a much lower growth rate for the Philippines. The Asian Development Bank expects only a 3.9 % growth for the country. Similarly, Singapore-based Nomura Research Institute projects that the Philippines' GDP will grow by only 3.6% this year. The International Monetary Fund, which forecasted a growth of 3.8 % in its September 2002's World Economic Outlook, downgraded its forecast to just 3.5 % due to the failure of the country to address the banking sector's fragility and speed up reforms in the power sector.

From a local perspective, a BusinessWorld poll revealed that the consensus among bank officials and economic forecasters is that domestic economic growth will range from 3.8% to 4.1%.

3. Breakdown of Government Forecast[6]

Industry	2002	2003 Forecast	
	Actual	Low	High
Sector Breakdown			
Agriculture	3.5	3.0	4.0
Industry	4.1	3.4	4.4
Mining & quarrying	4.2	6.0	7.0
Manufacturing	3.3	3.4	4.4
Construction	0.0	3.5	4.5
Electricity, gas & water	2.1	2.5	3.5
Industry	**2002**	**2003 Forecast**	
	Actual	**Low**	**High**

[6] Excerpt from *Profile of the Philippine Economy December 2002 to January 2003*

Services	5.4	5.2	6.2
Trans., comm., & storage	8.9	9.5	10.5
Trade	5.7	5.8	6.8
Finance	3.2	1.6	2.6
Ownership dwellings & real estate	1.6	3.1	4.1
Private services	5.5	5.0	6.0
Government services	4.6	1.5	2.5
Expenditures Breakdown			
Personal Consumption	3.9	3.2	3.7
Government Consumption	1.6	-3.1	-2.6
Investments	-0.6	2.6	3.1
Exports	3.3	5.2	5.7
Imports	4.9	5.0	5.5

Agriculture is projected to rise between 3.0 – 4.0% in 2003 from 3.5% in 2002, notwithstanding the expected recurrence of a mild El Niño that will run through the first half of 2003. Agriculture and fishery production will also be supported by initiatives to improve productivity and increased agriculture-related lending.

The industrial sector is expected to expand between 3.4 – 4.4% in 2003 from 4.1% in 2002, driven by construction and manufacturing activity. Construction will benefit from the joint efforts of the government and the private sector to enhance housing credit facilities. Meanwhile, manufacturing is expected to continue its recovery supported by robust nominal dollar exports growth and stable domestic demand.

In 2003, the service sector is set to be the fastest growing sector and a major source of economic growth. It is expected to increase between 5.2 – 6.2% in 2003 from 5.4% in 2002. Leading the growth in services is the communications sector that will continue to benefit from strong demand for expanded cellular phone and IT services by both the business and public sectors.

Trade will also be boosted by the expansion of large local retailers in regions outside Metro Manila and healthy domestic demand. Financial services are expected to further gain from the recent approval of bank assurance rules by the Monetary Board allowing the sale of insurance products by and also from the recent approval of the Special Purpose Vehicle Act that will strengthen the banking sector by disposing of bad loans and infusing greater liquidity through the sale of such non-performing assets.

Ownership of dwellings and real estate will benefit from the boost in private construction and low interest rate environment, while the completion or near-completion of ODA projects in 2002 will also stimulate economic and business activities.

Private consumption growth is expected to continue to expand between 3.2 – 3.7% in 2003. The upbeat momentum of communications services demand, expansion of trade in major cities outside Metro Manila and a relatively benign price environment will continue to support consumer demand. Government spending, on the other hand, will remain in line with the Administration's commitment to exercising fiscal prudence.

Investments are expected to climb between 2.6 – 3.1% as additional financing resources for small and medium enterprises (SMEs) and housing sector drives stronger investment demand. The start of major foreign assisted projects in transportation, flood control and agriculture coupled with a stable domestic interest environment is also expected to encourage investments.

Exports are forecast to rise between 5.2 – 5.7% on the back of strengthening world semiconductor demand and the expansion of the country's export markets in Asia, as well as the continued export growth to traditional markets such as Europe and the Americas. Meanwhile, imports are projected to grow between 5.0 and 5.5% in support of the economic expansion and expected improvement in semiconductor exports. Reduction of tariff rates, in line with the Government's commitments to international economic organizations in 2003, will also support growth in imported manufacturing goods and promote competitiveness in trade and industry.

4. Summary of GDP and GNP Forecasts for 2003

Summary of Forecasts for 2003	**GDP**	**GNP**
International Monetary Fund	3.5	3.5
Nomura Research Institute	3.6	3.8
The Wallace Business Forum, Inc.	4.2	4.8
Asian Development Bank	3.9	4.2
The Economist Intelligence Unit	3.8	

GDP *Forecasts for 2004 to 2007*	**2004**	**2005**	**2006**	**2007**
The Wallace Business Forum, Inc.	5.0	5.3	4.8	4.5
The Economist Intelligence Unit	4.0	3.8	3.7	3.6

III. PHILIPPINE COMPETITIVE ADVANTAGE[7]

A. PEOPLE POWER

The Philippines is ranked #1 in the availability of knowledge-based jobs and workers worldwide and ranked 4th among Asian nations in labor quality, according to a survey conducted by the U.S. based Meta Group. Aside from the huge pool of productive, trainable and multi-skilled labor force, the Philippines competes in the quality of its managers and information technology (IT) staff and engineers.

Moreover, the Philippines has one of the highest literacy rates in the region, with 93.9% of the population capable of being trained for the required skills and competencies. The unique edge comes from a high level of proficiency in English (the Philippines is the 3rd largest English-speaking country in the world).. The Philippine boasts of a good educational system, with the government offering free primary (six years) and secondary (four years) education and reasonable yet competitive tertiary/collegiate education (four years). Many of the universities and colleges offer IT-related courses and some educational institutions specialize in training their

7 http://www.dti.gov.ph/contentment/9/60/109/371.jsp

students in IT. English and Filipino are the major languages and used as media of instruction, with English as the official medium for business communication. Some 18.6 million students are in their primary and secondary schooling, while some 2.4 million students are taking up tertiary education, 1.6 million of which are in private institutions8. The five disciplines with the most number of enrollees are Business Administration, Education and Teacher Training, Mathematics and Computer Science, Engineering and Technology and IT, accounting for an estimated 75% of all disciplines enrolled in.

B. LOCATION

The Philippines is located in Asia - today, the fastest growing region. Flanked by two great trade routes - the Pacific Ocean and South China Sea - the Philippines is an ideal base for business, a critical entry point to over 500 million people in the ASEAN market. The country is a natural choice as an ASEAN Gateway in the international shipping and air lanes, particularly European and North American businesses.

C. FIRST-CLASS LIFESTYLE

The Philippines is the best Asian country in overall quality of expatriate life, according to the March 2000 survey of Hong Kong's Political Risk Consultancy Ltd (PERC). The Philippines ranked third in all countries surveyed - next to Australia and the U.S. - and was ahead of Singapore and Japan. Rated highly were its cultural compatibility with expatriates, its housing, sporting and recreational facilities, quality healthcare and first-rate educational institutions.

D. ABUNDANT RESOURCES

An archipelago like the Philippines offers diverse natural resources, from land to marine to mineral resources. It is also the biggest copper producer in Southeast Asia and among the top ten producer of gold in the world. It is also home to 2,145 fish species, four times more than those found in the Bahamas. The 7,100 islands boast of beautiful beaches and breathtaking sceneries that offer soothing leisure and relaxation spots for vacationers and tourists.

E. LOW COST OF DOING BUSINESS

Wages are typically less than a fifth of that in the U.S. Local communication, electricity and housing costs are also 50% lower compared to the U.S. rates. Foreign companies that are now outsourcing programming and business processes to the Philippines estimate 30 to 40% business cost savings, 15 to 30% call center services and application systems and 35 to 50% software development.

F. BUSINESS-FRIENDLY POLICIES

The Philippine government has redefined its role through privatization that allowed private sector participation in developing infrastructure and services in the country. It is adopting the innovative Build-Operate-Transfer scheme, a model now being followed by other countries due to its success.

