

BDB Law

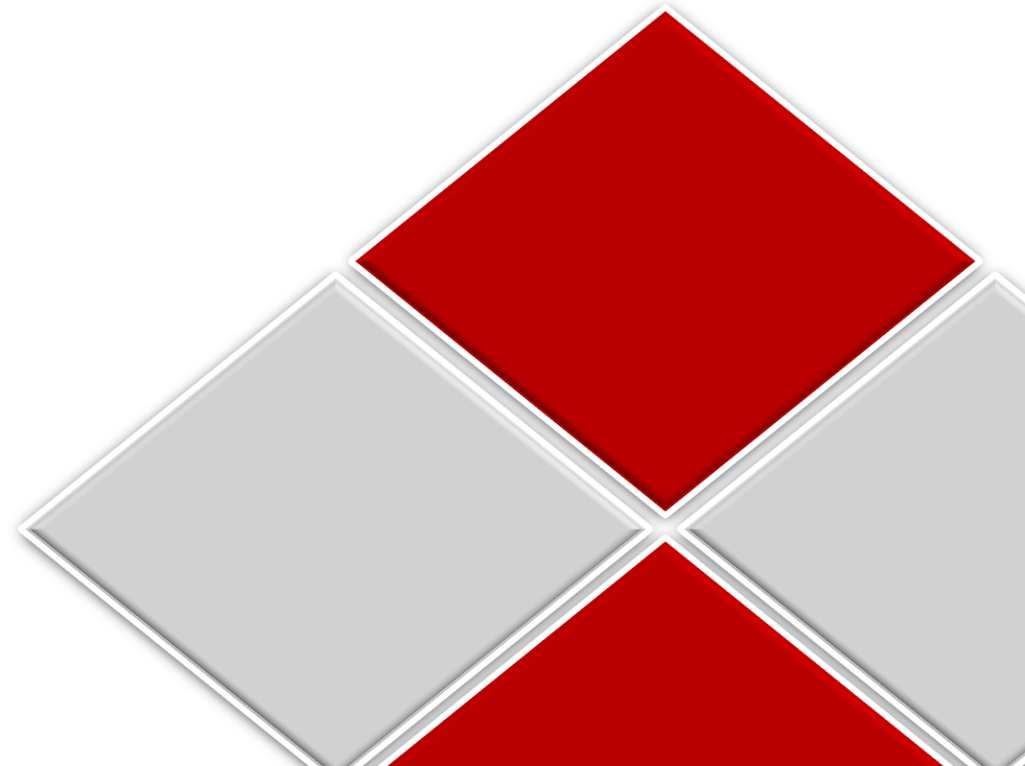
DU-BALADAD AND ASSOCIATES

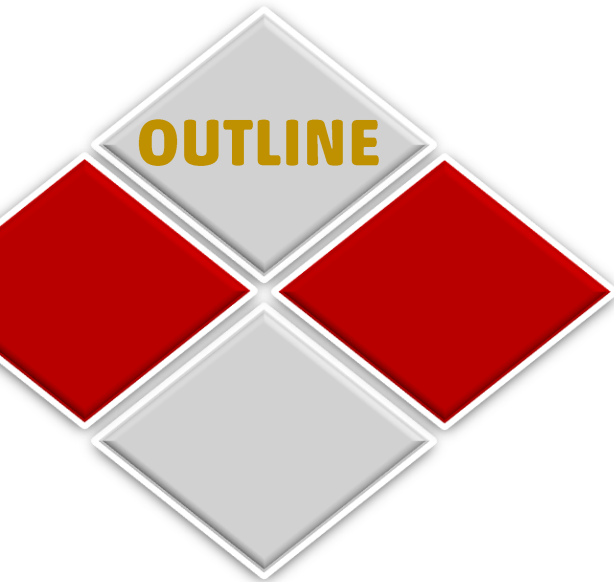
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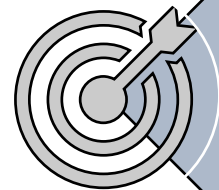
The Economic Liberalization Trio

Atty. Rodel C. Unciano

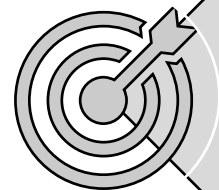




Retail Trade Liberalization Law
(Republic Act No. 11595)



