

ANNEX III
SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR
INVESTMENT

THE PHILIPPINES



LIST A
EXPLANATORY NOTES

1. This List sets out, pursuant to Article 10.8 (Reservations and Non-Conforming Measures), measures that do not conform to the obligations under:
 - (a) Article 10.3 (National Treatment);
 - (b) Article 10.4 (Most-Favoured-Nation Treatment);
 - (c) Article 10.6 (Prohibition of Performance Requirements); and
 - (d) Article 10.7 (Senior Management and Board of Directors).
2. This List and List B follow the negative list with two list approach as follows:
 - (a) This List sets out commitments in relation to existing non-conforming measures which will be subject to standstill obligations but not subject to ratchet mechanism; and
 - (b) List B sets out policy flexibility in relation to measures in sectors, subsectors and activities.
3. The Philippines may add, withdraw or modify any of its reservations as set out in this List for a period of 24 months from the date of entry into force of this Schedule, provided that the non-conforming measure is in existence as of the date of entry into force of this Agreement. Any addition, withdrawal or modification in this List will be submitted to the Depositary who will notify the other Parties, including the relevant laws and regulations. Such reservation shall be deemed to form part of this Schedule upon such notification.
4. Each reservation shall set out the following elements, where applicable:
 - (a) **Sector** refers to the sectors in which a reservation is taken;
 - (b) **Subsector** refers to specific industries, products, or activities in which a reservation is taken;
 - (c) **Industry Classification** refers to the activities covered by the reservation according to International Standard Industrial Classification (hereinafter referred to as "ISIC") Revision 3 for manufacturing, agriculture, fishery, forestry, mining and quarrying. If the reservation does not exactly conform to the ISIC, the Philippines specified the coverage of the reservation, as necessary and appropriate;
 - (d) **Level of Government** specifies the level of government maintaining the measure for which a reservation is taken;
 - (e) **Type of Obligation** refers to the obligation of National Treatment, Most-Favoured-Nation Treatment, Prohibition of Performance Requirements, and Senior Management and Board of Directors, as the case may be, which do not apply to the listed measure;



- (f) **Description of Measure** refers to measures that do not conform to National Treatment, Most-Favoured-Nation Treatment, Prohibition of Performance Requirements, and Senior Management and Board of Directors for which a reservation is taken; and
 - (g) **Source of Measure** refers to existing measures that apply to the sector, subsector or activities covered by the reservations and is identified for transparency purposes only.
5. In the interpretation of a reservation, all elements of a reservation shall be considered. The Description of Measure element shall prevail over all other elements.
 6. These Explanatory Notes shall form part of this List.



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|-------------------------|---|---|
| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | <p>Establishment of Domestic Corporation</p> <p>(a) Number of incorporators shall be natural persons, not less than five but not more than 15, all of legal age;</p> <p>(b) Majority of the incorporators and directors shall be residents of the Philippines; and</p> <p>(c) Corporate Secretary shall be a citizen and resident of the Philippines.</p> <p>Participation of foreign investors in entities engaged in partially nationalized activities and public utilities</p> <p>For public utility enterprises or corporations engaging in partially nationalized activities, the President and all the executive and managing officers of such corporation or association must be citizens of the Philippines. The participation of foreign investors in the governing body of said enterprise shall be limited to their proportionate share in its capital.</p> <p>Establishment of Cooperative</p> <p>No foreign equity is allowed.</p> <p>Domestic and Export Enterprise</p> <p>Small and medium-sized domestic market enterprises are reserved to Philippine nationals, however, the Philippines may allow up to a maximum of 40 percent foreign equity in small and medium-sized domestic market enterprises, subject to compliance with requirements, terms and conditions.</p> |



A non-Philippine national not otherwise disqualified by law may do business or invest in a domestic enterprise up to 100 percent of its capital, provided:

- (a) it is investing in a domestic market enterprise in areas outside the Foreign Investment Negative List under the *Foreign Investments Act of 1991*; or
- (b) it is investing in an export enterprise whose products and services do not fall within Lists A and B of the Foreign Investment Negative List under the *Foreign Investments Act of 1991*.

Provided, further, that, as required by existing laws, the country or state of the applicant must also allow Filipino citizens and corporations to do business therein.

Note:

"Philippine national" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of the Philippine nationals: Provided, that where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stocks outstanding and entitled to vote of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of both corporations must be citizens of the Philippines, in order that the corporations shall be considered a Philippine national.

Individuals or entities that do not meet the aforementioned qualifications are considered as "non-Philippine nationals".