[8] Statistics taken from http://www.ched.gov.ph/statistics/enrolment.html

The country has opened up its economy by allowing 100% foreign ownership in almost all sectors of the economy. It has strengthened its capital markets and deregulated the banking, insurance, as well as the shipping and telecommunication sectors, removing most, if not all, the monopoly structures in the Philippine market economy.

Attractive incentive packages are available to qualified enterprises in the country's numerous Special Economic Zones and Industrial Estates. The Special Economic Zone's are being nurtured to become balanced agricultural, industrial, commercial and recreational hubs of activity.

Corporate income tax has been reduced to 32% from 34% in 1998, with companies located in economic zones/export zones subject to only a 5% overall tax rate.

G. UNLIMITED BUSINESS OPPORTUNITIES

As ASEAN economies integrate within the framework of the ASEAN Free Trade Agreement (AFTA), the Philippines is the natural and most strategic location for firms that want access to the large ASEAN market and its vast trade opportunities. It has complied with WTO, APEC, and AFTA agreements and has reduced tariff rates on manufactured goods. The Philippines has enhanced and primed up various areas of business for investors and offers a dynamic consumer market accustomed to array of product choices created by a competitive domestic economy.

H. ALL YOU NEED AND MORE

The Philippines offers state-of-the-art telecommunications facilities, adequate and uninterrupted power supply. There are ready-to-occupy offices and production facilities, computer security and building monitoring systems, as well as complete office services in specialized IT zones. With the government's focus on building up an IT-enabled economy, the Philippines is on its way to becoming the E-services Hub of Asia.

IV. BUSINESS LEGAL ENVIRONMENT

A. GENERAL CONSIDERATIONS IN INVESTING IN THE PHILIPPINES

Foreign investors are welcome to invest in the Philippines. In fact, the 1998-2004 MTPDP expressly provides for the continued liberalization of trade and investment environment in order to encourage larger influx not only of domestic investors but also of foreign ones.

Before a foreign corporation can open an office in the Philippines, it must first secure the necessary licenses or registration certificates from the appropriate government bodies. Generally, the registration process starts with the Securities and Exchange Commission (SEC).

If the proposed project or activity qualifies for incentives, the foreign investor may file its application with the Board of Investments (BOI) or with the Philippine Economic Zone Authority

(PEZA) for registration under the 1987 Omnibus Investments Code Executive Order No. 226) or Republic Act 7916, as the case may be.

For the projects which will be located in the Subic Bay Free Port or the Clark Special Economic Zone, the applications shall be filed with the Subic Bay Metropolitan Authority (SBMA) or the Clark Development Corporation (CDC), respectively.

B. CONSTITUTIONAL GUARANTEES AND PROHIBITIONS

As a rule, a foreign investor is allowed to own 100% of any local business enterprise. However, in cases where the enterprise is a financial institution, public utility, or one engaged in defense, mass media (except the recording industry), practice of licensed profession, cooperative and small-scale mining, advertising, and real estate, ownership by foreigners are either limited to a particular percentage of equity or absolutely prohibited. Executive Order 286, otherwise referred to as the Fourth Regular Foreign Investment Negative List, which took effect last 24 October 2000, provides for a comprehensive list of investment areas where foreign ownership is limited by mandate of the Constitution and specific laws (called the List A) and where it is limited for reasons of security, defense, risk to health and morals and protection of small- and medium-scale enterprises (called the List B).

Under the Foreign Investment List, no foreign equity is allowed in mass media; services involving the practice of professions such as engineering, medical and allied profession, accountancy, criminology, architecture, law, etc.; retail trade; cooperatives; small-scale mining, utilization of marine resources; ownership and operation of cockpits; manufacture, repair of nuclear weapons and other biological, chemical weapons, etc; and other areas.

Up to 25% foreign ownership is allowed for private recruitment, whether for local or overseas employment; locally-funded public works, except for infrastructure/development projects and foreign-funded or assisted projects. Up to 30% foreign equity is allowed in advertising while a maximum of 40% is granted for exploration, development and utilization of natural resources; ownership of private lands; operation and management of public utilities, educational institutions; rice and corn administration; contracts to supply materials, good and commodities to government-owned or controlled corporations, and government agencies; project proponent of a BOT project in public utilities; deep-sea commercial fishing vessels operation and condominiums.

The law also allows 60% ownership in financing companies regulated by the Securities and Exchange Commission (SEC) and investment houses.

A preview of this Negative List is as follows:

List A	*List B*
• No foreign equity - Mass media, except recording - Practice of all professions (limited to Filipino citizens save in cases prescribed by law) a. Engineering (aeronautical, agricultural, chemical, civil, electrical, electronics and communication, geodetic, mechanical, metallurgical, mining, naval architecture and marine, sanitary)	• Up to 40% foreign equity - Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police clearance: a. Firearms (handguns to shotguns), parts of firearms and ammunition therefor, instruments or implements used or intended to be used in the manufacture of firearms

b. Medicine and allied professions (medicine, medical technology, dentistry, midwifery, nursing, nutrition and dietetics, optometry, pharmacy, physical and occupational therapy, radiologic and X-ray technology, veterinary medicine)
c. Accountancy
d. Architecture
e. Criminology
f. Chemistry
g. Customs brokerage
h. Environmental planning
i. Forestry
j. Geology
k. Interior design
l. Landscape architecture
m. Law
n. Librarianship
o. Marine deck officer
p. Marine engine officer
q. Master plumbing
r. Sugar technology
s. Social work
t. Teaching
u. Agriculture
v. Fisheries

- Retail trade enterprises with paid-up capital of less than US$2.5 million
- Cooperatives
- Private security agencies
- Small-scale mining
- Utilization of marine resources
- Ownership, operation, and management of cockpits
- Manufacture, repair, stockpiling, and/or distribution of biological, chemical, and radiological weapons, and anti-personal mines.
- Manufacture of firecrackers and other pyrotechnic devices

• Up to 20%
  - Private radio communication network (RA 3846)

• Up to 25% foreign equity
  - Private recruitment
  - Contracts for the construction and repair of locally-funded public works, except:
    a. Infrastructure/development projects covered in RA 7718
    b. Projects which are foreign funded or assisted and required to undergo international competitive bidding in RA 7718

• Up to 30% foreign equity
  - Advertising

• Up to 40% foreign equity
  - Exploration, development, utilization of natural resources
    a. Full foreign participation is allowed through financial or technical assistance agreement with the

b. Gunpowder
c. Dynamite
d. Blasting supplies
e. Ingredients used in making explosives:
   1. Chlorates of potassium and sodium
   2. Nitrates of ammonium, sodium, barium, Copper (11), lead (11), calcium, and cuprite
   3. Nitric acid
   4. Nitrocellulose
   5. Perchlorates of ammonium, potassium, and sodium
   6. Dinitrocellulose
   7. Glycerol
   8. Amorphous phosphorus
   9. Hydrogen peroxide
   10. Strontium nitrate powder
   11. Toluence
f. Telescopic sights, sniper scope, and other similar devices

- Manufacture, repair, storage and/or distribution of products requiring Defense Department clearance:
  a. Guns and ammunitions for warfare
  b. Military ordinance and parts thereof
  c. Gunnery, bombing, and fire control systems and components
  d. Guided missiles/missile systems and components
  e. Tactical aircraft, parts and components thereof
  f. Space vehicles and component systems
  g. Combat vessels
  h. Weapons repair and maintenance equipment
  i. Military communications equipment
  j. Night vision equipment
  k. Simulated coherent radiation devices, components and accessories
  l. Armament training devices
  m. Others as may be determined by the Defense Secretary
- Manufacture and distribution of dangerous drugs
- Sauna and steam bathhouses, massage clinics, and other like activities regulated by law because of risks they impose to public health and morals
- All forms of gambling (e.g., racetrack operation)
- Domestic market enterprises with paid-in equity capital of less than the equivalent of US$200,000.00
- Domestic market enterprises which involve advanced technology or employ at least fifty (50) direct employees with paid-in equity capital of less than the equivalent of US$100,000.00

President - Ownership of private lands - Operation and management of public utilities - Ownership, establishment, and administration of educational institutions - Culture, production, milling, processing, trading excepting retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof - Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation - Project Proponent and facility Operator of a BOT project requiring a public utilities franchise - Operation of deep sea commercial fishing vessel - Adjustment companies - Ownership of condominium units where the common areas in the condominium project are co-owned by the owners of the separate units or owned by a corporation • Up to 60% foreign equity - Financing companies regulated by the Securities and Exchange Commission (SEC) - Investment houses regulated by the SEC No foreign national may be allowed to own stock in financing companies or investment houses unless the country of which he is national accords the same reciprocal rights to Filipinos.	

