

## **FOREIGN INVESTMENT LIBERALIZATION PHILIPPINES (FILP)<sup>1</sup>**

Non-Philippine nationals are entitled to own up to 100% of domestic market enterprises in the following areas of activities and enterprises.<sup>2</sup>

### **1. DEFENSE**

#### **1.1. MANUFACTURE OF FIREARMS (CIVILIAN)**

Manufacture, repair, storage and distribution of firearms and explosive products and/or ingredients:

- a. Firearms (handguns to shotguns), parts of firearms, ammunition, and instruments or implements used or intended to be used in the manufacture of firearms;
- b. Gunpower;
- c. Dynamite;
- d. Blasting supplies;
- e. Ingredients used in making explosives:
  - i. Chlorates of potassium and sodium;
  - ii. Nitrates of ammonium, potassium, sodium barium, copper (11), lead (11), calcium and cuprite;
  - iii. Nitric acid;
  - iv. Nitrocellulose;
  - v. Perchlorates of ammonium, potassium and sodium;
  - vi. Dinitrocellulose;
  - vii. Glycerol;
  - viii. Amorphousphosphorus;
  - ix. Hydrogen peroxide;

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<sup>2</sup> Under Rep. Act No. 7042 (1991), as amended by Rep. Act No. 8179 (1996) and Rep. Act No. 11647 (2021), Foreign Investments Act, Sec. 8(b)(2), the minimum paid-up capital for foreign owned enterprises is US\$200,000, unless otherwise provided by law. Under Rep. Act No. 11595, Retail Trade Liberalization Act (2021), Sec. 5, the minimum paid-up capital for foreign owned enterprises engaged in retail trade is PhP25,000,000.

- x. Strontium nitrate powder;
- xi. Toluene; and
- f. Telescopic sights, sniper scope and other similar devices; subject to authorization by the Chief of the Philippine National Police (PNP).<sup>3</sup>

## 1.2. MANUFACTURE OF WEAPONS (MILITARY)

Manufacture, repair, storage and distribution of military ordinances, weapons, ammunition, drones, robots, spacecraft, aircraft, seacraft, land vehicles, hybrid crafts, subject to authorization by the Secretary of the Department of National Defense (DND).<sup>4</sup>

## 2. **FOOD**

### 2.1. AGRICULTURE

Cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry, or fish.<sup>5</sup>

### 2.2. FISHERIES

Production, growing and raising of fish and aquatic products.<sup>6</sup>

### 2.3. RICE AND CORN

Culture, production, milling, processing, trading, acquisition by barter or purchase of rice and corn, by-products thereof, and raw materials.<sup>7</sup>

### 2.4. LEASEHOLD OF AGRICULTURAL LAND

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<sup>3</sup> Exec. Order No. 175, 12<sup>th</sup> Foreign Investment Negative List, List B1 (2022). Rep. Act No. 7042 (1991), as amended by Rep. Act No. 8179 (1996) and Rep. Act No. 11647 (2021), Foreign Investments Act, Sec. 8(b)(1). Rep. Act No. 10591, Comprehensive Firearms and Ammunition Regulation Act (2012).

<sup>4</sup> Rep. Act No. 7042 (1991), as amended by Rep. Act No. 8179 (1996) and Rep. Act No. 11647 (2021), Foreign Investments Act, Sec. 8(b)(1).

<sup>5</sup> Rep. Act No. 8435, Agriculture and Fisheries Modernization Act (1997), Sec. 4.

<sup>6</sup> Id.

<sup>7</sup> Pres. Dec. No. 194, Rice and/or Corn Industry Decree (1973). NFA Reso. No. 193-98, providing for divestment of 30 years.

