

# PHILIPPINE FOREIGN INVESTMENT BRIEF ON RENEWABLE ENERGY

## What is the potential for renewable energy in the Philippines?

The Philippine government is prioritizing renewable energy for the next ten (10) years. In order to facilitate such a dramatic expansion the Philippine government has:

1. Given renewable energy technologies favored investment status;
3. Approval of the Renewable Energy Act with a range of specific market-based incentives;
4. Been working with a local government and Non-government Organizations to develop a Green Independent Power Producer (GRIPP) model for power projects.
5. Lastly, alternative source of energy projects has high level political support.

**The Renewable Energy Law of 2008 (Republic Act No.9513).** This law was approved into law on December 16, 2008. This law intends to establish the framework for the accelerated development and advancement of renewable energy resources, and the development of a strategic program to increase its utilization. The pertinent provisions provides, as follows:

**“Section 8. Renewable Energy Market (REM).** - To facilitate compliance with Section 6 of this Act, the DOE shall establish the REM and shall direct PEMC to implement changes to the WESM Rules in order to incorporate the rules specific to the operation of the REM under the WESM.

“The PEMC shall, under the supervision of the DOE, establish a Renewable Energy Registrar within one (1) year from the effectivity of this Act and shall issue, keep and verify RE Certificates corresponding to energy generated from eligible RE facilities. Such certificates will be used for compliance with the RPS. For this purpose, a transaction fee, equal to half of what PEMC currently charges regular WESM players, may be imposed by PEMC.

**“Section 9. Green Energy Option.** - The DOE shall establish a Green Energy Option program which provides end-users the option to choose RE resources as their sources of energy. In consultation with the NREB, the DOE shall promulgate the appropriate implementing rules and regulations which are necessary, incidental or convenient to achieve the objectives set forth herein.”

**“Section 15. Incentives for Renewable Energy Projects and Activities.** - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

(a) *Income Tax Holiday (ITH)* - For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the national government.

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: Provided, That the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: Provided, further, That the entitlement period for additional investments shall not be more than three (3) times the period of the initial availment of the ITH.

(b) *Duty-free Importation of RE Machinery, Equipment and Materials* - Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: Provided, however, That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: Provided, further, That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts are made.

(c) *Special Realty Tax Rates on Equipment and Machinery.* - Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a Registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: Provided, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant;

(d) *Net Operating Loss Carry-Over (NOLCO).* - The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss: Provided, however, That operating loss resulting from the availment of incentives provided for in this Act shall not be entitled to NOLCO;

(e) *Corporate Tax Rate.* - After seven (7) years of income tax holiday, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable

income as defined in the National Internal Revenue Act of 1997, as amended by Republic Act No. 9337. Provided, That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.

(f) *Accelerated Depreciation.* - If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books and be taxed based on such: Provided, That if it applies for Accelerated Depreciation, the project or its expansions shall no longer be eligible for an ITH. Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of the Department of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

i) *Declining balance method; and*

ii) *Sum-of-the years digit method*

(g) *Zero Percent Value-Added Tax Rate.* - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

(h) *Cash Incentive of Renewable Energy Developers for Missionary Electrification.* - A renewable energy developer, established after the effectivity of this Act, shall be entitled to a cash generation-based incentive per kilowatt hour rate generated, equivalent to fifty percent (50%) of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification;

(i) *Tax Exemption of Carbon Credits.* - All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes;

(j) *Tax Credit on Domestic Capital Equipment and Services.* - A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and custom duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer for purposes set forth in this Act: Provided, That prior approval by the DOE was obtained by the local manufacturer: Provided, further, That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract.

**“Section 19. Hybrid and Cogeneration Systems.** - The tax exemptions and/or incentives provided for in Section 15 of this Act shall be availed of by registered RE Developer of hybrid and cogeneration systems utilizing both RE sources and conventional energy: Provided, however, That the tax exemptions and incentives shall apply only to the equipment, machinery and/or devices utilizing RE resources.

**“Section 21. Incentives for RE Commercialization.** - All manufacturers, fabricators and suppliers of locally-produced RE equipment and components duly recognized and accredited by the DOE, in consultation with DOST, DOF and DTI, shall, upon registration with the BOI, be entitled to the privileges set forth under this section.

“Consistent with Article 7, Item (20) of EO No. 226, the registration with the BOI, as provided for in Section 15 and Section 21 of this Act, shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities based on the implementing rules and regulations that will be developed by DOE. It is further mandated that the applications for registration will be positively acted upon by BOI on the basis of the accreditation issued by DOE.

“The Renewable Energy Sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan, unless declared otherwise by law. As such, all entities duly accredited by the DOE under this Act shall be entitled to all the incentives provided herein.