Under the 1987 Constitution, foreign investors are given the same constitutional rights and privileges accorded to local investors. These privileges are provided for in the Omnibus Investments Code of 1987, to wit:

1. **<u>Right to repatriate investments</u>.** This pertains to the right of a foreign investor to repatriate the entire proceeds of his liquidated investments. He can remit said proceeds in the currency in which the investment was originally made. The exchange rate to be used is that prevailing at the time of repatriation.

2. **<u>Right to remit earnings</u>.** This pertains to the right of a foreign investor to remit his earnings in the same currency at the time he made the investment. Furthermore, with the liberalization of foreign exchange, the foreign investor is free to source foreign currency in the open market and remit the same abroad.

3. **<u>Right to freedom from expropriation</u>.** Similar principles of public use or welfare and of just compensation are applied to a foreign investor. Additionally, said foreign investor can remit the proceeds of the expropriation in the currency in which the investment was originally made, pegged at the exchange rate prevailing at the time of remittance.

4. **<u>Right to service foreign loans and contracts</u>.** This pertains to the right of a foreign investor to remit any amount necessary to comply with its obligation to meet interest payments and principal on foreign loans and obligations arising from technological assistance contracts.

5. **<u>Right to non-requisition of investment</u>.** This right pertains to the right of a foreign investor to exclude his investments or property from being requisitioned by the government, except in cases of war or national emergency and only for the duration of those particular eventualities. In case where his property or investments have been validly requisitioned, the proceeds (just compensation) over the same can be remitted by the foreign investor in the currency in which the investment was originally made, pegged at the exchange rate prevailing at the time of remittance.

C. I.T. LAW DEVELOPMENTS

The Philippine government is continuing its efforts of providing an investment friendly atmosphere, particularly in the field of IT. The Medium-Term Philippine Development Plan 1998-2004 (MTPDP, for brevity) espouses the promotion and development of IT as one of its policies and strategies for accelerating and sustaining the growth of the services sector. With the recent enactment of Republic Act 8792 (The E-Commerce Act) and in line with the government's policy of encouraging wider private sector participation, the government is gearing towards the full development of the Philippine IT sector with the business sector taking the lead. The E-Commerce Act paved the way for the legal validity and recognition of electronic transactions done in the course of profitable and non-profitable activities. As in the Model Law on Electronic Commerce drafted by the United Nations Commission for International Trade Law, the Philippine E-Commerce Act also penalizes cybercrimes and other computer-related crimes and mandates government agencies to be e-commerce ready within two (2) years from the time of its effectivity.

Pursuant to said measure, the Supreme Court of the Philippines has recently issued the Rules on Electronic Evidence which provides for a framework for admitting pieces of electronic evidence in court proceedings.

Republic Act 8792, otherwise known as the Electronic Commerce Act of 2000 provides for the legal recognition and admissibility of electronic data messages, documents and signatures. This was signed into law on June 14, 2000. The Act mandates all government departments and offices to accept electronic data messages and documents in their transactions within two years from its effectivity; it provides for penalties on computer hacking, introduction of viruses and piracy of copyrighted works of at least P100,000 and maximum commensurate to the damage incurred, and imprisonment of six months to three years among others. The law also promotes e-commerce in the country, particularly in business-to-business and business-to-consumer transactions whereby business relations are enhanced and facilitated and consumers are able to find and purchase products online.

The Department on Trade and Industry and the Department of Science and Technology recently signed Joint Department Administrative No. 02, Series of 2001 last 28 September 2001, providing for the implementing rules and regulations (IRR, for brevity) on electronic authentication and electronic signatures. This IRR, enacted pursuant to Section 29 of the Electronic Commerce Act, seeks to establish an environment conducive to electronic commerce by providing a clear, enforceable, stable, and predictable set of guidelines on giving legal validity and recognition to electronic signatures. This measure further strengthens the fundamental principles enshrined in the Electronic Commerce Act, such as non-denial from a signature, contract, or record legal validity or enforceability solely because it is in electronic form, and technology neutrality. The IRR on electronic authentication and signatures also provides for liability clauses for unauthorized use of electronic signatures and for incorrect and defective certificates. Moreover, it also contains provisions on recognition of foreign certificates and electronic signatures and a reciprocity clause whereby the benefits granted by the IRR shall be extended to foreign parties or entities whose countries of origin grant similar benefit to Philippine nationals.

In the area of electronic banking, the Bangko Sentral ng Pilipinas (BSP) issued a circular (BSP Circular No. 269, Series of 2000; in relation to BSP Circular No. 240 on Electronic Banking Services in the Philippines, series of 2000) which provides for the guidelines for electronic banking activities. Said circular mandates banks interested in engaging or enhancing their electronic banking services to submit an application with the BSP and to comply with the minimum pre-conditions imposed by the same. Said pre-conditions include:

1. Adequate risk management process
2. Manual on corporate security policy and procedures intended to cover all pertinent security matters, particularly the following concerns –

    a. Authentication
    b. Non-repudiation
    c. Authorization
    d. Integrity
    e. Confidentiality

3. Prior satisfactory systems test; and
4. Business continuity planning process and manual.

Additionally, Republic Act 8293, otherwise known as the Intellectual Property Code of the Philippines (IPC, for brevity), which took effect in January 1, 1998, provides for a secure legal regime respecting the protection of intellectual property rights. The IPC was enacted partly to implement the Agreement on Trade-Related Aspects of Intellectual Property, popularly known as the TRIPS Agreement. Recently, the Philippine Congress passed a law amending the IPC giving copyright protection to integrated circuit designs. More recent developments in intellectual property law include plans for full compliance with the World Intellectual Property Organization Internet treaties, namely the WIPO Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), both of which the Philippines ratified in 2002.

Aside from this, the Philippine government is establishing a comprehensive on-line access to public information and services. This plan, dubbed as the Government Information Systems Plan, serves as the backbone for optimizing the use of IT in government and serves as the framework for increasing transparency and efficiency in governance.

D. STATUTORY CONSIDERATIONS

Aside from the fundamental constitutional considerations, regard must be given to various statutory and administrative conditions imposed by the government in regulating foreign investments in the Philippines.

1. EO 226, as amended (The Omnibus Investments Code of 1987)

The Omnibus Investments Code of 1987 consolidates all laws related to domestic and foreign investments. The Code mandates the creation of a Board of Investments (BOI, for brevity) under the Department of Trade and Industry to formulate an annual Investments Priority Plan (IPP, for brevity). The IPP lists the preferred areas of investments after consultation with appropriate government agencies and the private sector. An investor seeking to avail of the incentives provided for in the Code should focus on a preferred area of investments set out in the IPP and register the same with the BOI.

EO 226 sets the rules and parameters within which foreign investments in the Philippines may be made, with emphasis on the grant of incentives to certain sectors, under conditions that will encourage competition and discourage monopolies

An important aspect of the law is the provision of incentives, fiscal and non-fiscal, to preferred areas of investments, pioneer or non-pioneer, export production as well as rehabilitation or expansion of existing operations. Pioneer enterprises are registered enterprises engaged in the manufacture and processing of products or raw materials that are not yet produced in the Philippines in large volume. It also involves the design, formula or system applied as well as agricultural, forestry and mining activities, the services and energy sectors. Non-pioneer enterprises refer to all registered producer enterprises not included in the pioneer enterprise list.

Qualified projects, depending on their category, are granted a host of incentives, including income tax holidays, tax credits, tax and duty exemption for imported raw materials and equipment, hiring of foreign labor, exemption from contractors tax, simplified customs procedure, and other tax incentives. Investors are assured the right to repatriate of profits and earnings, payment of foreign loans and interests, and freedom from expropriation. As an attached agency of the Department of Trade and Industry (DTI), the BOI is the implementing agency authorized to grant incentives, set investment priorities programs and promote the country as an investment site.