Leasehold for 99 years of private land for agricultural activities.<sup>8</sup>

## 2.5. AGRO-PROCESSING

Processing of raw agricultural and fishery materials into foods, feeds, pharmaceuticals and other industrial products.<sup>9</sup>

## 2.6. LEASING OF FISHING VESSELS

Acquisition, repair and maintenance, and leasing of steel-hulled fishing vessels to enterprises, cooperatives or associations of fisherfolk, with fixed rental rates, or with variable rentals based on the value of the fish catch or sales.<sup>10</sup>

# 3. **HEALTH**

## 3.1 HOSPITALS AND CLINICS

Operation of hospitals, clinics and facilities for the diagnosis, treatment and care of individuals suffering illness, disease, injury or deformity, or in need of obstetrical or other medical and nursing care.<sup>11</sup>

## 3.2. MANUFACTURE OF DRUGS

Manufacture and/or distribution of drugs recognized in official pharmacopeias and formularies, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals, or intended to affect the structure of any function of the body of humans or animals, except dangerous drugs.<sup>12</sup>

# 4. **INDUSTRY**

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<sup>8</sup> Rep. Act No. 12252, Investors' Lease Act, providing for a long-term lease period of 99 years for agricultural land.

<sup>9</sup> Supra Rep. Act No. 8435, Sec. 4.

<sup>10</sup> Pres. Dec. No. 474, as amended, Maritime Industry Authority (2004). Rep. Act No. 9295, Domestic Shipping Development Act (2004). Rep. Act No. 11321, Sagip Saka Act (2019), Sec. 7.

<sup>11</sup> Rep. Act No. 4226, Hospital Licensure (1965), Secs. 2(a) & 4.

<sup>12</sup> Rep. Act No. 9711, Food and Drug Administration (2009), Secs. 10(f) & 10(y). Rep. Act No. 7042, as amended, Foreign Investments Act (1991), Sec. 8(b)(2). Supra Exec. Order No. 175, List B2 (2022) excludes the manufacture of ordinary drugs. Under Rep. Act No. 9165 (2002), as amended by Rep. Act No. 10640 (2014), Comprehensive Dangerous Drugs Act, dangerous drugs refer to those listed in the annexed Schedules of the 1961 Single Convention on Narcotic Drugs, as amended, and in the annexed Schedules of the 1971 Single Convention on Psychotropic Substances.

#### 4.1. CONSTRUCTION

Construction, alteration, repair, adding to, subtracting from, improving, moving, wrecking or demolishing any building, highway, road, railroad, excavation of other structure, project, development or improvement, or to do any part thereof.<sup>13</sup>

#### 4.2. INFORMATION TECHNOLOGY

Provision of electronic means to access, create, store, process, receive, transmit, present and disseminate information.<sup>14</sup>

#### 4.3. PUBLIC SERVICES

Businesses affected with public interest,<sup>15</sup> including critical infrastructure,<sup>16</sup> but excluding public services classified as public utilities,<sup>17</sup> such as the following:

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<sup>13</sup> Rep. Act No. 4566 (1965), as amended by Rep. Act No. 11711 (2022), Contractor's License Law, Secs. 9(b) & 23. SEC Opinion, Foreign Investments in Construction, 18 April 2001. PCAB v. Manila Water, G.R. No. 217590, re foreign investments in construction.

<sup>14</sup> Rep. Act No. 10844, Department of Information and Communications Technology (2016), Sec. 3(a). Supra Exec. Order No. 175, List A (2022) excludes information technology.

<sup>15</sup> Comm. Act No. 146 (1936), as amended by Rep. Act No. 11659 (2022), Sec. 13(e), which reads as follows:

“A public service which is not classified as a public utility under this Act shall be considered a business affected with public interest for purposes of Sections 17 and 18 of Article XII of the Constitution.

“Notwithstanding any law to the contrary, nationality requirements shall not be imposed by the relevant Administrative Agencies on any public service not classified as a public utility.”

<sup>16</sup> Supra Rep. Act No. 11659, Sec. 2(e), which defines “critical infrastructure” as “systems and assets, whether physical or virtual, so vital to the Republic of the Philippines that the incapacity or destruction of such systems or assets would have a detrimental impact on national security, including telecommunications and other such vital services as may be declared by the President of the Philippines.”

Id. Sec. 24 prohibits entities controlled by foreign governments from owning capital in “critical infrastructure.”

Id. Sec. 25 requires reciprocity for investments in “critical infrastructure.”

