



PRIMER ON TOURISM INVESTMENT IN THE PHILIPPINES

FOREWORD

This primer provides answers to frequently asked questions about investing in tourism in the country. Provided are the laws and regulations that govern tourism investments and the incentives available. Other materials such as area-specific folders, statistics and list of opportunities may be secured upon request.

This primer is revised each year reflecting changes made in economic policies and regulations. Changes occurring in midyear would be provided as inserts. Otherwise, questions may be directed:

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Chapter I

GENERAL

A. Who may invest?

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

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

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

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

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

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

D. Are foreigners allowed to lease land?

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

Chapter II

STATE OF TOURISM

What is the general state of tourism in the Philippines?

After a series of declines from 2000-2003, tourism in the Philippines bounced back in 2004. From 2000-2003, visitor arrivals in the Philippines decrease by an average of 2.9% but increased by 18.8% for the year 2003 to 2004. For the year 2004, visitor arrivals reached 2.291 million, which in turn resulted in visitor receipts totaling US\$1.99 billion. Over the years tourism has been a top foreign exchange generator. Tourism investments endorsed by the Department to concerned agencies (i.e. Board of Investments and Land Transportation, Franchising and Regulatory Board) reached over Php937.897 million in 2004 with new projects in land transport and in hotel development. This figure, however, can easily double if we include investment projects that did not go through the Department of Tourism for endorsement purposes.

By and large, the tourism industry continues to be a major contributor to the growth of the Philippine economy.

Chapter III

TOURISM INVESTMENT OPPORTUNITIES

What are the investment opportunities in the Philippine tourism industry?

As the Philippine tourism industry is expected to continue to grow, there will invariably be greater demand for tourism superstructures, facilities and services.

Hotels, resorts and other types of accommodation facilities especially in the regions will have to be built to address the lodging requirements of both foreign and domestic travelers. The need for improved accessibility will likewise open investment opportunities in air, water and land transport operations. In response to worldwide demand for integrated tourism development, the Department of Tourism is also encouraging investments in tourism estates, historico-cultural heritage projects and ecotourism and agri-tourism projects.

Chapter IV

TOURISM INVESTMENTS LAWS

What are the laws and incentives covering tourism investments?

The government has passed the following laws aimed at encouraging more investments:

A. Executive Order No. 63

This Executive Order grants incentives to foreigners investing at least US\$50,000 in a tourist-related project or in any tourist establishment as determined by the Committee created in the same law.

E. O. 63 grants the foreign investor a Special Investor's Resident Visa (SIRV) for as long as the investment subsists. The E. O. also recognizes the right of the investor to remit earnings from his investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance. In case of liquidation, the investor is also allowed to repatriate the entire proceeds of the liquidation of the investment in which the investment originally made. Lastly, the right of succession is also recognized.

An investor may apply for SIRV at the Philippine Embassy or Consulate in his home country or place of residence. If already in the Philippines, the investor may file the application at the Department of Tourism for endorsement to the Bureau of Immigration.

B. Omnibus Investments Code (Executive Order No. 226)

This Executive Order authorizes the Board of Investments to grant fiscal incentives and non-fiscal incentives for local and foreign investors engaged in tourism activities listed under the current Investments Priorities Plan (IPP).

Incentives granted include income tax holiday (4-6 years for non-pioneer and pioneer projects, respectively) and the employment of foreign nationals. (Please see insert for more details)

C. Foreign Investments Act of 1991 (Republic Act 7042 as Amended by Republic Act No. 8179)

With the passage of the Foreign Investments Act, foreign nationals are now allowed to invest up to 100% equity participation in new or existing economic activities including restaurant operations that are incidental to the hotel business. Foreign equity participation of up to 40% is allowed in the operation and management of utilities (i.e. land, air, and water transport).

D. Build-Operate-Transfer (BOT) Law (Republic Act 6957 as Amended by Republic Act No. 7718)

The BOT Law authorizes the financing, construction, operation and maintenance of infrastructure projects by the private sector. It allows national implementing agencies and local government units to enter into BOT arrangement as a means of encouraging the participation of foreign and local companies in the country's infrastructure development program.

Tourism estates including related infrastructure facilities and utilities are among the priority projects eligible for BOT implementation.

Backed up by a wide range of credit enhancements and investment incentives, the BOT Law opened to the private sector a new window of investment opportunity.

Salient points of the amended BOT Law include the following:

1. Provides flexibility to both the government and private sector by allowing the use of a variety of arrangements under the BOT scheme to suit specific conditions;
2. Broadens the type and variety of projects that can be implemented under the BOT process;
3. Recognizes the need for private investors to realize rates of return reflective of market conditions;
4. Institutionalizes government support for BOT projects; and
5. Allows government agencies and local government units (LGUs) to accept unsolicited proposals.

The BOT Law mandates the BOT Center to coordinate and monitor all projects undertaken under RA 7718. The BOT Center is empowered to actively promote all modes of private sector participation in the implementation of development projects in the country. Under A. O. 67,

the BOT Center expands the coverage of the program to include the BOT scheme, joint venture agreement, concession agreement, lease and contractual management, among others.

The DOT Center is specifically involved in:

- Project development
- Policy advocacy
- Institution-building
- Marketing and promotions
- Monitoring

E. Special Economic Zone Act of 1995 (Republic Act 7916)

This Republic Act provides for the legal framework and mechanism for the creation, operation, administration and coordination of Special Economic Zones in the Philippines, creating for this purpose, the Philippine Economic Zone Authority (PEZA) and for other purposes.

On October 7, 2002, the DOT entered into a Memorandum of Agreement (MOA) with PEZA that will grant Special Economic Zone status to tourism development zones and tourism estates upon registration with PEZA subject to the issuance of the required Presidential Proclamation.

The PEZA shall consider for registration tourist-oriented enterprises to be located in PEZA-registered tourism development zones/tourism estates which are enclosed by the DOT as enterprises that will be established and operated with foreign tourists as primary clientele.

Incentives available are:

- a. Up to 100% foreign ownership of locator-enterprises;
- b. Income tax holiday (ITH) for six years for pioneer firms and four years for non-pioneer firms. If a non-pioneer firm is located in a less developed area, it shall generally be entitled to 6 years ITH.
- c. After the ITH period, the option to pay a special 5% Tax on Gross Income, in lieu of all national and local taxes, except real property taxes;
- d. Tax and duty-free importation of capital equipment required for the technical viability of registered tourism activities;
- e. Special Investor's Resident Visa;
- f. Employment of foreign nationals; and
- g. Other incentives as may be determined by the PEZA Board.

F. Retail Trade Liberalization Act of 2000 (Republic Act No. 8762)

This is an act liberalizing the retail trade business, repealing for the purpose Republic Act No. 1180, as amended, and for other purposes.

With the enactment or implementation of the Trade Liberalization Act of 2000, up to 100% foreign equity participation in restaurants is now allowed for enterprises with a paid-up capital of US\$2.5 million.

Chapter V

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