Under the Code, any individual, corporation, partnership, or association that meets the criteria set forth in Article 32 thereof shall be entitled to registration. These criteria include:

1. **Citizenship requirement.**
   a. If the applicant investor is a natural person, he must be a Filipino citizen.
   b. If the applicant investor is a partnership or any other association, it must be organized under Philippine laws and that at least 60% of its capital is owned and controlled by Filipino citizen.
   c. If the applicant investor is a corporation or cooperative, it must be organized under Philippine laws and that at least 60% of the capital stock outstanding and entitled to vote is owned and held by Filipinos and at least 60% of the members of the Board of Directors are citizens of the Philippines. If it does not possess the required degree of ownership by Philippine nationals, it may still apply for registration provided that the following are met:

      - Proposal to engage in pioneer project/s (i.e., engaging in the manufacture, assembly, or production of goods that have not been or are not being produced in the Philippines on a commercial scale; or which uses a formula or method which is new in the Philippines; or engaging in agricultural and other related activities which are deemed as highly essential in attaining agricultural self-sufficiency or other declared national goals; or engaging in activities which produces non-conventional fuels and manufactures which utilize non-conventional sources of energy and other related processes), or proposal to at least 70% of its total production;

- Obligates itself to attain the status of a Philippine national within 30 years from the date of registration (however, a firm which exports 100% of its total production need not comply with this requirement); and

- The pioneer undertaking it will engage in is one that is not within the activities reserved by the Constitution or other related laws to Filipinos (see earlier discussion on ***Constitutional Guarantees and Prohibitions***).

2. **Proposal to engage in a preferred project listed or authorized under the prevailing IPP.**

   a. If proposed activity is not listed in the IPP –

      - At least 50% of its total production is for export or it is an existing producer which will export part of the production under the conditions to be imposed by the BOI; or

      - Proposal to engage in the sale abroad of export products bought by it from one or more export producers; or

      - Proposal to engage in rendering technical, professional, or other services or in exporting television, motion picture, and musical recordings made or produced in the Philippines.

3. **Capability of operating on a sound and efficient basis of contributing to the national development of the preferred area in particular and of the national economy in general.**

4. **Installation or an undertaking to install an accounting system adequate to identify the investments, revenues, costs, and profits and losses of each preferred project undertaken by the enterprise separately from the aggregate figures over the same items, if applicant proposes to engage in activities other than preferred projects.**

Fiscal and Non-Fiscal Incentives

As soon as said application is granted and the individual or firm becomes registered, the same shall be entitled to several incentives granted to registered enterprises. These incentives, which consist of both fiscal and non-fiscal incentives, generally include:

1. **Tax exemptions, credits, and deductions**

   a. Income tax holidays

- Six (6) years for pioneer firms

- Four (4) years for non-pioneer firms
  - ♦ If non-pioneer firm located in less developed area, six (6) years.

- No income tax holiday for registered firms located within Metro Manila, unless they are:
  - ♦ Within a government industrial estate
  - ♦ Service-type projects with no manufacturing facilities
  - ♦ Power generating plants
  - ♦ Exporters with expansion projects

b. Tax credit on raw materials, supplies, and semi-manufactured products

c. Additional deduction from taxable income for labor expense

d. Additional deduction from taxable income for necessary and major infrastructure works

e. Tax and duty exemptions on imported capital equipment

f. Tax credit on domestic capital equipment

g. Exemption from contractor's tax

h. Tax exemption on importation of breeding stocks and genetic materials

i. Tax credit on domestic breeding stocks and genetic materials

j. Exemption from wharfage dues and any export tax, duty, impost and fee

2. Non-fiscal incentives

a. Employment of foreign nationals

- A registered enterprise may be allowed to employ foreign nationals in supervisory, technical, or advisory positions for a period not exceeding five (5) years from its registration (which may be extended upon the BOI's discretion). However, when the majority of the capital stock of a registered enterprise is owned by foreign investors, the position of president, treasurer, and general manager or their equivalents may be retained by foreign nationals beyond the five-year period.

b. Simplification of customs procedure

c. Unrestricted use of consigned equipment

d. Access to bonded manufacturing/trading warehouse system

2. RA 7092, as amended (Foreign Investments Act of 1991)

The Foreign Investments Act of 1991 (FIA, for brevity) expressly declares that as a general rule, foreigners can invest as much as 100% equity in domestic enterprises except in areas included in the Negative List (see discussion above). Note however that no foreign-ownership restrictions are imposed on export enterprises, i.e., a manufacturer, processor, or service enterprise whereby at least 60% of its output is exported, or a trader which purchases products domestically and exports at least 60% of such purchases. Foreign owned firms catering mainly to the domestic market shall be encouraged to undertake measures that will gradually increase Filipino participation in their business by taking in Filipino partners, electing Filipinos to the board of directors, implementing transfer of technology to Filipinos, generating more employment for the economy, and enhancing skills of Filipino workers. The law specifies the limits on the extent of allowable foreign ownership. There are no restrictions on foreign ownership in export and domestic market enterprises, but a Foreign Investment Negative List or Negative List defines the areas of economic activities where foreign ownership is limited. The Transitory Foreign Investment negative list will be replaced at the end of the transitory period when adjustments in the equity limits will be effected.

Former natural-born Filipinos are granted the same investment rights of a Philippine citizen based on existing investment and related laws. However, former natural-born Filipinos are restricted in some areas such as defense-related activities, exercise of profession, activities covered by the Retail Trade Act, Small Scale Mining Act, Rice and Corn Industry Act and other laws. Also, all industrial enterprises, regardless of the citizenship of owners, are required to comply with existing environmental standards.

Without need of prior approval, a non-Philippine national and not otherwise disqualified by law may, upon registration with the Philippine Securities and Exchange Commission (SEC) or with the Bureau of Trade Regulation and Consumer Protection (BTRCP) of the Department of Trade and Industry (in case of sole proprietorships), do business in the Philippines or invest in domestic enterprise up to 100% of its capital, unless participation of non-Philippine nationals is totally or partially proscribed by existing laws (see discussion on ***Constitutional Guarantees and Prohibitions***). The SEC or BTRCP shall not impose any additional limitations on the extent of foreign ownership in an enterprise.

An investor can be considered a non-Philippine national in the following instances:

1. Citizen of a country other than the Philippines;
2. Partnership or association not wholly owned by Filipino citizens;
3. In case of corporations:
   a. Organized under foreign laws and which less than 60% of the outstanding capital stock and entitled to vote is owned and held by Filipino citizens;

   b. Organized under foreign laws and registered as doing business in the Philippines under the Corporation Code of which less than 100% of the outstanding voting capital stock is owned by Filipinos.

It should be noted that under the FIA, any enterprise seeking to avail of incentives under the Omnibus Investments Code of 1987 must apply for registration with the BOI, and such application must comply with the criteria set forth in said Code (see discussion on the ***Omnibus Investments Code of 1987***).

3. RA 8756 (Incentives to Corporations Establishing RHQ or ROHQ)

Seeking to encourage wider foreign participation in the country's economic activities, the Philippine legislature enacted Republic Act 8756 which provides for terms and conditions for the establishment and operation of Regional or Area Headquarters (RHQ, for brevity) and Regional Operating Headquarters (ROHQ, for brevity) of multinational companies, and grants incentives thereof.

An RHQ is an office whose purpose is to act as an administrative branch of a multinational company engaged in international trade which principally serves as a supervision, communication, and coordination center for its subsidiaries, branches, or affiliates in the Asia-Pacific region and other foreign markets and which does not earn or derive income in the Philippines. Meanwhile, an ROHQ, is a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries, or branches in the Philippines, in the Asia-Pacific region, and in other foreign markets. These qualifying services include the following:

1. General administration and planning;
2. Business planning and coordination;
3. Sourcing and procurement of raw materials and components;
4. Corporate finance advisory services;
5. Marketing control and sales promotion;
6. Training and personnel management;
7. Logistic services;
8. Research and development services and product development;
9. Technical support and maintenance;
10. Data processing and communication; and
11. Business development.