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| | <p>“Export enterprise” shall mean an enterprise wherein a manufacturer, processor or service (including tourism) enterprise exports sixty percent (60%) or more of its output, or wherein a trader purchases products domestically and exports sixty percent (60%) or more of such purchases.</p> <p>Designation of Resident Agent</p> <p>A foreign corporation shall be required to file a written power of attorney designating some person who must be a resident of the Philippines, on whom any summons and other legal processes may be served.</p> <p>Branches and Regional Operating Headquarters</p> <p>Foreign Enterprises may establish Regional Operating Headquarters provided it shall register the same with the appropriate government agency and shall be subject to relevant rules and regulations.</p> |
| Source of Measure | <p>:</p> <ul style="list-style-type: none"> - The 1987 Philippine Constitution - Batas Pambansa Blg. 68, <i>The Corporation Code of the Philippines</i> - Commonwealth Act No. 108, <i>An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges</i>, as amended by Presidential Decree No. 715, <i>Otherwise known as “The Anti-Dummy Law”</i>, as may be amended - Republic Act (R.A.) No. 7042, the <i>Foreign Investments Act of 1991</i>, as amended and its Implementing Rules and Regulations - R.A. No. 9520, the <i>Philippine Cooperative Code of 2008</i> - R.A. No. 6977, the <i>Magna Carta for Micro, Small and Medium Enterprises (MSMEs)</i>, as amended by R.A. No. 8289 and R.A. No. 9501 - R.A. No. 9178, the <i>Barangay Micro Business Enterprises Act of 2002</i> - R.A. No. 8756, <i>An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, Amending for the Purposes Certain Provisions of Executive Order No. 226, the Omnibus Investments Code of 1987</i> - Securities and Exchange Commission Issuances and Opinions |



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|-------------------------|---|--|
| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) |
| Description of Measure | : | <p>The Philippines protects the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserves its use and enjoyment exclusively to Filipino citizens.</p> <p>Small-scale utilization of natural resources is allowed only to Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays, and lagoons.</p> |
| Source of Measure | : | <ul style="list-style-type: none"> - The 1987 Philippine Constitution - R.A. No. 7160, the <i>Local Government Code of 1991</i> - R.A. No. 7942, the <i>Philippine Mining Act of 1995</i> - R.A. No. 7076, the <i>People's Small-Scale Mining Act of 1991</i> - R.A. No. 8550, the <i>Philippine Fisheries Code of 1998</i>, as amended by R.A. No. 10654, <i>An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending Republic Act No. 8550, Otherwise Known as "The Philippine Fisheries Code of 1998," and for Other Purposes</i> - Presidential Decree No. 705, s. 1975, the <i>Revised Forestry Code of the Philippines</i> |



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| Sector | : | Fisheries and Aquaculture |
| Subsector | : | - |
| Industry Classification | : | ISIC 050 Fishing, aquaculture and service activities incidental to fishing |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) |
| Description of Measure | : | <p>The use and exploitation of the fishery and aquatic resources in Philippine waters shall be reserved exclusively to Filipinos.</p> <p>Municipal Fishing</p> <p>All fishery activities in municipal waters shall be utilized by municipal fisherfolk and their cooperatives or organizations who are listed as such in the registry of municipal fisherfolk.</p> <p>Commercial Fishing</p> <p>No commercial fishing vessel license shall be issued except to citizens of the Philippines, partnerships or to associations, cooperatives or corporations duly registered in the Philippines at least 60 percent of the capital stock¹ of which is owned by Filipino citizens, subject to requirements and compliance with certain conditions.</p> <p>Foreign owned vessels are not allowed to conduct fishing operations in all Philippine waters.</p> <p>Note: There is a moratorium on the issuance of commercial fishing vessel and gear licenses and other clearances.</p> <p>Fishpond</p> <p>No fishpond lease agreements may be issued for public lands that may be declared available for development primarily except to citizens of the Philippines, or fisherfolk cooperatives or associations. In the absence of such citizens or fisherfolk cooperatives or associations, corporations duly incorporated in the Philippines at least 60 percent of the capital stock of which is owned by Filipino citizens may be granted fishpond</p> |

¹ The foreign equity participation under this Reservation is not covered by Reservation No. 1 of List B.