**(a) Tax and Duty-free Importation of Components, Parts and Materials.** - All shipments necessary for the manufacture and/or fabrication of RE equipment and components shall be exempted from importation tariff and duties and value added tax: Provided, however, That the said components, parts and materials are: (i) not manufactured domestically in reasonable quantity and quality at competitive prices; (ii) directly and actually needed and shall be used exclusively in the manufacture/fabrication of RE equipment; and (iii) covered by shipping documents in the name of the duly registered manufacturer/fabricator to whom the shipment will be directly delivered by customs authorities: Provided, further, That prior approval of the DOE was obtained before the importation of such components, parts and materials;

*(b) Tax Credit on Domestic Capital Components, Parts and Materials. - A tax credit equivalent to one hundred percent (100%) of the amount of the value-added tax and customs duties that would have been paid on the components, parts and materials had these items been imported shall be given to an RE equipment manufacturer, fabricator, and supplier duly recognized and accredited by the DOE who purchases RE components, parts and materials from a domestic manufacturer: Provided, That such components, and parts are directly needed and shall be used exclusively by the RE manufacturer, fabricator and supplier for the manufacture, fabrication and sale of the RE equipment: Provided, further, That prior approval by the DOE was obtained by the local manufacturer;*

*(c) Income Tax Holiday and Exemption. - For seven (7) years starting from the date of recognition/accreditation, an RE manufacturer, fabricator and supplier of RE equipment shall be fully exempt from income taxes levied by the National Government on net income derived only from the sale of RE equipment, machinery, parts and services; and*

*(d) Zero-rated value added tax transactions - All manufacturers, fabricators and suppliers of locally produced renewable energy equipment shall be subject to zero-rated value added tax on its transactions with local suppliers of goods, properties and services.*

**“Section 23. Tax Rebate for Purchase of RE Components.** - To encourage the adoption of RE technologies, the DOF, in consultation with DOST, DOE, and DTI, shall provide rebates for all or part of the tax paid for the purchase of RE equipment for residential, industrial, or community use. The DOF shall also prescribe the appropriate period for granting the tax rebates. “

**“SEC. 5. Mandatory Use Biofuel.** - Pursuant to the above policy, it is hereby mandated that all liquid fuels for motors and engine sold in the Philippines shall contain locally-sourced biofuels components as follows:

*5.1 Within two years from the effectivity of this Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country, subject to the requirement that all bioethanol blended gasoline shall contain a minimum of five percent (5%) bioethanol fuel by volume: Provided That the ethanol blend conforms to PNS.*

*5.2 Within four years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of ten percent (10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country.*

*In the event of supply shortage of locally-produced bioethanol during the four year period, oil companies shall be allowed to import bioethanol but only to the extent of the shortage as may be determined by the NBB.*

*5.3 Within three months from the effectivity of this Act, a minimum of one percent (1%) biodiesel by volume shall be blended into all diesel engine fuels sold in the country: Provided, That the biodiesel blend conforms to PNS for biodiesel.*

*Within two years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased taking into account considerations including but not limited to domestic supply and availability of locally-sourced biodiesel component.*

*SEC. 6. Incentive Scheme. - To encourage investments in the production, distribution and use of locally-produced biofuels at and above the minimum mandated blends, and without prejudice to enjoying applicable incentives and benefits under existing laws, rules and regulations, the following additional incentives are hereby provided under this Act.*

- i. Specific tax. The specific tax on local or imported biofuels component, per liter of volume shall be zero (0). The gasoline and diesel fuel component shall remain subject to the prevailing specific tax rates.*
- ii. Value Added Tax The sale of raw material used in the production of, biofuels such as, but not limited to, coconut, jatropha, sugarcane, cassava, corn, and sweet sorghum shall be exempt from the value added tax.*
- iii. Water Effluents. All water effluents, such as but not limited to distillery slops & from the production of biofuels used as liquid fertilizer and for other agricultural purposes are considered "reuse", and are therefore, exempt from wastewater charges under the system ,provided under Section 13 of RA No. 9275, also known as the Philippine Clean Water Act: Provided, however, That such application shall be in accordance with the guidelines issued pursuant to R.A. No. 9275, subject to the monitoring and evaluation by DENR and approved by DA;*
- iv. Financial Assistance. Government financial institutions, such as the Development Bank of the Philippines, Land Bank of the, Philippines, Quedancor and other government institutions providing financial services shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financing to Filipino citizens or ' entities, at least sixty percent (60%) of the capital stock of which belongs to citizens of the Philippines that shall engage in activities involving production, storage, handling and transport of biofuel and biofuel feedstock, including the blending of biofuels with petroleum, as certified by the DOE."*