The following is an outline of the licensing requirements for RHQ and ROHQ:

LICENSING REQUIREMENTS	
REGIONAL OR AREA HEADQUARTERS	***REGIONAL OPERATING HEADQUARTERS***
• Secure license with the Philippine Securities and Exchange Commission (SEC), upon favorable recommendation of the Board of Investments (BOI) • Minimum requirements: - Certification from the Philippine Consulate Embassy, or duly authenticated certification from the Philippine Dept. of Trade and Industry or its equivalent in the foreign firm's home country a. That the firm is engaged in international trade with affiliates, subsidiaries, or branches in the Asia-Pacific region and other foreign markets - Certification from the principal officer of the	• Secure license with the Philippine SEC, upon favorable recommendation of the BOI - However, ROHQs of banking and financial institutions, required to secure licenses from both the SEC and the *Bangko Sentral ng Pilipinas* (BSP, for brevity). • Minimum requirements: - Certification from the Philippine Consulate Embassy, or duly authenticated certification from the Philippine Dept. of Trade and Industry or its equivalent in the foreign firm's home country a. That the firm is engaged in international trade with affiliates, subsidiaries, or

firm a. That the firm has been authorized by its Board of Directors to establish its RHQ in the Philippines, specifying the following: 1. Activities of the RHQ shall be limited to acting as supervisory, communication, and coordinating center for its subsidiaries, branches, and affiliates in the region 2. RHQ will not derive any income from sources within the Philippines 3. RHQ shall notify the BOI and the SEC of any decision to close down or suspend its operations 15 days before the same is effected - An undertaking that the multinational company will remit into the Philippines such amount of money as may be necessary to cover RHQ's operations but which amount shall not be less than US$50,000.00 or its equivalent in other foreign currencies - An undertaking that any violation of the Omnibus Investments Code and its implementing rules and regulations shall constitute sufficient cause for the cancellation of RHQ's license to operate	branches in the Asia-Pacific region and other foreign markets - Certification from the principal officer of the firm a. That the firm has been authorized by its Board of Directors to establish its ROHQ in the Philippines, specifying the following: 1. ROHQ may engage in any of the following qualifying services – ♦ General administration and planning ♦ Business planning and coordination ♦ Sourcing and procurement of raw materials and components ♦ Corporate finance advisory services ♦ Marketing control and sales promotion ♦ Training and personnel management ♦ Logistic services ♦ Research and development services and product development ♦ Technical support and maintenance ♦ Data processing and communication ♦ Business development 2. ROHQ, prohibited from offering qualifying services to entities other than its affiliates, branches, or subsidiaries 3. ROHQ shall notify the BOI, the SEC, and the BSP, as the case may be, of any decision to close down or suspend its operations 15 days before the same is effected - An undertaking that the multinational company will remit into the Philippines such amount of money as may be necessary to cover ROHQ's operations but which amount shall not be less than US$200,000.00 or its equivalent in other foreign currencies - An undertaking that any violation of the Omnibus Investments Code and its implementing rules and regulations shall constitute sufficient cause for the cancellation of ROHQ's license to operate

Once the application for license to establish and operate a RHQ or a ROHQ, the same shall be entitled to the following incentives:

SCHEDULE OF INCENTIVES	
REGIONAL OR AREA HEADQUARTERS	***REGIONAL OPERATING HEADQUARTERS***

• Exemption from income tax and branch profits remittance tax • Exemption from value-added tax (VAT, for brevity) • Sale or lease of goods and property and rendition of services to RHQs shall be zero-rated for purposes of VAT • Exemption from all kinds of local government taxes, fees, or charges, except real property tax on land improvements and equipment • Tax and duty free importation of training materials and equipment	• Subject to 10% preferential tax rate on taxable income • Subject to branch profits remittance tax • Subject to 10% VAT • Exemption from all kinds of local government taxes, fees, or charges, except real property tax on land improvements and equipment • Tax and duty free importation of training materials and equipment

Additionally, the law allows foreign personnel of RHQs and ROHQs of multinational companies and their respective spouses and unmarried children under 21 years of age to be issued multiple entry special visas which shall be valid for three (3) years. Income derived from their work in the RHQs and ROHQs shall be subject to a preferential income tax rate of 15%, provided that the same rate shall be imposed on Filipino employees occupying similar positions. Moreover, said expatriates shall be entitled to tax and duty free importation of personal and household effects, exempted from travel tax and special immigration fees and requirements.

4. RA 8762 (Retail Trade Liberalization Act of 2000)

In line with the policy of promoting consumer welfare by attracting, promoting, and welcoming investments that will lower retail prices for Filipino consumers, create more employment opportunities, and establish a more competitive local retail market, the Retail Trade Liberalization Act of 2000 allows foreign investors to invest in the retail sector. As a rule, Philippine retail enterprises must be owned and operated by Philippine citizens or corporations or entities owned exclusively by Philippine citizens. Under the new law, foreign entities are now permitted to engage in retail trade business in the Philippines, provided that they comply with the requirements for capitalization, net worth, and other criteria.

Foreign-owned partnerships, associations, and corporations organized under Philippine laws may, upon registration with the SEC and the Department of Trade and Industry (DTI, for brevity), or with the DTI alone in case of sole proprietorship, engage or invest in the retail trade business, subject to the following categories:

CATEGORY	***PAID-UP CAPITAL***	***FOREIGN OWNERSHIP***	***OTHER CONDITIONS***
A	• Equivalent in Philippine pesos (PhP) of less than US$2.5 million	• Not allowed • Reserved exclusively for Filipino citizens and corporations wholly owned by Filipino citizens (see discussion on ***Constitutional Guarantees and Prohibitions***)	
B	• Equivalent in PhP of US$2.5 million but less than US$7.5 million	• May be wholly owned by foreigner except for the first two (2) years after the effectivity of this law (two-year period will	• In no case shall the investments for establishing a store be less than the equivalent in PhP of US$830,000.00

		last up to year 2002) wherein foreign ownership shall be limited to 60% of the total equity	
C	• Equivalent in PhP of US$7.5 million or more	• May be wholly owned by foreigner	• In no case shall the investments for establishing a store be less than the equivalent in PhP of US$830,000.00
D	• Specializing in high-end or luxury products • Equivalent in PhP of US$250,000.00 per store	• May be wholly owned by foreigners	• High-end/luxury products are goods which are not necessary for life maintenance and whose demand is generated in large part by the higher income groups (ex: jewelry, branded apparel, leisure and sporting goods, electronics and other personal effects.

The law imposes the following qualifications for foreign retailers before they are allowed to engage in such business in the Philippines:

1. A minimum of US$200 Million net worth in its parent corporation for Categories B and C, and US$ 50 Million net worth in its parent corporation for Category D;

2. Five (5) retailing branches or franchises in operation anywhere around the world unless such retailer has at least one (1) store capitalized at a minimum of US$25 Million;

3. Five (5)-year track record in retailing; and
4. Only nationals from, or juridical entities formed or incorporated in countries which allow the entry of Filipino retailers shall be allowed to engage in retail trade in the Philippines.

However, a qualified foreign retailer is not allowed to engage in certain retailing activities outside their accredited stores through the use of, mobile or rolling stores or carts, sales representatives, door-to-door selling, restaurants and *sari-sari* stores and such other similar means.

5. RA 7916, as amended (The Special Economic Zone Act of 1995)

The Special Economic Zone Act of 1995 provides a framework for establishing special economic areas, called *ecozones* throughout the country whereby companies and industries establishing their operations therein are given incentives and privileges. An *ecozone* is a selected area with highly developed enterprises or which have the potential to be developed into agro-industrial, industrial, tourist/recreational, commercial, banking, investment, and financial centers.

Firms registered with the Philippine Export Zone Authority (PEZA, for brevity) and operating within the ecozones shall be entitled to similar incentives granted to those enterprises covered by the Omnibus Investments Code of 1987 (see discussion on The Omnibus Investments Code of 1987) and by Presidential Decree 66. These include:

1. All incentives for BOI-registered enterprises (e.g., income tax holidays)
2. Preferential tax rate of 5% on gross income in lieu of all national and local taxes, after the lapse of income tax holiday

3. Deduction from the national government's share (3% out of the 5% final tax) of an amount equivalent to ½ of the value of training expenses incurred in developing labor or for management programs

Additionally, PEZA-registered firms are given tax and duty exemption on importations of capital equipment, raw materials, and other merchandise directly needed in its operations.