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| | <p>lease agreement subject to requirements and compliance with certain conditions.</p> <p>Aquaculture</p> <p>Aquaculture is reserved for citizens of the Philippines and corporations or associations duly incorporated under the laws of the Philippines where at least 60 percent of the capital stock² or interest belongs to citizens of the Philippines, subject to requirements and compliance with certain conditions.</p> |
| Source of Measure | <p>:</p> <ul style="list-style-type: none"> - R.A. No. 8550, the <i>Philippine Fisheries Code of 1998</i>, as amended by R.A. No. 10654 - Presidential Decree No. 704 (May 16, 1975), the <i>Fisheries Decree of 1975</i> - R.A. No. 7160, the <i>Local Government Code of 1991</i> - Administrative Issuances |

² The foreign equity participation under this Reservation is not covered by Reservation No. 1 of List B.



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|-------------------------|---|--|
| Sector | : | Mining and Quarrying |
| Subsector | : | Salt Production |
| Industry Classification | : | ISIC 1422 Extraction of salt |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | Only Filipino citizens of legal age, corporation, association or cooperative duly constituted under the laws of the Philippines, 60 percent of the capital ³ of which is owned by Filipino citizens may enter into a Salt Production Sharing Agreement with the Philippine Government, subject to compliance requirements and terms and conditions. |
| Source of Measure | : | - The <i>1987 Philippine Constitution</i> - Department of Environment and Natural Resources (DENR) Administrative Order No. 1998-67, as amended |

³ The foreign equity participation under this Reservation is not covered by Reservation No. 10 of List B.



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|-------------------------|---|---|
| Sector | : | Mining and Quarrying |
| Subsector | : | Small Scale Mining |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) |
| Description of Measure | : | Small-scale mining is reserved to Filipino citizens who, individually or in the company of other Filipino citizens, voluntarily form a cooperative duly licensed by the Philippine Government. The processing of mineral ores and minerals they produced is reserved to Filipino citizens. |
| Source of Measure | : | <ul style="list-style-type: none"> - The 1987 Philippine Constitution - R.A. No. 7942, the <i>Philippine Mining Act of 1995</i> - R.A. No. 7076, the <i>People's Small-Scale Mining Act of 1991</i> - R.A. No. 7586, the <i>National Integrated Protected Areas System of 1992</i> - R.A. No. 7160, the <i>Local Government Code of 1991</i> - Administrative Issuances |



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| Sector | : | Manufacturing |
| Subsector | : | Defense-related manufacturing and repair activities,–manufacture of firecrackers and other pyrotechnic devices, and dangerous drugs |
| Industry Classification | : | ISIC Division 24, Manufacture of chemicals and chemical products ISIC 242 Manufacture of other chemical products n.e.c. ISIC Group 2927, Manufacture of arms and ammunitions ISIC Division 35, Manufacture of other transport equipment |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) |
| Description of Measure | : | <p>Defense-related activities, such as the manufacture, repair, storage or distribution of firearms, ammunition, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials, shall be limited only to Filipino citizens, corporation, association or cooperative duly constituted under the laws of the Philippines, 60 percent of the capital of which is owned by Filipino citizens, subject to prior clearance and authorization from the Philippine Government.</p> <p>A license or permit to manufacture or to deal in wholesale or retail of firecrackers and pyrotechnic devices shall be issued only to: (a) Filipino citizens of good moral character; or (b) entities with 100 percent capitalization owned by Filipino citizens.</p> <p>Manufacture of dangerous drugs is limited only to Filipino citizens, corporation, association or cooperative duly constituted under the laws of the Philippines, 60 percent of the capital of which is owned by Filipino citizens, subject to prior clearance and authorization from the Philippine Government.</p> |
| Source of Measure | : | <ul style="list-style-type: none"> – The 1987 <i>Philippine Constitution</i> – R.A. No. 7042, the <i>Foreign Investments Act of 1991</i>, as amended by R.A. No. 8179 and its Implementing Rules and Regulations – R.A. No. 9165, the <i>Comprehensive Dangerous Drugs Act of 2002</i> |



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| | <p>- R.A. No. 7183, <i>An Act Regulating the Sale, Manufacture, Distribution and Use of Firecrackers and other Pyrotechnic Devices</i></p> |
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| Sector | : | Manufacturing |
| Subsector | : | Atomic Energy Facility |
| Industry Classification | : | ISIC Division 29 Manufacture of machinery and equipment n.e.c. |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) |
| Description of Measure | : | <p>No license to acquire, own, or operate any atomic energy facility shall be issued to an alien, or any corporation or other entity which is owned or controlled by an alien, a foreign corporation, or a foreign government, subject to compliance requirements and terms and conditions. A corporation or entity is not owned or controlled by an alien, a foreign corporation or a foreign government if at least 60 percent of its capital stock is owned by Filipino citizens.</p> <p>Note:</p> <p>“Atomic energy facility” means any equipment or device which the Philippine Government may determine from time to time, by regulation, to be capable of producing or utilizing atomic energy material in such quantity or in such manner as to be of significance to the national interest or to the health and safety of the public.</p> |
| Source of Measure | : | <ul style="list-style-type: none"> - R.A. No. 5207, the <i>Atomic Energy Regulatory and Liability Act of 1968</i> - Presidential Decree No. 1484, <i>Amending Certain Sections of Republic Act Numbered Fifty Two Hundred and Seven Entitled "An Act Providing for the Licensing and Regulation of Atomic Energy Facilities and Materials, Establishing the Rules on Liability for Nuclear Damage, and for Other Purposes"</i> |