## 21. Disadvantages Foreign Investments in the Philippines.

- So much politics in the Philippine business activities;
- So much corruption and red tape that may hamper or hinder the smooth implementation of any Renewable Energy projects.
- Inconsistent government policy, complex laws and regulations, including environmental regulations which could adversely affect the cost, manner or feasibility of doing the Renewable Energy/Biofuel Generation business.
- Reality of looks different - neglect business due to restrictive ownership of business. Short term lease contracts are little inviting to invest in the future and improve as necessary to remain competitive in business;
- As a result of existing economical problems - many Philippine business ventures have lost contact to international competition. Low salaries alone is no attraction for investors. Political stability and legal sound business basis are needed to offer the security necessary to invest a life times savings and earnings into a new business venture. While some of may have venture capital to risk or lose - others just invest their lifetime savings into a better future. Such future needs to be stable and solid in a legal environment that gives the necessary trust into politicians and laws. Successful business needs to be made with long time perspectives in mind - life time planning or even beyond. Some among may want to construct a future to be forwarded the future . A sound gift solid and health only can be given to the next generation of Filipinos.

**It was also noted that the country needs to upgrade and modernize its infrastructure while improving its governance and cutting "non-tariff barriers" such as red tape.**

## BASIC LEGAL FRAMEWORK

1. **BASIC LEGAL FRAMEWORK:** Foreign investments in the Philippines are basically governed by the following laws, rules, regulations and other government issuances:

[1] Executive Order No. 226 - *The Omnibus Investments Code of 1987* - sets forth the rules and parameters within which foreign investments in the Philippines may be made, with emphasis on the grant of incentives to certain sectors.

[2] Republic Act No. 7042, as amended by Republic Act No. 8179 - *The Foreign Investments Act of 1991* - dwells on foreign investments without incentives; it reduced the minimum paid-in equity from US Dollars Five Hundred Thousand [US\$500,000] to US Dollars Two Hundred Thousand [US\$200,000].

[3] Republic Act No. 7227 - *The Bases Conversion and Development Act of 1992* - sets forth the grant of incentives to industries and enterprises which establish their plants and offices within the Subic Bay Freeport Zone.

[4] Republic Act No. 7916 - *The Special Economic Zone Act of 1995* - treats of incentives granted to industries and enterprises which situate their operation within Special Economic Zones.

[5] Republic Act No. 7844 - *The Export Development Act of 1994* - provides for incentives to business enterprises in the export industry.

[6] Republic Act No. 7721 - liberalized the entry and operations of foreign banks and financial institutions in the Philippines.

[7] Republic Act No. 7652 - *The Investor's Lease Act* - grants to foreign investors the privilege of leasing private lands for a period of fifty (50) years [initial] which may be renewed for another twenty-five (25) years.

[8] Republic Act No. 7718 - *The Build-Operate-Transfer Act [BOT]* -liberalized the implementation of the Build-Operate-Transfer Scheme in certain projects, eased the restrictions on government financing and setting and imposition of tolls and charges and wholly foreign-owned corporations are allowed to undertake certain projects under this scheme.

[9] Republic Act No. 7888 - grants authority to the President of the Philippines to suspend the nationality requirement under the Omnibus investments Code [Executive Order No. 226] in the case of equity investments by multilateral financial institutions like the Asian Development Bank [ADB] or the International Finance Corporation [IFC].

## **2. POLICY ON COMPETITION:**

Monopolies are not allowed in the Philippines. It is a fundamental policy that the State shall regulate or prohibit monopolies when public interest so requires. No combination in restraint of trade or unfair competition shall be allowed.

## **3. POLICY ON EXPROPRIATION OF PRIVATE PROPERTY**

Expropriation of private property by the government is a policy which is exceptionally exercised. In extreme and urgent cases where expropriation becomes necessary for public use or in the interest of national welfare, just compensation is required by law to be paid to the private owner of the property. Under this situation, the affected foreign enterprise or investor has the right to remit any and all amounts received as just compensation for the expropriated property in the currency in which the investment was originally made and at the prevailing foreign exchange rate at the time it is remitted.

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#### 4. PHILIPPINE CURRENCY

The currency of the Philippines is called the Philippine Peso [PhP]. A floating exchange rate system is being maintained by the Philippine government. Under this system, the exchange rate is allowed to be determined principally by prevailing market forces. The central bank authority - the Bangko Sentral ng Pilipinas [BSP] - intervenes only for the purpose of limiting sharp fluctuations in the exchange rate to maintain order in the market conditions.