<sup>17</sup> Comm. Act No. 146 (1936), as amended by Rep. Act No. 11659 (2022), Public Service Act, Sec. 13(d), which classifies the following “public services” as “public utilities”: (1) distribution of electricity; (2) transmission of electricity; (3) petroleum and petroleum products pipeline transmission systems; (4) water pipeline distribution systems and wastewater pipeline systems, including sewerage pipeline systems; (5) seaports; and (6) public utility vehicles.

Supra Rep. Act No. 11659, Sec. 24 prohibits entities controlled by foreign governments from owning capital in any critical infrastructure.

- 4.3.1. ELECTRICITY GENERATION from any resource, including fossil fuels, nuclear fuels and geothermal resource;<sup>18</sup>
- 4.3.2. PETROLEUM REFINING, excluding transmission and distribution systems;<sup>19</sup>
- 4.3.3. BULK WATER SUPPLY and treatment, excluding transmission and distribution systems;<sup>20</sup>
- 4.3.4. AIRPORTS that provide terminals for aircraft;<sup>21</sup>
- 4.3.5. LAND PORTS that provide terminals for motor vehicles and trains;<sup>22</sup>
- 4.3.6. TOLL ROADS, bridges and tunnels;<sup>23</sup>
- 4.3.7. RAILWAYS that provide for the carriage of passengers and goods by vehicles on tracks;<sup>24</sup>
- 4.3.8. AIRLINES that provide for the carriage of passengers and goods by aircraft;<sup>25</sup>

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Id. Sec. 25 requires reciprocity for investments in critical infrastructure.

<sup>18</sup> Rep. Act No. 7638, Department of Energy Act (1992), Sec. 12, Par. 2(a).

<sup>19</sup> Rep. Act No. 8479, Downstream Oil Industry Deregulation Act (1998), Sec. 4(h), which defines the “downstream oil industry” to include the business of processing and refining crude oil, gasoline, diesel, liquefied petroleum gas, kerosene, and other petroleum products.

<sup>20</sup> Exec. Order No. 710, Ministry of Public Works and Highways (1981). Exec. Order No. 124 (1987), as amended by Exec. Order No. 124-A (1987), Ministry of Public Works and Highways. Pres. Dec. No. 198, as amended, Provincial Water Utilities Act (2004).

<sup>21</sup> Exec. Order No. 125 (1987), as amended by Exec. Order No. 125 (1987), Ministry of Transportation and Communications. Rep. Act No. 10844, Department of Information and Communications Technology, Sec. 15 (2016).

<sup>22</sup> Id.

<sup>23</sup> Id. Supra Exec. Order No. 710. Supra Exec. Order No. 124.

<sup>24</sup> Supra Exec. Order No. 125. Supra Rep. Act No. 10844.

<sup>25</sup> Id. Rep. No. 776, as amended, Civil Aeronautics Board (1987). Rep. Act No. 9497, Civil Aviation Authority Act (2008).

4.3.9. SHIPPING that provide for the carriage of passengers and goods by seacraft;<sup>26</sup>

4.3.10. TELECOMMUNICATIONS that provide for the relay and receipt of voice, data, electronic messages, fixed or moving pictures, audible signals by wire, radio or other technological means;<sup>27</sup>

4.3.11. SOLID WASTE MANAGEMENT for the segregation, collection, transport, recycling, composting and disposal of non-hazardous/non-toxic solid waste.<sup>28</sup>

#### 4.4. LEASING OF PUBLIC UTILITY FACILITIES

Acquisition, repair and maintenance, and leasing of fixed assets, infrastructure, facilities, machinery and equipment, including buildings, structures and improvements, but excluding land, used for the business of public utilities, with fixed rental rates, or with variable rentals based on the value of the public utility services provided or sold.<sup>29</sup>

#### 4.5. RENEWABLE ENERGY

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<sup>26</sup> Supra Exec. Order No. 125. Supra Rep. Act No. 10844. Pres. Dec. No. 474, as amended, Maritime Industry Authority (2004).

<sup>27</sup> Rep. Act No. 7925, Public Telecommunications Policy Act (1995), Sec. 3(a). Rep. Act No. 10844, Department of Information and Communications Technology (2016).