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| Sector | : | Manufacturing |
| Subsector | : | Mass Media, Printing and Publishing |
| Industry Classification | : | ISIC Division 22 |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) |
| Description of Measure | : | <p>The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations or associations wholly owned and managed by such citizens.</p> <p>Note:</p> <p>“Mass Media” refers to the print medium of communication, which includes all newspapers, periodicals, magazines, journals, and publications and all advertising therein, and billboards, neon signs and the like, and the broadcast medium of communication, which includes radio and television broadcasting in all their aspects and all other cinematographic or radio promotions and advertising.</p> |
| Source of Measure | : | <ul style="list-style-type: none"> - The 1987 Philippine Constitution - Presidential Decree No. 1018, <i>Limiting the Ownership and Management of Mass Media to Citizens of the Philippines and for Other Purposes</i> - Presidential and Administrative Issuances |



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|-------------------------|---|---|
| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | Any employer who desires to engage an alien for employment in the Philippines shall obtain approval of the government and be subject to compliance with certain conditions relating to the following: (1) duration; (2) employment position; (3) non-availability of a local person; (4) understudy training for Filipinos; and (5) percentage of employment of foreign nationals <i>vis-à-vis</i> the total workforce. |
| Source of Measure | : | <ul style="list-style-type: none"> - The 1987 Philippine Constitution - Batas Pambansa Blg. 68, <i>The Corporation Code of the Philippines</i> - Commonwealth Act No. 108, <i>An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges, as amended by Presidential Decree No. 715, Otherwise known as "The Anti-Dummy Law", as may be amended</i> - R.A. No. 7042, the <i>Foreign Investments Act of 1991</i>, as amended and its Implementing Rules and Regulations - Presidential No. 442, the <i>Labor Code of the Philippines</i> - R.A. No. 7916, <i>The Special Economic Zone of 1995</i>, as amended - R.A. No. 8756, <i>An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, Amending for the Purposes Certain Provisions of Executive Order No. 226, the Omnibus Investments Code of 1987</i> - Securities and Exchange Commission Issuances and Opinions |



| | | |
|-------------------------|---|--|
| Sector | : | Manufacturing |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | The processing of the following products is limited only to Filipino citizens, or corporations or associations at least 60 percent ⁴ of whose capital is owned by Filipino citizens, subject to compliance requirements, terms and conditions: <ol style="list-style-type: none"> 1. copper wires; 2. copper bars, sheets and strips; 3. brass, bronze and other alloys of copper; 4. nickel pig iron; and 5. ferronickel. |
| Source of Measure | : | <ul style="list-style-type: none"> - The 1987 Philippine Constitution - R.A. No. 7942, the <i>Philippine Mining Act of 1995</i> - Executive Order No. 79, Series of 2012, <i>Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources</i> - Executive Order No. 226, the <i>Omnibus Investments Code of 1987</i>, as amended - Presidential and Administrative Issuances |

⁴ The foreign equity participation under this Reservation is not covered by Reservation No. 10 of List B.



| | | |
|-------------------------|---|--|
| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | Prohibition of Performance Requirements (Article 10.6) |
| Description of Measure | : | The adoption of a given rate or amount of royalty under a license contract is subject to approval, terms and conditions, and compliance requirements imposed, by the relevant government agency under Philippine laws and regulations. |
| Source of Measure | : | Administrative Issuances |