#### 4. FOREIGN EXCHANGE

Reformatory measures to deregulate the Philippine foreign exchange system were implemented sometime in 1992. Consequently, foreign exchange surrender requirements were removed, access to foreign currency deposit facilities was liberalized, restrictions on the repatriation of foreign investments and/or profit remittances were lifted and limitations on the quantitative restrictions on current account transactions deleted.

Registration with the central monetary authority - Bangko Sentral ng Pilipinas [BSP] - of loans and investments accounts was lifted except in cases where funding will be made through the banking system of transactions like repatriation of capital and remittances of dividends and profits as well as foreign exchange requirement for future debt.

Further, BSP approval and registration are required in case of outward investments of residents in an amount in excess of US\$6,000,000.00, per investor per year should the funds therefor be sourced from the banking system. Foreign borrowings by the public sector should also be approved by the BSP.

The law allows the deposit in foreign currency accounts of any foreign exchange received in the Philippines or abroad. It also allows the selling and acquisition of foreign exchange outside of the Philippine banking system. The only restriction on foreign exchange transaction pertains to the payment of foreign loans and/or foreign investments, in which case, such may only be serviced with foreign exchange purchased through authorized agent banks, if the loan is approved/registered with the BSP or the investment is registered therewith. Thus, in case of sales of foreign exchange for payment of foreign obligations [foreign loan or foreign investment], the purchaser shall be required by the authorized agent bank to present proof of BSP approval and/or registration for each loan or investment.

In case of purchase of foreign exchange for any non-trade purposes, authorized agent banks may sell foreign exchange to residents without need of prior BSP approval subject, however, to the following:

[a] Written notarized application and supporting documents from the foreign exchange purchaser if the amount exceeds US\$25,000.00.

[b] Simple written application if the amount does not exceed US\$25,000.00.

This limitation on non-trade purchase cannot be circumvented by splitting the foreign exchange purchase into separate smaller amounts. Splitting of purchase of foreign exchange is presumed if the bank sells to any one purchaser, a combined total amount exceeding US\$25,000.00 within a period of fifteen [15] banking days.

In cases of outward payments, the law does not prescribe any particular currency requirements. However, all foreign exchange proceeds from exports and invisibles should be procured through specified currencies numbering more than twenty [20].

Philippine-peso denominated bank accounts may be opened by non-residents - whether an individual or corporate without need to secure BSP approval. Non-resident depositors may freely withdraw their accounts but non-resident bank accounts may only be credited with the proceeds from inward foreign exchange remittance or with income earned in the Philippines. The maintenance of foreign currency deposit accounts with local banks by residents and non-residents alike is not subject to any further restrictions.

## **6. REPATRIATION OF FUNDS [SALES PROCEEDS, PROFITS, DIVIDENDS, ROYALTIES, LOAN PAYMENTS & LIQUIDATION]**

There are no existing restrictive regulations on the repatriation of funds related to BSP-registered foreign investments such as sales or divestment proceeds, profits, dividends, royalties, loan payments and liquidation. As earlier pointed out, BSP registration of foreign investments is necessary only in cases where the foreign exchange required to service the repatriation of capital and remittance of profits, dividends, royalties, loan payments or liquidation proceeds will be sourced from the banking system.

Further, it bears to emphasize that investments in government or listed securities or money market instruments or bank deposits need not be registered with the BSP or with the designated custodian bank of the investor concerned.

## **7. SOURCES OF FINANCING**

### **SOURCE 1 - Foreign Borrowings**

[1] *Public Sector Loans* - Under the law, all public sector loans taken from offshore sources and from Foreign Currency Deposit Units (FCDUs) must be approved by the Bangko Sentral ng Pilipinas [BSP]. The BSP approval, however, is not required in case of short-term interbank borrowings of public sector banks and short-term FCDU loans for trade financing.

[2] *Private Sector Loans* - The approval of and registration with BSP of the private sector loans are required under the following circumstances:

[a] if the loan is guaranteed by a public sector entity such as the national government, government financial institutions, government-owned or controlled corporations and local government units or by a local commercial bank; or

[b] if the loan is granted by an FCDU and will specifically or directly be funded from, or collateralized by, offshore loans or deposits; or

[c] if the loan is obtained by banks and financial institutions with a term exceeding one [1] year and intended for relending to public and private enterprises.

Except for the foregoing types of loans, other categories of private sector loans are not subject to prior approval by the BSP. Registration with BSP, however, is still required in order to purchase foreign exchange from the banking system to service the loan. The following may be cited: [a] private sector loans from FCDUs or offshore sources regardless of their maturity to be paid using foreign exchange purchased from outside of the banking system; [b] short-term loans of public and private financial institutions incurred in normal interbank transactions and with maturity not exceeding one [1] year; [c] short-term loans of the private sector in the form of export advances from buyers abroad; [d] short-term loans of private sector borrowers from FCDUs such as those incurred: [i] by community and service exporters [provided these loans are used to finance export-related import costs of goods and services as well as peso cost requirements]; and [ii] by producers or manufacturers, including oil companies and public utility concerns [provided the loans are used to finance import costs of goods and services necessary in the production of goods by the borrower concerned].