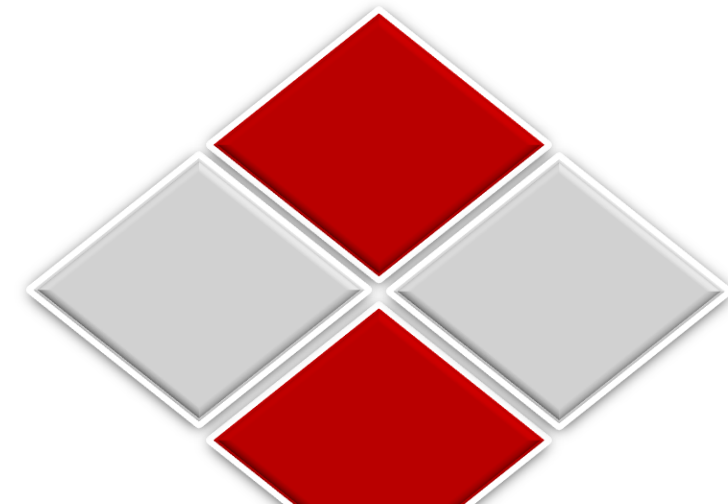
Foreign Investments Act
(Republic Act No. 11647)



Public Service Act
(Republic Act No. 11659)

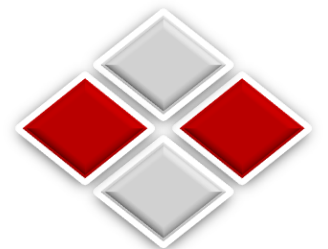
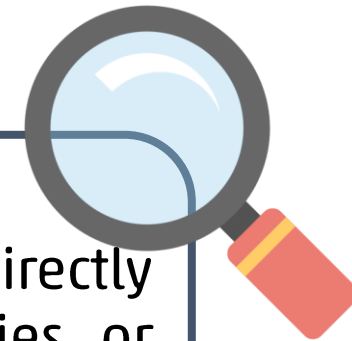
RETAIL TRADE LIBERALIZATION ACT

(Republic Act No. 11595)



**RETAIL TRADE,
defined**

Any act/occupation/calling of habitually selling directly for the general public merchandise, commodities or goods for consumption.



Conditions for foreign equity participation in retail trade:

Minimum paid-up capital of Php25M (from USD2.5M or Php125M)

Foreign retailer's country of origin does not prohibit entry of Filipino retailers

If more than one (1) physical store, minimum investment per store must be at least Php10M (from USD830K)

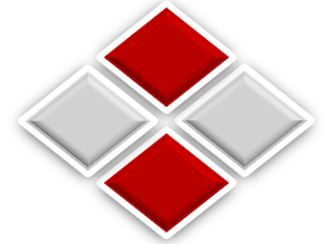


Conditions for foreign equity participation in retail trade:

Required to maintain the minimum paid-up capital at all times

Use of the minimum paid-up capital in Philippine operations is monitored by the SEC/DTI





Registration requirements:



A certification from the BSP of the inward remittance of capital investment



Other proof certifying that capital investment is deposited and maintained in a bank in the Philippines

Labor Policy



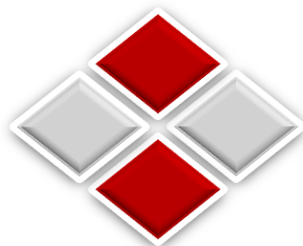
**Employment of
foreign nationals**



shall comply with the provisions of the Labor Code on the determination of nonavailability of a competent, able and willing Filipino citizen before engaging the services of a foreign national.

Promotion of Locally Manufactured Products

Foreign retailers are encouraged to have a stock inventory of Philippine-made products.



Promotion of Locally Manufactured Products



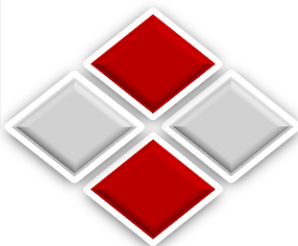
- Designation of a store space as Filipino section
- Use of locally made packaging materials
- Use of locally sourced raw materials