Aside from the establishment of ecozones and providing for incentives to firms operating within said areas, other special economic zones were established under separate laws. These are the Subic Bay Free Port Zone (under the administration of the Subic Bay Metropolitan Authority), the Clark Field Development Zone (under the management of the Clark Development Corporation), and the special economic zones in Zamboanga City (located in the southwestern Mindanao) established by Republic Act 7903, and in the province of Cagayan (in the northern Luzon) established by Republic Act 7922. Firms located in these special economic zones are entitled to the same benefits and privileges extended to PEZA-registered firms.

6. Registration with the SEC and BSP

The Securities and Exchange Commission (SEC, for brevity) is a government agency tasked with regulation and supervision organized enterprises in the Philippines, such as partnerships and corporations. Any corporation or partnership, including foreign corporations licensed to engage in business or to set up a branch in the Philippines, is required to seek SEC registration before starting its operations. The Corporation Code of the Philippines outlines the requirements for registration.

The Bangko Sentral ng Pilipinas (BSP, for brevity) is the country's central monetary authority. If a foreign investor wishes to repatriate capital or remit dividends and earnings using foreign currency sourced from the Philippine banking system, he must secure BSP registration respecting his investment. With the BSP registration, the foreign investor is entitled to repatriate capital and remit profits and dividends and concerned banks are authorized to repatriate and remit the same in the desired foreign currency at the exchange rate prevailing. On the other hand, unregistered foreign investments are free to source their foreign exchange outside the Philippine banking system.

7. Taxation

Taxes on Individuals. In the case of individual taxpayers, the worldwide income of resident Filipino citizens are subject to Philippine income tax, while only Philippine-sourced income of resident aliens and non-resident aliens are subject to the same. The tax rates imposed on individual taxpayers is graduated from 5% to 33%, with the top rate imposed on persons with a taxable income in excess of PhP500,000.00. However, in the case of individual non-resident aliens whose stay in the Philippines does not exceed 180 days in a calendar year, they are taxed 25% of their gross income from Philippine sources.

Corporate Taxes. Domestic corporations, i.e., established under the laws of the Philippines, are taxed at 32% on their net taxable income derived from all sources. The same tax rate is imposed on foreign corporations, whether or not engaged in trade or business in the Philippines, on their income derived in the Philippines. However, a foreign corporation engaged in trade or business in the Philippines, called a resident foreign corporation, computes its income tax liability based on its net income and has the option to pay 15% tax on gross income. A non-resident foreign corporation, i.e., a foreign corporation not engaged in trade or business in the Philippines, is taxed on its gross income.

The following are additional points to consider as regards individual and corporate taxation in the Philippines:

Individual Taxpayer	*Corporate Taxpayer*
• 15% tax rate imposed on income (salaries, annuities, honoraria, allowances, etc.) of aliens employed in the following: - Regional or area headquarters or regional operating headquarters of multinational corporations - Representative offices - Offshore banking units - Petroleum service contractors/subcontractors • Capital gains tax on sales of shares of domestic stocks: - 5% on the first PhP100,000.00 gains and 10% on the excess over PhP100,000.00, if the stock is not traded in the Philippine Stock Exchange (PSE) - ½ of 1% of the gross selling price or gross value in money of the stock sold, if stock sold is listed in the PSE • Tax on stocks sold or disposed at initial public offering - Tax rate (1%, 2%, 4%) varies according to the proportion of the shares sold or disposed to the total outstanding shares after listing • Capital gains tax of 6% based on the gross selling price or fair market value, whichever is lower, on the sale of real property • Tax on passive income (e.g., interest, dividends, prizes, royalties, and other winnings) • Final tax of 32%, imposed on the individual employer, on the grossed-up monetary value of fringe benefits given to employees, except rank-and-file, unless the fringe benefit is required by the nature of the trade, business, or profession of the	• 10% tax on net taxable income - Proprietary educational institutions and non-profit hospitals • Final tax of 10% - For foreign currency deposit units and offshore banking units, on their income from foreign currency transactions with local commercial banks, authorized branches of foreign banks, and depository banks under the foreign currency deposit system • 15% branch profits remittance tax - Excluding those registered with PEZA • General tax of 32% imposed on dividends declared by a domestic corporation to its parent company - If country of the recipient foreign corporation grants a tax credit of 17% as tax deemed paid in the Philippines, tax is reduced to 15%. • Capital gains tax on sales of shares of domestic stocks: - 5% on the first PhP100,000.00 gains and 10% on the excess over PhP100,000.00, if the stock is not traded in the Philippine Stock Exchange (PSE) - ½ of 1% of the gross selling price or gross value in money of the stock sold, if stock sold is listed in the PSE • Tax on passive income, such as dividends and royalties - Exempt from tax are dividends received by a domestic corporation and a resident foreign corporation from a domestic corporation • Final tax of 32%, imposed on the corporate employer, on the grossed-up monetary value of

employer	fringe benefits given to employees, except rank-and-file, unless the fringe benefit is required by the nature of the trade, business, or profession of the employer

Aside from the taxes imposed on the abovementioned items, there are certain business taxes imposed by both the national and local governments. Said taxes are payable by both individual and corporate taxpayers. These taxes include:

National Tax	***Local Tax***
• Generally, 10% value-added tax (VAT) imposed on: - Importation of goods - Sale, barter, exchange, or lease of goods, properties, services in the Philippines, with certain exceptions • Gross receipt tax on the following endeavors: - 0%-5%, on bank and other non-bank financial intermediaries - 5%, on insurance companies - 3%, on common passenger carriers - 2%, on electric, gas, and water utilities - 3%-30%, on other businesses • Excise tax on certain products (e.g., tobacco, alcohol, mineral and petroleum products, jewelry, automobiles, etc.)	• Real estate tax • Documentary stamp tax • Overseas communication tax • On manufacturers, wholesalers, exporters, and contractors: - Percentage tax on sales or gross receipts, imposable rate depending on the place where the business is situated • Percentage tax on banks and other financial institutions

Pursuant to the provisions of the Philippine Electronic Commerce Act, the Bureau of Internal Revenue (BIR, for brevity), the country's leading tax revenue collecting agency, issued a regulation allowing the electronic filing of tax returns and payment of taxes (BIR Revenue Regulations 9-2001; 03 August 2001). Now, taxpayers are given the option to avail of the BIR's Electronic Filing and Payment System (EFPS, for brevity) in the filing of their returns and paying the taxes due thereon. A taxpayer interested to e-file his tax returns and e-pay the tax due may enroll with the BIR and any of its authorized agent banks.

8. RA 8293 (Intellectual Property Code of the Philippines)

As earlier mentioned, the Intellectual Property Code of the Philippines (IPC, for brevity) provides a legal framework that secures the intellectual property rights of authors, inventors, scientists, engineers, artists, writers and composers, among others. Under the IPC, intellectual property consists of copyright and related rights; trademarks and service marks; geographic indications; industrial designs; patents; layout designs or topographies of integrated circuits, and protection of undisclosed information. The Intellectual Property Office (IPO, for brevity) is tasked to administer and implement the provisions of said law within the Philippines.

Foreign entities who want to engage in inventive undertakings are covered by the protection granted by the IPC. In addition, the IPC espouses a principle of reciprocity whereby, any person who is a national or is domiciled or has a real and effective industrial establishment in a country which is a party to any convention, treaty, or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to Philippine nationals by law, shall be entitled to the benefits under such convention, treaty, or reciprocal law.

The IPC also provides for reverse reciprocity. This principle states that any condition, restriction, or limitation imposed by a foreign country's law on a Philippine national seeking protection of intellectual property rights in that foreign country shall reciprocally be enforceable upon nationals of said country within the Philippine jurisdiction.

The IPC also regulates technology transfer arrangements (TTA, for brevity) and requires that the same be registered with the Documentation, Information, and Technology Transfer Bureau of the IPO. A TTA is a contract or agreement involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts, and the transfer, assignment, or licensing of all forms of intellectual property rights, including licensing of software except computer software developed for the mass market.