It must be emphasized that proceeds from FCDU loans are not allowed to be deposited in an FCDU account if the same shall be serviced using foreign exchange purchased from the banking system.

[3] *Short-term loans of private sector exporters or importers* - These loans from participating creditor banks under the Revolving Trade Facility (RTF) Agreement are subject to the following conditions:

[a] the loans are not covered by a guarantee from a government financial institution or corporation;

[b] the loans shall be exclusively used to finance specific trade transactions in an amount equivalent to the import bills to be liquidated and/or in the case of export financing transactions, to the borrower's pre-export financing requirements;

[c] proceeds of loans intended to pay for foreign exchange requirements shall be paid directly to the supplier or creditor while amounts intended to fund pre-export peso costs shall be inwardly-remitted and sold to the banking system;

[d] the loans shall be granted against BSP-approved short-term relending programs of foreign creditors. Creditors shall submit to the BSP their short-term relending program for Philippine borrowers indicating their proposed credit limit together with a list of prospective borrowers/beneficiaries. These relending programs shall be valid for one year but shall be subject to semi-annual review if commitments and/or utilization for the semester shall be below fifty percent [50%] of total relending limit;

[e] drawdown and registration requirements shall be complied with;

[f] any assignment of the loan by the creditor shall require prior BSP approval; and

[g] the borrower shall submit to BSP the required documents at least five days after its credit line is approved by the creditor.

[4] *Priority projects* - Projects considered priority for foreign financing under the socio-economic development plan include the following:

[a] export-oriented projects;

[b] BOI-registered projects;

[c] those listed in the Annual Priorities Plan (APP); and

[d] other projects which may be declared priority by the National Economic Development Authority [NEDA] or by the Congress of the Philippines.

The law requires that the proceeds of all loans, irrespective of maturity, shall exclusively finance foreign exchange requirements of eligible projects. However, loans of direct and indirect exporters and public sector borrowers may be used to finance both foreign exchange costs and local costs of their projects.

#### **SOURCE 2 - Domestic Borrowings**

Foreign firms may avail of domestic loans. Except for the requirement that the banks should report the level of domestic borrowings of foreign firms to the BSP for monitoring purposes, there are no restrictions on domestic borrowings.

### **8. INVESTMENT PROPOSAL AND APPROVAL**

Any investment proposal shall comply with certain requirements of the law. More specifically, the following conditions apply:

[1] Merger - must comply with the legal requirements under the Corporation Code of the Philippines;

[2] Acquisition - must comply with Section 40 of the Corporation Code and subject to the restrictions regarding foreign equity ownership under the 1987 Constitution.

[3] Real Estate/Land - the foreign equity is up to forty percent [40%] only.

[4] Management Contract - must comply with Section 44 of the Corporation Code.

[5] Joint Venture - may be entered into without legal restriction on registration unless the parties thereto form another business organization requiring registration such as a corporation or partnership.

[6] Greenfield Investments - must comply with the requirements under the Corporation Code.

[7] Media - no foreign equity is allowed.

[8] Telecommunications - foreign equity is allowed up to forty percent [40%].

[9] Transportation - foreign equity is allowed up to forty percent [40%].

[10] Agriculture - there is no limitation if private land is used for this purpose. However, foreign equity is required up to forty percent [40%] in case of public land.

[11] Infrastructure - allowed but subject to the provisions of the Build-Operate-Transfer [BOT] Law and Presidential Decree No. 1594.

[12] Mining - allowed but subject to the conditions under the Revised Mining Act of 1995.

## 9. APPLICATION AND APPROVAL FORMS

The following application and approval forms are required:

[1] For formation of a new corporation with more than forty percent [40%] foreign equity - S.E.C. Form No. F-100.

[2] For establishment of a branch office of a foreign corporation - S.E.C. Form No. F-103.

[3] Board of Investments [BOI] registration form.

[4] Philippine Economic Zone Authority [PEZA] registration form.