LIST B
EXPLANATORY NOTES

1. This List sets out, pursuant to Article 10.8 (Reservations and Non-Conforming Measures), measures that the Philippines may maintain existing, or adopt new or more restrictive measures that do not conform to the obligations under:
 - (a) Article 10.3 (National Treatment);
 - (b) Article 10.4 (Most-Favoured-Nation Treatment);
 - (c) Article 10.6 (Prohibition of Performance Requirements); and
 - (d) Article 10.7 (Senior Management and Board of Directors).
2. This List and List A follow the negative list with two list approach as follows:
 - (a) List A sets out commitments in relation to existing non-conforming measures which will be subject to standstill obligations but not subject to ratchet mechanism; and
 - (b) This List sets out policy flexibility in relation to measures in sectors, subsectors and activities.
3. Each reservation shall set out the following elements, where applicable:
 - (a) **Sector** refers to the sectors in which a reservation is taken;
 - (b) **Subsector** refers to specific industries, products, or activities in which a reservation is taken;
 - (c) **Industry Classification** refers to the activities covered by the reservation according to International Standard Industrial Classification (hereinafter referred to as "ISIC") Revision 3 for manufacturing, agriculture, fishery, forestry, mining and quarrying. If the reservation does not exactly conform to the ISIC, the Philippines specified the coverage of the reservation, as necessary and appropriate;
 - (d) **Level of Government** specifies the level of government maintaining the measure for which a reservation is taken;
 - (e) **Type of Obligation** refers to the obligation of National Treatment, Most-Favoured-Nation Treatment, Prohibition of Performance Requirements, and Senior Management and Board of Directors, as the case may be, which do not apply to the listed measure;
 - (f) **Description of Measure** refers to measures that do not conform to National Treatment, Most-Favoured-Nation Treatment, Prohibition of Performance Requirements, and Senior Management and Board of Directors for which a reservation is taken; and



- (g) **Source of Measure** refers to existing measures that apply to the sector, subsector or activities covered by the reservations and is identified for transparency purposes only.
4. In the interpretation of a reservation, all elements of a reservation shall be considered. The Description of Measure element shall prevail over all other elements.
 5. These Explanatory Notes shall form part of this List.



| | | |
|-------------------------|---|--|
| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | <p>The Philippines reserves the right to adopt or maintain any measure relating to the ownership, conservation, exploration, development, protection, and utilization of land, water and natural resources, which shall be under the full control and supervision of the Philippines.</p> <p>The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils based on real contributions to the economic growth and general welfare of the country. In such agreements, the Philippines shall promote the development and use of local scientific and technical resources.</p> |
| Source of Measure | : | The 1987 <i>Philippine Constitution</i> |



| | | |
|-------------------------|---|---|
| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | <p>The Philippines reserves the right to adopt any measure on certain areas of investment, when the national interest dictates, upon recommendation of the economic and planning agency, where such measures are necessary and would not constitute arbitrary or unjustifiable discrimination or a disguised restriction on foreign investment.</p> <p>In the grant of rights, privileges, and concessions covering the national economy and patrimony, the Philippines shall give preference to qualified Filipinos. Further, the Philippines reserves the right to adopt or maintain any measure relative to the grant of franchise, certificate, or any other form of authorization for the operation of a public utility, where such measures are necessary and would not constitute arbitrary or unjustifiable discrimination or a disguised restriction on foreign investment.</p> <p>The Philippines shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities, where such measures are necessary and would not constitute arbitrary or unjustifiable discrimination, or a disguised restriction on foreign investment.</p> |
| Source of Measure | : | <i>The 1987 Philippine Constitution</i> |



| | | |
|-------------------------|---|---|
| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure or mechanism relating to the local government units ⁵ , the autonomous regions, in the Cordilleras, and the autonomous region in Muslim Mindanao and the enforcement and protection of the rights of Cultural Communities or Indigenous Peoples on their ancestral domains and on indigenous knowledge systems and practices ⁶ . |
| Source of Measure | : | <ul style="list-style-type: none"> - The 1987 Philippine Constitution - R.A. No. 8731, <i>The Indigenous Peoples' Rights Act of 1997</i> - R.A. No. 7160, the <i>Local Government Code of 1991</i> - Executive Order No. 220, series of 1987, <i>Creating a Cordillera Administrative Region, Appropriating Funds Therefor and for Other Purposes</i> - R.A. No. 11054, the <i>Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao</i> - National Commission on Indigenous Peoples (NCIP) Administrative Order No. 3, Series of 2012, <i>The Revised Guidelines on the Exercise of Free and Prior Informed Consent (FPIC) and Related Processes</i> Executive Orders and Administrative Issuances |

⁵ Measures and mechanisms of local government units include general welfare, provision of basic services and facilities, generation of resources and creation of revenues within their respective territorial jurisdictions.