Implementing Agencies

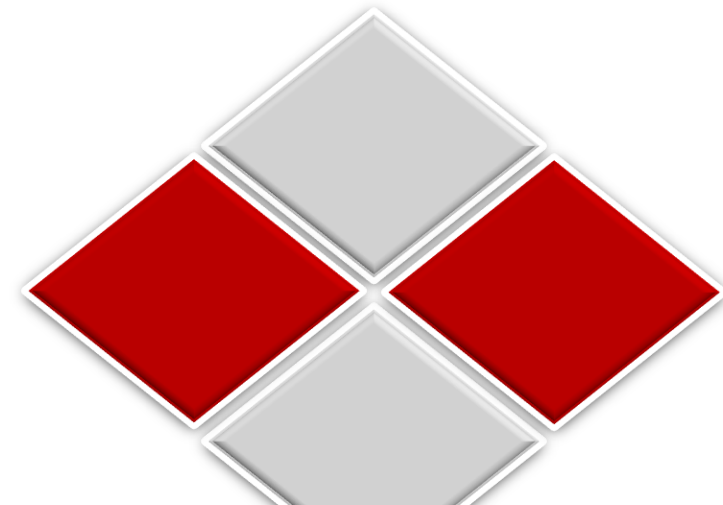


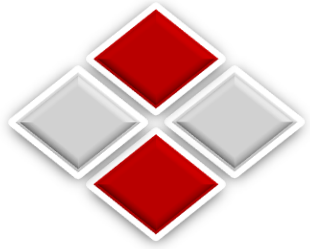
The above agencies shall review the minimum paid-up capital requirement every three (3) years.



FOREIGN INVESTMENTS ACT OF 1991

(Republic Act No. 11647)





Investments of Non-Philippine Nationals

➤ A non-Philippine national may, upon registration with:



Or



do business/invest in a domestic enterprise up to 100% of its capital

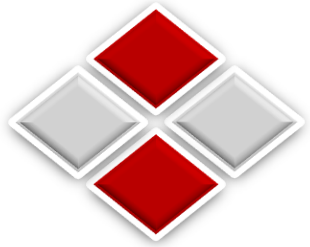


Conditions for registration

The non-Philippine national is not disqualified by law

Participation of non-Philippine national is not prohibited by law

Participation of non-Philippine national is not limited to smaller percentage by existing laws



Investments in micro and small domestic market enterprises

Micro and small domestic market enterprises with paid-in equity capital less than **USD200,000** are reserved to Philippine nationals.





Investments in micro and small domestic market enterprises

Minimum paid-in capital of USD 100,000 allowed to non-Philippine nationals



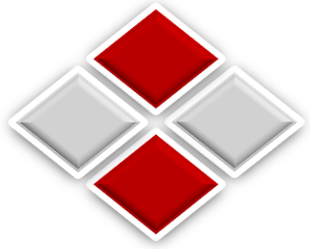
Involves advanced technology, as determined by the DOST



Endorsed as startup or startup enablers; or majority of direct employees are Filipinos, but in no case less than 15



Shall implement an understudy or skills development program to ensure transfer of skills/technology to Filipinos



Foreign investments in export enterprises

100

Foreign investment in export enterprises whose products and services do not fall within Lists A and B of the Foreign Investment Negative List is allowed up to **100% ownership**.

Foreign investments in export enterprises

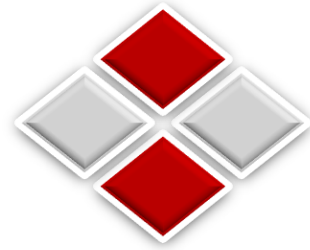


Export enterprise, defined

- ✓ a manufacturer or processor or service enterprise that exports 60% or more of its output.
- ✓ a trader that purchases products domestically and exports 60% or more of such purchases.



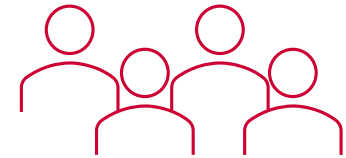
Creation of **Inter-Agency Investment Promotion Coordination Committee (IIPCC)**

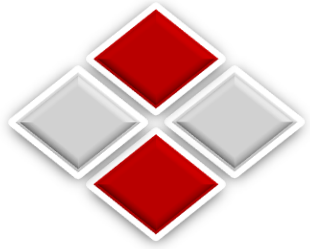


Functions of IIPCC:

To integrate all promotion and facilitation efforts to encourage foreign investments in the Philippines

To establish Foreign Investment Promotion and Marketing Plan (FIPMP)





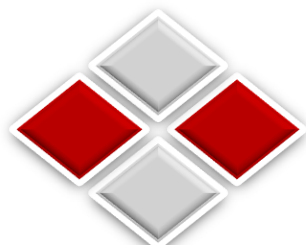
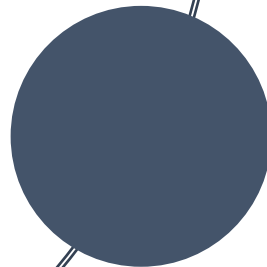
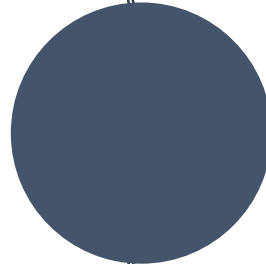
A comprehensive and strategic **Foreign Investment Promotion and Marketing Plan (FIPMP)** shall be developed by the IIPCC for the medium five-year and the long-term ten-year plan.