## 10. PERIODS WHEN PROCESSING AND APPROVAL OF APPLICATION COMPLETED

The investment laws in the Philippines explicitly prescribe the following periods within which the processing and approval of foreign investment proposal and/or applications should be completed from the time of submission of all required documents:

[1] The BOI shall approve or disapprove an application within twenty [20] working days after official acceptance thereof. If application involves less than PhP5,000,000.00 production cost and applicant is an exporter, the period is seven [7] days. [1987 Omnibus Investment Code]

[2] The SEC [in the case of corporation or partnership] or the BTRCP [in the case of sole proprietorship] shall act on the application within fifteen [15] days from official acceptance thereof. [Foreign Investments Act]

[3] The PEZA processes and evaluates an application within two [2] weeks. Approval thereof is made during the regular monthly meeting of its Board.

## 11. ENTRY OF NON-RESIDENT PERSONNEL

Enterprises registered under the Omnibus Investments Code [Executive Order No. 226] are permitted to employ foreign nationals in supervisory, technical, or advisory positions during its first five years from registration. Those majority foreign-owned registered enterprises are allowed to employ foreign nationals as president, treasurer and general managers for an indefinite period of time. In the case of Offshore Banking Units [OBUs], they are allowed to

employ foreign nationals as executives in their respective units. The same may be said for executives in area headquarters of multinational corporations.

For non-resident personnel of foreign firms, the entry visa requirements and description of the nature of the entry restriction are as follows:

- a. Special Investors Resident Visa [SIRV] - This is issued to any alien, except nationals coming from North Korea and Cambodia and such other countries that may be classified restricted in the future, who meets the following qualifications:
  1. he/she had not been convicted of a crime involving moral turpitude;
  2. he/she had not been afflicted with any loathsome, dangerous or contagious disease;
  3. he/she had not been institutionalized for any mental disorder or disability; and
  4. he/she is willing and able to invest the amount of at least US\$75,000 in the Philippines.

The special feature of this visa is the grant to the investor of the privilege to reside in the Philippines for as long as his investment exists. He shall be entitled to import his used household goods and personal effects, tax and duty-free, as an alien coming to settle in the Philippines for the first time under Sec. 105(h) of the Tariff and Customs Code of the Philippines. Moreover, the investor's spouse and unmarried children under 21 years of age who join him in the Philippines may be issued the same visa.

- b. Pre-arranged Employment Visa - This is granted pursuant to Sec. 9(g) of the Philippine Immigration Law. This is available for employment in any executive or managerial position.

- c. International Treaty Investors Visa - This is granted under Sec. 9(d) of the Philippine Immigration Law. The required investment is at least P300,000.00. Only Germans, Japanese and Americans are parties to this treaty.

## **12. RESTRICTIONS ON EMPLOYMENT OF FOREIGN TECHNICAL OR MANAGERIAL PERSONNEL AND ACCOMPANYING FAMILY MEMBERS**

### **Restrictions on positions:**

[1] Registered foreign enterprises with the Board of Investments [BOI] may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding five [5] years from its registration, extendible for limited periods at the discretion of the BOI.

[2] BOI-registered majority foreign-owned enterprises may employ foreign nationals in the positions of president, treasurer or general manager beyond the period of five [5] years.

[3] Foreign nationals under the Corporation Code may be employed as members of the Board of Directors by way of election.

[4] Foreign enterprises located at the Subic Bay Freeport may employ foreign nationals in any position upon prior approval of the Subic Bay Metropolitan Authority [SBMA] for a period of five [5] years which may be extended from year to year.

[5] Foreign enterprises entering into government contracts and service for coal operations and exploration and development of oil and geothermal resources are allowed to employ foreign nationals in any position.

*Restrictions on skills requirement:*

Employment of foreign technicians in foreign enterprises in the Philippines is subject to the requirement that the skills they possess are not available in the Philippines. If there is none available in the Philippines, a pre-arranged employment visa may be extended to the foreign technician. Further, under the law, their employment should be accompanied by an understudy program wherein at least two [2] Filipino understudies should be trained on the skills for which they [foreign technicians] were engaged.

### **13. MINIMUM WAGES AND OTHER LABOR STANDARDS AND LABOR RELATIONS LAW**

Labor laws in the Philippines respecting wages, hours of work, overtime, night differential pay, service incentive leave, and other labor standards; strikes, picketing, termination of employment, and other labor relations rules, have all been codified. All these may be found in the Labor Code of the Philippines, as amended.

As regards minimum wages, the Labor Code of the Philippines, as amended, provides for the basic standards for minimum wage fixing which is done through the various Regional Tripartite Wages and Productivity Boards. Each region has its own set of minimum wage rates and rules.

As regards labor unions, strikes and picketing, collective bargaining, voluntary modes of settling labor disputes and other labor-related rules, the Labor Code of the Philippines has provided ample safeguards to protect the interest of both labor and management.