⁶ These are systems, institutions, mechanisms, and technologies comprising a unique body of knowledge evolved through time that embody patterns of relationships between and among peoples and between peoples, their lands and resource environment, including such spheres of relationships which may include social, political, cultural, economic, religious spheres, and which are the direct outcome of the indigenous peoples, responses to certain needs consisting of adaptive mechanisms which have allowed indigenous peoples to survive and thrive within their given socio-cultural and biophysical conditions.



| | | |
|-------------------------|---|---|
| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure relating to registration of foreign investment (equity and debt) and foreign loans with the Bangko Sentral ng Pilipinas ⁷ . |
| Source of Measure | : | <ul style="list-style-type: none"> - The <i>1987 Philippine Constitution</i> - R.A. No. 7653, <i>The New Central Bank Act</i> - R.A. No. 7160, the <i>Local Government Code of 1991</i> - R.A. No. 4860, <i>Foreign Borrowings Act of 1966</i>, as amended by R.A. No. 8182, the <i>Official Development Assistance Act of 1996</i> and R.A. No. 8555 - R.A. No. 7042, the <i>Foreign Investments Act of 1991</i>, as amended by R.A. No. 8179 - R.A. No. 245, <i>An Act Authorizing the Secretary of Finance to Borrow to Meet the Public Expenditure</i>, as amended - R.A. No. 8799, <i>The Securities Regulation Code</i> - Administrative Issuances, including Bangko Sentral ng Pilipinas Issuances (e.g., <i>Manual of Regulations on Foreign Exchange Transactions</i>, as amended, <i>Manual of Regulations for Banks and Non-Bank Financial Institutions</i>) |

⁷ Registration of a foreign investment (equity and debt) with the Bangko Sentral ng Pilipinas (BSP) is required if the foreign exchange needed to service the repatriation of capital and the remittance of dividends, profits and earnings which accrue thereon shall be sourced from authorized financial institutions.

The approval and registration with BSP of a foreign loan is required if the foreign exchange needed to service the loan shall be sourced from authorized financial institutions, except in the following cases, which require BSP prior approval and registration regardless of source of foreign exchange for servicing: (a) public debt; and (b) private debt which are: (i) guaranteed by government corporations or government financial institutions, or by authorized financial institutions; or (ii) granted by local banks and directly funded or collateralized by offshore loans or deposits.



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| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure or mechanism relating to privatization programs of government assets and divestment of assets requirement in iron and steel, pioneer ⁸ activities ⁹ , and public-private partnership programs. |
| Source of Measure | : | <ul style="list-style-type: none"> - The 1987 Philippine Constitution - R.A. No. 7042, the <i>Foreign Investments Act of 1991</i>, as amended and its Implementing Rules and Regulations - Executive Order No. 226, the <i>Omnibus Investments Code of 1987</i>, as amended - R.A. No. 9184, the <i>Government Procurement Reform Act</i> - R.A. No. 7718, <i>An Act Amending Certain Sections Of Republic Act No. 6957, Entitled "An Act Authorizing The Financing, Construction, Operation And Maintenance Of Infrastructure Projects By The Private Sector, And For Other Purposes"</i> |

⁸ "Pioneer Enterprise" shall mean a registered enterprise (1) engaged in the manufacture, processing or production, and not merely in the assembly or packaging of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale or (2) which uses a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw materials into another raw material or finished goods which is new and untried in the Philippines or (3) engaged in the pursuit of agricultural, forestry and mining activities and/or services including the industrial aspects of food processing whenever appropriate, pre-determined by the Board, in consultation with the appropriate Department, to be feasible and highly essential to the attainment of the national goal, in relation to a declared specific national food and agricultural program for self-sufficiency and other social benefits of the project or (4) which produces non-conventional fuels or manufactures equipment which utilize non-conventional sources of energy or uses or converts to coal or other non-conventional fuels or sources of energy in its production, manufacturing or processing operations. Provided, That the final product in any of the foregoing instances, involves or will involve substantial use and processing of domestic raw materials, whenever available; taking into account the risks and magnitude of investment. Provided, further, That the foregoing definitions shall not in any way limit the rights and incentives granted to less-developed-area enterprises.

⁹ The registered enterprise under Executive Order No. 226 (the *Omnibus Investments Code of 1987*) shall obligate itself to attain the status of a Philippine national within 30 years from the date of registration or with such longer period as the Board may require taking into account the export potential of the project.