Requirements for the FIPMP



It is based on competitive advantages, natural resources, skill and educational development, traditional linkages, and international market potential



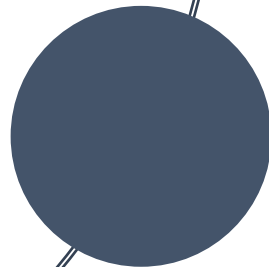
Requirements for the FIPMP



It is based on competitive advantages, natural resources, skill and educational development, traditional linkages, and international market potential



It is consistent with the strategic investment priorities plan under Title XIII of the Tax Code, as amended



Requirements for the FIPMP



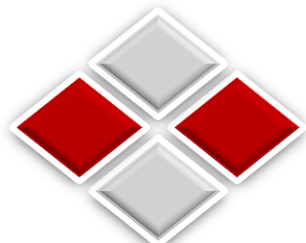
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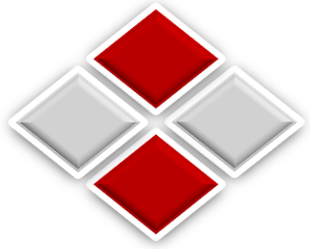


It is fully consistent with the strategic investment priorities plan under Title XIII of the National Internal Revenue Code, as amended



An online portal shall be uploaded, containing IIPCC's procedures, contacts, schedules, among others





Areas not covered by the **Foreign Investments Act**



Banking and other financial institutions which are governed and regulated by The General Banking Law and other laws under the supervision of the BSP



Practice of professions that are covered by specific laws and fall under the jurisdiction of various Professional Regulatory Boards (PRBs) or any other equivalent regulating body , or those subject to reciprocity agreements with other countries.



PENALTY PROVISIONS for committing anti-graft and corrupt practices

Any public official or employee involved in foreign investment promotions who shall commit Anti-Graft and Corrupt Practices Act, shall be punished by



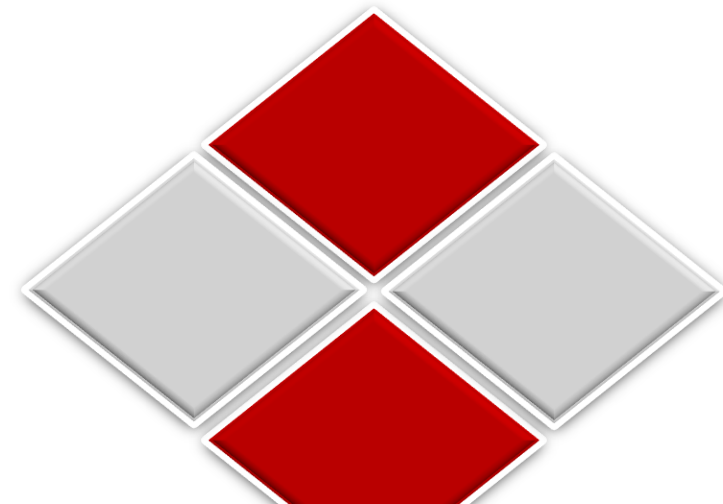
Not less than one year nor more than ten years



Not less than Php2M but not more than Php5M

PUBLIC SERVICE ACT

(Republic Act No. 11659)





Policy Objectives:



Ensuring effective regulation of public services



Providing reasonable rate of return to public services

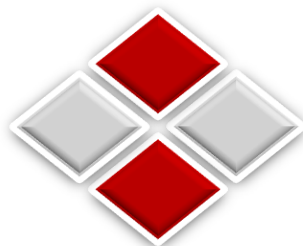


Rationalizing foreign equity restrictions on public utilities

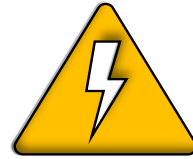


Instituting processes for the protection of national security

What is Public Utility?



Public Utility refers to a public service that operates, manages, or controls for public use any of the ff:



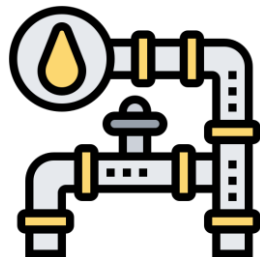
1. Distribution of electricity.