### **14. TAXATION LAW ON FOREIGN INVESTMENTS**

#### **I. Corporate and similar entities:**

- a. [1] Foreign corporations engaged in business or trade in the Philippines - Their income derived from sources in the Philippines are taxed a flat rate of thirty-five percent [35%] based on net income.
- b. [2] Foreign corporations not engaged in business or trade in the Philippines - Their income derived from sources in the Philippines are taxed a flat rate of thirty-five percent [35%] on gross income. Further, interest income on foreign loans earned is subject to a twenty percent [20%] tax.
- c. [3] Foreign international carriers - They are taxed at the rate of two-and-a-half percent [2.5%] on their gross Philippine billings.
- d. [4] Non-resident foreign cinematographic film owners, lessors or distributors - They are taxed at the rate of twenty-five percent [25%] on gross income.

- e. [5] Foreign mutual life insurance companies - They are taxed at the rate of ten percent [10%] of their gross investment income derived from sources within the Philippines.
- f.
- II. **Foreign individuals:**
  - [1] Individual resident foreigners - Their income: [a] derived from all sources in the Philippines and in foreign countries taxed from 1-35% on gross compensation income [arising from an employer-employee relationship]; and net on non-compensation [business and other] income.
    - a. [b] twenty percent [20%] on royalties, prizes, winnings [final tax].
    - b. [c] twenty percent [20%] on interest on bank deposit, and on substitute arrangements [final tax].
    - c. [d] five percent [5%] capital gains tax on sale of realty [final tax].
- III. [2] Foreigners engaged in trade or business in the Philippines - Their income:
  - a. [a] derived from Philippine sources are taxed from 1-35% on gross compensation income and net on non-compensation income.
  - b. [b] thirty percent [30%] on royalties, interests and dividends, and others.
- IV. [3] Foreigners not engaged in trade or business in the Philippines - Their income derived from Philippine sources are taxed a flat rate of thirty percent [30%] on gross Philippine income.

## 15. FISCAL INCENTIVES TO FOREIGN INVESTMENTS

### a. FISCAL INCENTIVES - Omnibus Investments Code of 1987:

Income tax holiday.

[1] Full exemption from income tax for six (6) years for newly-registered *pioneer* projects from the start of commercial operations; and

[2] Full exemption from income tax for four (4) years from the start of commercial operations for newly-registered *non-pioneer* projects.

**These exemption periods may be extended for another year each under the following cases:**

[a] the project used indigenous raw materials;

[b] the project meets the BOI-prescribed ratio of capital equipment to the number of workers;

[c] the net foreign exchange savings or earnings amount to at least US\$500,000 annually during the first three (3) years of the commercial operations of the project.

Any project which is established in less developed areas [LDAs] shall be entitled to the incentive for six (6) years.

Expansion projects of domestic-oriented industries are not entitled to the income tax holiday incentive.

**Tax credit on domestic capital equipment.**

[a] Firms registered on or before December 31, 1994 shall be entitled to tax credit equivalent to one hundred percent [100%] of any taxes and duties which could have been waived had the capital equipment and accompanying spare parts been imported until December 31, 1997, provided that those firms located outside the National Capital Region [NCR] shall enjoy said tax credit until December 31, 1999.

[b] Firms registered after December 31, 1994 shall be entitled to tax credit on the duty portion equivalent to the difference between the three percent [3%] minimum duty and the actual duty rate provided under the Philippine Tariffs and Customs Code, as amended.

**Tax and duty-free importation of capital equipment.**

[a] Firms registered on or before December 31, 1994 shall be entitled to tax and duty free importation of capital equipment and accompanying spare parts until December 31, 1997. However, firms located outside the National Capital Region [NCR] shall be entitled to the incentive until December 31, 1999.

[b] Firms registered after December 31, 1994 shall be subject to ten percent [10%] Value-Added Tax [VAT] upon the implementation of Republic Act No. 7716, the expanded VAT Law and three percent [3%] duty.

- I. Additional deduction for labor expense. For the first five [5] years from registration, a registered enterprise shall be allowed an additional deduction from taxable income of fifty percent [50%] of the wages corresponding to the increment in the number of the direct labor for skilled and unskilled workers if the project meets the prescribed ratio of capital equipment to the number of workers set by the Board of Investments. This additional deduction shall be doubled if the activity is located in less developed areas [LDAs].
- II. Tax and duty free importation of breeding stocks and genetic materials for ten [10] years from registration or commercial operation for agricultural producers.
  - Tax credit on domestic breeding stocks and genetic materials.
  - Simplification of customs procedures for the importation of equipment, spare parts, raw materials and supplies and exports of processed products.
  - Unrestricted use of consigned equipment provided a re-export bond is posted.
  - Employment Of Foreign Nationals.
  - Tax credit for taxes and duties paid on raw materials, supplies and semi-manufactured products used in the manufacture of export products and forming part thereof.
  - Access to bonded manufacturing/trading warehouse system. Registered export-oriented enterprises may have access to bonded warehousing systems.