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| | <ul style="list-style-type: none">- R.A. No. 9136, the <i>Electric Power Industry Reform Act of 2001</i>- Presidential Decree No. 194, s. 1973, <i>Authorizing Aliens, as well as Associations, Corporations or Partnerships Owned in Whole or in Part by Foreigners to Engage in the Rice and Corn Industry, and for other Purposes</i> and its Implementing Rules and Regulations- Executive Orders and Administrative Issuances |
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| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | Most-Favoured-Nation Treatment |
| Description of Measure | : | <p>The Philippines reserves the right to adopt or maintain any measure or mechanism relating to:</p> <p>(a) preferential treatment accorded to investors or their investments under any existing bilateral, regional or international arrangements or any forms of economic or regional cooperation of which the Philippines is a party¹⁰; and</p> <p>(b) any existing or future preferential treatment accorded to investors or their investments in any agreement or arrangement between or among Member States of ASEAN.</p> <p>The Philippines reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <p>(a) mining; (b) fisheries; or (c) forestry.</p> |
| Source of Measure | : | <ul style="list-style-type: none"> - Administrative Policies - International agreements or arrangements |

¹⁰ For greater certainty, this right extends to any preferential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.



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| Sector | : | Forestry and Manufacturing |
| Subsector | : | Forestry, logging, and wood processing |
| Industry Classification | : | ISIC Section 0200 Forestry, logging and related service activities ISIC Section 201 - Sawmilling and planing of wood ISIC Section 202 - Manufacture of products of wood, cork, straw and plaiting materials |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure relating to any activity within any forest and grazing land, or establish, install, add and operate any wood or forest products processing plant, unless the person is duly authorized under a license agreement, license, lease or permit, subject to compliance with terms and conditions. |
| Source of Measure | : | <ul style="list-style-type: none"> - The 1987 Philippine Constitution - Presidential Decree No. 705, the <i>Revised Forestry Code of the Philippine</i>, as amended - R.A. No. 7160, the <i>Local Government Code of 1991</i> - R.A. No. 11054, the <i>Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao</i> - Executive Order No. 220, series of 1987, <i>Creating the Cordillera Administrative Region</i> - Executive Orders and Administrative Issuances |



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| Sector | : | Fisheries and Aquaculture |
| Subsector | : | - |
| Industry Classification | : | ISIC 050 Fishing, aquaculture and service activities incidental to fishing |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure relating to the exportation or importation of fisheries and aquaculture species. For a foreign entity or individual, Filipino citizens affiliated with a foreign institution, or a Filipino citizen with foreign funding that will conduct a scientific research on aquatic wildlife, there is a need to identify a local institution as a research collaborator or counterpart and a letter of consent of the Head of the local institution. |
| Source of Measure | : | <ul style="list-style-type: none"> - R.A. No. 8550, <i>The Philippine Fisheries Code of 1998</i>, as amended - Presidential Decree 704, <i>the Fisheries Decree of 1975</i> - Muslim Mindanao Act No. 86, <i>the ARMM Fisheries and Aquatic Code of 1999</i> - R.A. No. 7160, <i>the Local Government Code of 1991</i> - R.A. No. 11054, <i>the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao</i> - Executive Order No. 220, series of 1987, <i>Creating the Cordillera Administrative Region</i> - Fisheries Administrative Orders and Issuances |



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| Sector | : | Manufacturing |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | The Philippines reserves the right to adopt and implement any measure on rationalization programs ¹¹ for certain manufacturing industries whose operation may result in dislocation, overcrowding or inefficient use of resources, thus impeding economic growth. |
| Source of Measure | : | Executive Order No. 226, the <i>Omnibus Investments Code of 1987</i> , as amended. |

¹¹ Illustrative Example: The Comprehensive Automotive Resurgence Strategy (CARS) Program under E.O. 182, to augment and enhance policy and directions of existing motor vehicle development programs towards ensuring a resurgent automotive industry that supports innovation, technology transfer, environmental protection, and small and medium enterprises development.



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| Sector | : | Mining and Quarrying |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure or mechanism relating to exploration, development, and utilization of mineral resources. |
| Source of Measure | : | <ul style="list-style-type: none"> - The 1987 Philippine Constitution - R.A. No. 7942, the <i>Philippine Mining Act of 1995</i> - Executive Order No. 79, <i>Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources</i> - R.A. No. 7586, the <i>National Integrated Protected Areas System Act of 1992</i> - Proclamation No. 1250, (9 June 1998), <i>Exclusion of Mineral Resource-Rich Areas of Cagraray Island, Albay from the Bicol Region Tourism Master Plan</i> - Executive Order 211, series of 1987, <i>Prescribing the Interim Procedures in the Processing and Approval of Applications for the Exploration, Development and Utilization of Minerals</i> - Presidential Decree No. 2027, <i>Granting Tax Relief to Distressed Copper Mining Companies</i> - Proclamation No. 297, series of 2002, <i>Excluding a Certain Area from the Operation of Proclamation No. 369 dated February 27, 1931 and Declaring the same as Mineral Reservation and as Environmentally Critical Area</i> - Proclamation No. 183, Series of 1999, <i>Revoking Proclamation No. 66, Series Of 1999, Declaring The Lahar-Affected Rivers And Embankment Areas In The Provinces Of Pampanga, Tarlac And Zambales As Environmentally Critical Areas And As Mineral Reservation Under The Direct Supervision And Control Of The</i> |