As expressly provided for in the IPC, a TTA must provide among others, that:

1. The governing law in the interpretation of the agreement shall be Philippine law, and venue for litigation shall be the proper court where the licensee has its principal place of business;

2. There shall be continued access to technical and processual improvements during the period of the TTA;

3. If there is a provision for arbitration, the procedure for arbitration provided for in the Philippine Arbitration Law of the UNCITRAL's Arbitration Rules or the Rules of Conciliation and Arbitration of the International Chamber of Commerce shall apply, and venue of the arbitration shall be the Philippines or any neutral country; and

4. The Licensor shall bear the payment of Philippine taxes imposed on the TTA.

Furthermore, a TTA must not contain any of the following prohibited clauses:

1. Imposing on the licensee an obligation to acquire from specific sources inputs, other raw materials, and technologies, or of permanently employing personnel indicated by the licensor;

2. Allowing the licensor the right to fix the selling prices of goods produced by the licensee;

3. Restricting the volume and structure of production;
4. Prohibiting the use of competitive technologies in a non-exclusive TTA;
5. Establishing a full or partial purchase option in favor of the licensor;
6. Obligating the licensee to transfer for free to the licensor the inventions or improvements that may be obtained through the use of the licensed technology;

7. Requiring payment of royalties to the owners of patents for patents which are not used;

8. Prohibiting the licensee to export the licensed product unless justified for the protection of the legitimate interest of the licensor;

9. Restricting the use of the technology supplied after the expiration of the TTA, except in cases where the early termination of the TTA is due to reason/s attributable to the licensee;

10. Requiring payments for patents and other industrial property rights after their expiration;

11. Requiring that the technology recipient shall not contest the validity of any of the patents of the technology supplier;

12. Restricting the research and development activities of the licensee designed to absorb and adapt the transferred technology to local conditions or to initiate research and development programs in connection with new products, processes, or equipment;

13. Preventing the licensee from adapting the imported technology to local conditions or from introducing innovations to it, as long as it does not impair the licensor's quality standards; and

14. Other anti-competition clauses.

However, the aforesaid prohibition against anti-competition clauses does not apply in exceptional cases where the Philippine economy shall reap substantial benefits, such as high technology content, increase in foreign exchange earnings, employment generation, or countryside industrial dispersal or use of raw material as substitute inputs.

V. MISCELLANEOUS INFORMATION

As mentioned, the government's with the participation of the business sector, seeks to develop the country's potential to become Asia's E-Services Hub. In the 2001 Philippine Investments Priority Plan, information and communication technology (ICT, for brevity), particularly IT services, IT-enabled services, ICT support activities, and IT parks, are included in the national priority list. Any firm desiring to undertake investment and development projects in this field shall be entitled to the incentives provided for in the Omnibus Investments Code of 1987 (i.e., those given to BOI-registered firms; see discussion above). This echoes the government's commitment to use IT as one of its strategies in achieving industrial and technological development as envisioned by the Philippine MTPDP 1998-2004.

Consistent with this strategy, the Information Technology and Electronic Commerce Council (ITECC) was formed by the government to spearhead the efforts in turning the country into a major IT center. The ITECC is a government-private sector partnership composed of high-level officials from the government and private sectors. It establishes comprehensive plans, strategies, and policies that shape the Philippine IT environment. To emphasize the government's determination in developing the IT sector, the President of the Philippines herself has chosen to chair the ITECC (for more information, visit http://www.itecc.gov.ph).

A. IT SERVICES

Pursuant to the policy of encouraging more investments in the Philippine IT sector, the government recently issued a framework of guidelines for the registration and administration of incentives for IT services under the Omnibus Investments Act of 1987. The guidelines cover the following projects offering services domestically and internationally which are eligible for BOI registration:

1. **ICT-Services**
   a. **Application software** -- refers to the development of packaged software programs that provide solutions to specific industry of business problems and to problems across industries
   b. **Middleware projects** -- refers to the development of computer programs that are used as interface among disparate application systems, or to develop and manage new applications that are robust, scalable, and highly available
   c. **System software** -- refers to the development of operating system-type and software tools-type packaged programs

2. **ICT-enabled services-** business process outsourcing (BPO) refers to business lines that can be transformed and delivered through the means of ICT infrastructure. These include: customer contact centers, engineering and design, animation and content creation, distance learning, market research, travel services, finance and accounting services, human resource services and other administrative services (e.g., purchasing). For foreign entities (more than 40% foreign-owned), at least 70% of total services rendered must be exported. Filipino-owned entities, however, must export at least 50% of total services rendered.

   Entities primarily serving the domestic must comply to the existing international standards for specific services rendered, in terms of equipment, tools and processes.

3. **ICT Support and knowledge-based services-** pure research and development center and services, educational and training institutions for ICT, incubation centers for ICT projects, community access facilities.

ICT Learning Institutions refer to the establishment and operation of training institution/center specializing in developing skills for the information and communication technology sector utilizing state-of-the-art facilities. To qualify for registration, project shall be endorsed by either the Technical Education and Skills Development Authority (TESDA) or Commission on Higher Education (CHED) or any other appropriate government agencies or endorsed by the recognized industry associations in the field of training.The project to be registered must provide training laboratories utilizing state-of-the-art personal computers (should be the latest model in the market) and with reliable means of connection to the Internet. The ratio of PC to number of students must be 1:1 per class and the ratio of trainer to trainees should not be more than 1:16 per class. Prior to availment of incentives, firm shall submit proof that its curriculum has been endorsed by either TESDA or CHED or any other appropriate government agencies or recognized industry associations in the field of training. Community Access Facilities refer to activities that will provide facilities for mass-based use of internet/e-commerce. These include internet cafés, kiosks, multipurpose communication telecenters, etc. which must be located outside Metro Manila, Metro Cebu and Davao.

Following are the qualifications for registration:

a) Utilizes a network that provides reliability of access;

b) There is a roll-out plan covering various areas of the country;
c) Support the programs of the Local Government Units (LGUs) aimed at complying with Government On-line; and,
d) Assists/partners with schools/educational institutions in promoting E-commerce and in augmenting the lack of sufficient computer facilities.

If the registered project will provide access to unserved municipalities as identified by the Department of Transportation and Communications (DOTC), the firm shall be granted pioneer incentives.

For *ICT Learning Institutions* and *Community Access Facility:* Projects that fail to comply with the minimum conditions set on investment cost and technical requirements for pioneer status shall be downgraded to non-pioneer.

Projects that fail to comply with the minimum conditions set on technical requirements for non-pioneer status shall be required to refund the incentives availed. To be eligible for pioneer status, all ICT activities must comply with any of the following requirements:

a. Utilizes new or untried technology;
b. Introduces a major innovation in software development; and
c. Project cost should be at least US$2 million.

An application for registration under the guidelines for IT services must be accompanied by a project feasibility study and must strictly comply with the requirements provided in the Omnibus Investments Act of 1987, its implementing rules and regulations, and the 2001 Investments Priority Plan. As soon as such application is approved, the registered IT enterprise shall be entitled to the following 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.

The ITH is limited in the following cases:

a) Export traders may be entitled to the ITH only on income derived from the following:

b) Export of new products, i.e. those which have not been exported in excess of US$100,000 in any of the two (2) years preceding the filing of application for registration, or
c) Export to new markets, i.e., to a country where there has been no recorded import of a specific export product in any of the two (2) years preceding the filing of the application for registration.

New registered pioneer and non-pioneer enterprises and those located in LDAs may avail themselves of a bonus year in each of the following cases:

a) The indigenous raw materials used in the manufacture of the registered product must at least be fifty percent (50%) of the total cost of raw materials for the preceding years prior to the extension unless the Board prescribes a higher percentage; or

b) The ratio of total imported and domestic capital equipment to the number of workers for the project does not exceed US$1,000 to one worker; or

c) The net foreign exchange savings or earnings amount to at least US$500,000 annually during the first three (3) years of operation.

In no case shall the registered pioneer firm avail of the ITH for a period exceeding eight (8) years.

b) Additional Deductions from Taxable Income

Additional deduction for labor expense (ADLE).
For the first five (5) years from registration, a registered enterprise shall be allowed an additional deduction from taxable income equivalent to fifty percent (50%) of the wages of additional skilled and unskilled workers in the direct labor force. The incentive shall be granted only if the enterprise meets a prescribed capital to labor ratio and shall not be availed of simultaneously with ITH. This additional deduction shall be doubled if the activity is located in a Less Developed Areas (LDA).