<sup>28</sup> Rep. Act No. 9003, Ecological Solid Waste Management Act (2001), Sec. 3(kk) which defines “solid waste” as “all discarded household, commercial waste, non-hazardous institutional and industrial waste, street sweepings, construction debris, agricultural waste, and other non-hazardous/non-toxic solid waste.” Exec. Order No.131 (1987), as amended by Exec. Order No. 192 (1987), Department of Environment and Natural Resources.

<sup>29</sup> See *Tatad v. Garcia*, G.R. No. 114222, 06 April 1995, which held in part as follows:

“What private respondent owns are the rail tracks, rolling stocks like the coaches, rail stations, terminals and the power plant, not a public utility. While a franchise is needed to operate these facilities to serve the public, they do not by themselves constitute a public utility. What constitutes a public utility is not their ownership but their use to serve the public (*Iloilo Ice & Cold Storage Co. v. Public Service Board*, 44 Phil. 551, 557 558 [1923]).

“The Constitution, in no uncertain terms, requires a franchise for the operation of a public utility. However, it does not require a franchise before one can own the facilities needed to operate a public utility so long as it does not operate them to serve the public.”

Exploration and development of renewable energy sources, including biomass, solar, wind, hydro, geothermal, ocean energy, hybrid systems, except hydro and ocean systems that harvest energy directly from the source.<sup>30</sup>

#### 4.6. LEASING OF HYDRO/OCEAN FACILITIES

Acquisition, repair and maintenance, and leasing of hydro and ocean facilities, machinery and equipment, infrastructure, fixed assets, including buildings, structures and improvements, but excluding land, used to harvest energy direct from the source, with fixed rental rates, or with variable rentals based on the value of the electricity generated or sold.<sup>31</sup>

#### 4.7. LEASEHOLD OF INDUSTRIAL LAND

Leasehold for 99 years of private land for industrial activities.<sup>32</sup>

#### 4.8. TECHNICAL/FINANCIAL ASSISTANCE FOR MINERALS/OILS

Technical and/or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, oil and gas, subject to authorization by the President.<sup>33</sup>

#### 4.9. MANUFACTURE OF MACHINES

Manufacture, repair, storage and distribution of machines, including motor vehicles, seacraft, aircraft, spacecraft, drones, robots, computers, electronic devices and industrial machines.<sup>34</sup>

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<sup>30</sup> Rep. Act No. 9513, Renewable Energy Act (2008). Pres. Dec. No. 1067, Water Code (1976). *Ideals v. PSALM*, G.R. No. 192088, 09 October 2012. DOE Cir. No. DC2022-11-0034, 15 November 2022. DOJ Opinion No. 21, *Foreign Equity in Renewable Energy*, 29 September 2022. DOJ Opinion No. 23, *Foreign Equity in Renewable Energy*, 24 October 2022.

<sup>31</sup> See *Supra Tatad v. Garcia*.

<sup>32</sup> Rep. Act No. 12252, *Investors' Lease Act*, providing for a long-term lease period of 99 years for industrial land.

<sup>33</sup> 1987 Constitution, Article XII, National Economy and Patrimony, Sec. 2, Par. 3. Rep. Act No. 7942, *Philippine Mining Act* (1995). *La Bugal v. Ramos*, G.R. No. 127882, 01 December 2004. Rep. Act No. 387 (1949), as amended by Rep. Act No. 4889 (1967) and Pres. Dec. No. 782 (1975), *Petroleum Act*. Pres. Dec. No. 972 (1976), as amended by Pres. Dec. No. 1174, *Coal Development Act*.

<sup>34</sup> Exec. Order No. 133 (1987), as amended by Exec. Order No. 242 (1987), Department of Trade and Industry. Pres. Dec. No. 474, as amended, *Maritime Industry Authority* (2004). Rep. Act No. 9295, *Domestic Shipping Development Act* (2004). Rep. Act No. 9497, *Civil Aviation Authority Act* (2008). Rep. Act No. 10844, Department of Information and Communications Technology (2016), Sec. 3(d).