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| | <p><i>Department Of Environment And Natural Resources</i></p> <ul style="list-style-type: none"> - Letter of Instruction No. 1387 s. 1984 - R.A. No. 5092, <i>Geothermal Energy, Natural Gas and Methane Gas Law</i> - Presidential Decree No. 87, <i>The Oil Exploration and Development Act of 1972</i> - Presidential Decree No. 972, <i>The Coal Development Act of 1976</i> - Department of Environment and Natural Resources (DENR) Administrative Order No. 2010-21, (28 June 2010) <i>Revised Implementing Rules and Regulations of R.A. 7942, otherwise known as the Philippine Mining Act of 1995</i> - R.A. No. 7160, <i>Local Government Code of 1991</i> - R.A. No. 11054, <i>the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao</i> - Executive Order No. 220, series of 1987, <i>Creating the Cordillera Administrative Region</i> - Department of Energy Issuances - DENR Administrative Orders, Memorandum Orders and Memorandum Circulars - Mines and Geosciences Bureau Memorandum Circulars |
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| Sector | : | Agriculture |
| Subsector | : | Rice and Corn Industry |
| Industry Classification | : | ISIC 0111, Growing of cereals and other crops n.e.c. ISIC 153, Manufacture of grain mill products, starches and starch products, and prepared animal feeds |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) |
| Description of Measure | : | <p>An alien, association, partnership or corporation, owned in whole or in part by foreigners, may engage in the rice and corn industry, subject to the following conditions:</p> <ul style="list-style-type: none"> (a) There is an urgent need for foreign investment in the undertaking and that the same will not pose a clear and present danger of promoting monopolies or combination in restraint of trade. (b) The alien, association, corporation or partnership shall have the necessary financial capability and technical competence. (c) The alien, association, corporation or partnership shall submit a development plan acceptable to the Philippine Government. <p>In connection with the foreign equity participation, at least 60 percent thereof shall be transferred to Filipino citizens over a 30-year divestment period, which shall start from the actual operation of the business in the Philippines.</p> <p>Foreign investors shall fully develop the land leased to them for rice and corn production and culture over a period as established in their development plan, provided such period shall not exceed four years; provided, further, that the Philippine Government may grant a grace period on a case-to-case basis.</p> |
| Source of Measure | : | - Presidential Decree No. 194, series of 1973, <i>Authorizing Aliens, as well as Associations, Corporations or Partnerships Owned in Whole or in Part by Foreigners to Engage in the Rice</i> |



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| | <p><i>and Corn Industry, and for other Purposes" and its Implementing Rules and Regulations</i></p> <ul style="list-style-type: none">- R.A. No. 8435, the <i>Agriculture and Fisheries Modernization Act of 1997</i>- Executive Orders and Administrative Issuances |
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| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure or mechanism relating to: (a) investments other than those recognized or other than those that should have been recognized by the Philippine Government owing to the circumstances on the date of entry into force of this Agreement; and (b) investments which were not technically feasible on the date of entry into force of this Agreement. |
| Source of Measure | : | - |



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| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure or mechanism that it considers necessary for the protection of its essential security interests. |
| Source of Measure | : | - |



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| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | Prohibition of Performance Requirements (Article 10.6) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure or mechanism relating to technology transfer, production processes, or other proprietary knowledge. |
| Source of Measure | : | - |



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| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure relating to investments in all services sectors and subsectors. |
| Source of Measure | : | - |



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| Sector | : | All sectors |
| Subsector | : | - |
| Industry Classification | : | - |
| Level of Government | : | All levels |
| Type of Obligation | : | National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) |
| Description of Measure | : | The Philippines reserves the right to adopt or maintain any measure affecting or relating to electronic commerce, where such measure is necessary and would not constitute arbitrary or unjustifiable discrimination or a disguised restriction on foreign investment. |
| Source of Measure | : | - |