Additional deduction for necessary and major infrastructure works.
Registered enterprises locating in LDAs or in areas deficient in infrastructure, public utilities and other facilities may deduct from taxable income an amount equivalent to the expenses incurred in the development of necessary and major infrastructure works.

c) Non-Fiscal Incentives

Non-fiscal incentives are as follows:

Employment of Foreign Nationals
A registered enterprise may be allowed to employ foreign nationals in supervisory, technical or advisory positions for five (5) years from date of registration. The position of

President, General Manager and Treasurer of foreign-owned registered enterprises or their equivalent shall however not be subject to the foregoing limitations.

Simplification of customs procedures for the importation of equipment, spare parts, raw materials and supplies and exports of processed products.

Importation of consigned equipment for a period of 10 years from date of registration, subject to posting of a re-export bond.

B. IT PARKS

Aside from the incentives extended by the BOI to certain IT enterprises and projects, the PEZA also provides for similar privileges to enterprises that undertake IT activities and/or situate themselves in approved IT parks.

The PEZA Board of Directors issued a resolution (Resolution No. 99-264, October 1999) setting the guidelines for the establishment and operation of IT parks. An IT park is an area, classified as a special economic zone, that has been developed into a complex, capable of providing infrastructure and other support facilities required by IT enterprises, including amenities required by professionals and workers involved in IT enterprises. To date, there are nine (9) approved and/or proclaimed IT parks, covering a total area of approximately 113 hectares, the majority of which are situated in the Metropolitan Manila area. The following is a list of approved/proclaimed IT parks:

NAME OF IT PARK	*LOCATION*
Eastwood City CyberPark	Quezon City, Metro Manila
E-Square Information Technology Park	Fort Bonifacio Global City, Taguig, Metro Manila
Northgate Cyber Zone	Filinvest Corporate City, Muntinlupa, Metro Manila
RCBC Plaza Information Technology Park	Makati City, Metro Manila
CCTC Information Technology Park	Cebu City
PBCom Towers	Makati City, Metro Manila
Bonifacio Information Special Technology Zone	Fort Bonifacio Global City, Taguig, Metro Manila

Robinson's CyberPark	Mandaluyong City, Metro Manila
Summit One Office Towers	Mandaluyong City, Metro Manila

The PEZA allows the establishment of an IT park in any suitable location, the only limitation being that if the same shall be established within the Metropolitan Manila area, i.e., Manila, Quezon City, Caloocan City, Makati City, Pasay City, Mandaluyong City, Las Piñas, Marikina, Pasig City, Valenzuela, Parañaque, Muntinlupa, Malabon, Navotas, Pateros, San Juan, and Taguig, only service-type projects are allowed with no manufacturing operations. Generally, an IT park must at least have a minimum area of five (5) hectares. However, those to be established in the Metropolitan Manila area must have an available business area of at least 5,000 square meters. The following PEZA-registrable activities may be situated in an IT park:

1. Software development for business, e-commerce, education, and entertainment
2. Content development for multimedia or internet purposes
3. Hardware design, prototype production, and other related activities
4. Knowledge and computer-based support activities (e.g., software support, data encoding and conversion, internet facilitation, systems integration, project implementation, IT consultancy, call center)
5. Research and development services
6. Manufacturing facilities (for IT parks established outside Metro Manila)

Any person or entity interested in developing an IT park may do so by following the procedure prescribed by the PEZA. Generally, an IT park must have the following amenities and features:

1. High-speed fiber-optic telecommunication backbone and high-speed international gateway facility or wide-area network, or any high-speed data telecommunications system that may become available in the future
2. Clean and uninterrupted power supply
3. Computer security and building monitoring and maintenance system
4. May provide for IT business and technology incubation centers

An IT park becomes operational as soon as the required Presidential Proclamation is issued.

Owners/developers of IT parks located within Metro Manila are not entitled to PEZA incentives, unless said owners/developers are already covered by Presidential Proclamations or had secured a PEZA approval prior to these guidelines. On the other hand, owners/developers of IT parks located outside of Metro Manila are entitled to PEZA incentives, which include:

1. Income tax holiday
   a. Generally, for four (4) years
   b. Six (6) years when IT park located in less developed areas, as determined in the Investments Priority Plan
2. After the lapse of income tax holiday period, optional special tax of 5% on gross income earned from enterprises located in the IT park in lieu of all national and local taxes except real property taxes

3. Permanent resident status for foreign investors with initial investments of US$150,000.00
4. Employment of non-resident aliens required in the IT operations
5. Simplified customs procedures
6. May avail of incentive under the Build-Operate-Transfer Law (includes government support for accessing Official Development Assistance and other financing sources)

C. IT ENTERPRISES

For IT enterprises, i.e., company operating or offering IT services, they can seek PEZA Board Approval and registration for availment of incentives under the Omnibus Investments Code of 1984 provided that the following registration requirements are met:

1. Duly accomplished PEZA application form
2. Corporate profile
3. Certificate of Registration with the Securities and Exchange Commission and updated Articles of Incorporation
4. Board resolution authorizing the filing of application with PEZA and designating authorized representative/s
5. Project brief

Upon registration, said enterprise shall be entitled to the following incentives, aside from the incentives provided for in the Omnibus Investments Code of 1987 and the Special Economic Zone Act of 1995 as may be determined by the PEZA Board:

1. Income tax holiday
   a. Four (4) years for non-pioneer IT enterprises
   b. Six (6) years for pioneer IT enterprises
2. After the lapse of income tax holiday period, optional special tax of 5% on gross income earned, in lieu of al national and local taxes, except real property tax
   a. A deduction of equivalent to 50% of the training expenses, charged against the 3% national government share in this optional special tax
3. Exemption from import duties and taxes imposed on imported machinery, equipment, and raw materials
4. Permanent resident status for foreign investors with initial investments of at least US$150,000.00

Due regard must also be given to the prevailing wage rates. In the Philippines, such rates may vary across regions. As of May 2003, the National Capital Region, i.e., Metropolitan Manila, imposes the highest daily minimum wage rate at PhP250.00 (approximately US$4.75), with a ceiling of PhP290.00, while the Autonomous Region in Muslim Mindanao (composed of the provinces of Lanao del Sur, Maguindanao, Sulu, and Tawi-Tawi) the lowest at PhP140.00 (approximately US$2.50).

D. SUMMARY CHECKLIST PRIOR TO SETTING UP BUSINESS IN THE PHILIPPINES

In fine, investors setting up business in the country have to comply with the above general requirements. The following checklists identify the requisites and the agencies in charge.

Businesses must check if they comply with registration for the following:

Registration	Agency
Registration of corporations and partnerships	Securities and Exchange Commission (SEC)
Registration of business name/single proprietorship	Department of Trade and Industry- NCR ()DTI-NCR
Registration for incentives availment under Executive Order 226	Board of Investments (BOI)
Registration with other Investment Promotion Agencies for incentive availment	Philiippine Economic Zone Authority (PEZA) Subic Bay Metropolitan Authority (SBMA) Clark Development Corporation (CDC) Cagayan Export Processing Zone Phividec Industrial Authority Zamboanga Economic Zone Authority
Registration of foreign investments for purposes of capital repatriation and profit remittances	Bangko Sentral ng Pilipinas (BSP)

Checklist for Utilities and Pre-Operation Requirements

Requisite	Agency
Securing Tax Identification Number (TIN)	Bureau of Internal Revenue (BIR)
Securing locational clearance/business permit for firms locating in Metro Manila	Metro Manila Development Authority (MMDA)/City Hall/Municipal Offices in the localities where the business will be set up
Securing an employer's SSS number	Social Security System (SSS)
Securing membership in the government health care benefits system	Philippine Health Insurance Corporation
Securing electric services connection	Manila Electric Co. (MERALCO) for businesses within the MERALCO franchise area; local electric utility firms for companies locating in non-MERALCO franchise area
Securing Water services	Maynilad Water Works and/or Manila Water Company for firms locating in Metro Manila and Local Water Utilities Administration (LWUA) for firms locating outside Metro Manila
Securing Telephone services connection	Philippine Long Distance Telephone Co.

(PLDT), Bayantel, Digitel, Smart and Globelines