2. Transmission of electricity.



3. Petroleum and petroleum products pipeline transmission system.



4. Water pipeline distribution systems and wastewater pipeline systems, including sewerage pipeline systems.



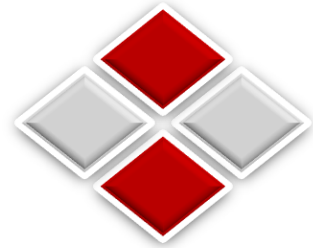
5. Seaports.



6. Public utility vehicles.



Public Utility



Public Utility Vehicles – internal combustion engine vehicles that carry passengers and/or domestic cargo for a fee, offering services to the public, namely:

- ✓ **Trucks-for-hire**
- ✓ **UV express service**
- ✓ **PUB**
- ✓ **PUJ**
- ✓ **Tricycles**
- ✓ **Filcabs**
- ✓ **Taxis**
- X Transport vehicles accredited with TNC**



Public Utility

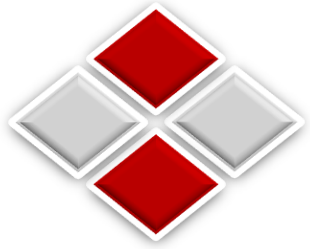


- Concessionaires/JVs/other entities that wholly operate/manage/control for public use the sectors above are also public utilities

Public Service

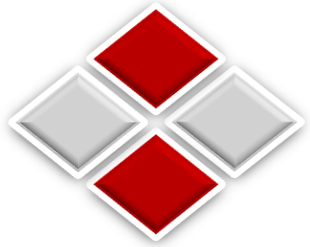


- A public service which is not classified as a public utility shall be considered **a business affected with public interest** for purposes of Sections 17 and 18 of Article XII of the Constitution.
- **Nationality requirements shall not be imposed** by administrative agencies on any public service not classified as public utility



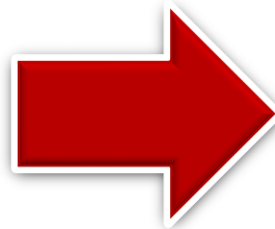
A **public service** shall employ a foreign national only after the determination of nonavailability of a Philippine National who is competent, able, and willing to perform the services for which the foreign national is desired.





The President can suspend or prohibit a transaction or investment

Within sixty (60) days from receipt of a recommendation from the relevant administrative agency



In the interest of national security, the President may suspend/prohibit a merger/acquisition/investment in a public service that effectively results in the grant of control to a foreigner or a foreign corporation.



Operation and Management of Critical Infrastructure

What is Critical Infrastructure?



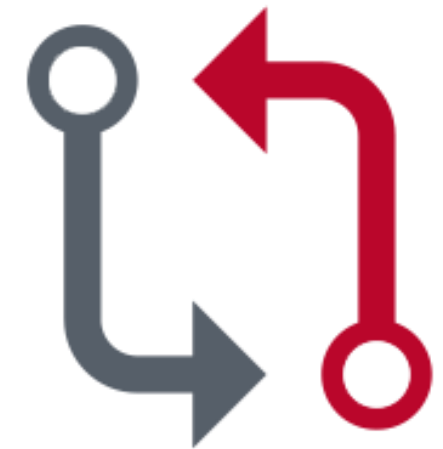
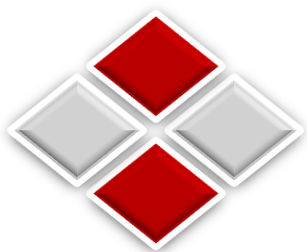
Any public service which owns/uses/operates systems and assets, **so vital to the Republic of the Philippines that the incapacity or destruction of such systems would have detrimental effect on national security**

Operation and Management of Critical Infrastructure



General Rule: Foreign nationals shall not own more than 50% of the capital of entities engaged in the operation and management of critical infrastructure

Exception: Unless the country of such foreign national accords reciprocity to Philippine nationals



Telecommunications is considered a critical infrastructure as it is a public service so vital to the Philippines that the incapacity/destruction would have detrimental impact on national security.



Investments by Foreign/State-owned enterprises

Entities controlled by or acting on behalf of foreign governments/foreign state-owned enterprises shall be prohibited from owning capital in any public service classified as public utility or critical infrastructure.



Foreign State-owned Enterprise

It refers to an entity in which a foreign State:

directly or indirectly owns more than 50% of the capital

controls the exercise of more than 50% of the voting rights;
or

holds the power to appoint majority of members of the board of directors or any other equivalent management body.



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