- Exemption from wharfage dues and any export tax, duty, impost and fees.
- New enterprises registered under the 1995 Investments Priorities Plan [IPP] shall be granted a five-year period to avail of the exemption from wharfage dues and any export tax, impost and fees. Expansion and existing projects, however, are not entitled to this incentive.

***Tax and duty exemption of imported spare parts and supplies for export producers with customs bonded warehouse exporting at least seventy percent [70%] of the production.***

**b. FISCAL INCENTIVES - Special Economic Zone Act of 1995:**

**Fiscal incentives, in general.**

Enterprises operating within the Economic Zones [ECOZONES] are entitled to the fiscal incentives granted under Presidential Decree No. 66, [Export Processing Zone Authority Law], or those provided under Book VI of Executive Order No. 226, [Omnibus Investments Code of 1987].

**Tax credit for exporters using local materials as inputs in accordance with the Export Development Act of 1994.**

**Exemption from taxes under the National Internal Revenue Code [NIRC] but in lieu of paying taxes, five percent [5%] of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government.**

**c. FISCAL INCENTIVES - Export Development Act of 1994:**

- Exemption from Presidential Decree No. 1853 on the advanced payment of customs duties.
- Duty-free importation of machinery and equipment and accompanying spare parts until December 31, 1997.
- Tax credit for imported inputs and raw materials primarily used for the production and packages of export goods that are not readily available locally until December 31, 1999.
- Tax credit for increase in current year's export revenues.
- First five percent [5%] increase in annual export revenue over the previous year a credit of 2.5% shall be granted to be applied on incremental export revenue converted to pesos.
- Next five percent [5%] increase shall be entitled to a credit of 5%.
- Next five percent [5%] increase shall be entitled to a credit of 7.5%.
- In excess of fifteen percent [15%] shall be entitled to a credit of 10%.
- Tax credit for the use or import-substitution of non-traditional products.
  - Tax credit equivalent to twenty-five percent [25%] of duties until December 31, 1997.

**Claims For Tax Credits.**

1. Imported inputs, raw materials and capital equipment.

1. Increase in current year's export revenues.
  1. Import-substitution.
- d. **FISCAL INCENTIVES - Bases Conversion and Development Act of 1992:**
- Exempted from any and all Philippine national and local taxes. In lieu, however, of paying taxes, a final tax of five percent [5%] of gross income earned is imposed.

## 16. INTELLECTUAL PROPERTY RIGHTS PROTECTION

### *Intellectual Property Code of the Philippines:*

In order to strengthen protection to intellectual property rights, Republic Act No. 8293 [otherwise known as the Intellectual Property Code of the Philippines] was approved on June 6, 1997 and took effect on January 1, 1998. This is the codification of all laws on intellectual property rights in the Philippines. It repealed and superseded the Philippine Law on Patents [R. A. No. 165], the Law on Trademarks [R. A. No. 166], Articles 188 and 189 of the Revised Penal Code and the Law on Copyright [Presidential Decree No. 49] including Presidential Decree No. 285, as amended.

### *Related Laws and Issuances:*

The following are some related laws and executive issuances:

- Presidential Decree No. 1987 [Decree Creating the Videogram Regulatory Board] ·
- Executive Order No. 60 issued on February 26, 1993, creating the Presidential Inter-Agency Committee on Intellectual Property Rights. Several member-agencies of this Committee have created special task forces on IPR such as: the Department of Trade and Industry [DTI], Department of Justice [DOJ], National Bureau of Investigation [NBI], Bureau of Customs [BOC] and the Philippine National Police [PNP].
- Executive Order No. 913 [Strengthening the Rule-Making and Adjudicatory Powers of the Minister of Trade and Industry in order to further protect consumers].

### *Treaties on Intellectual Property Rights [Philippines is a signatory]:*

The Republic of the Philippines is a signatory to several international treaties on intellectual property rights, *to wit:*

- Convention Establishing the World Intellectual Property Organization [since 1980]
- Paris Convention for the Protection of Industrial Property [since 1965]
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for Purposes of Patent Procedure [since 1981]
- Berne Convention for the Protection of Literary and Artistic Works [since 1984]

- International Convention for the Protection of Performers, Producers of Phonographs and Broadcasting Organizations [since 1984]
- Agreement on Trade-Related Aspects of Intellectual Property Rights [TRIPS Agreement]

## **17. INTERNATIONAL INVESTMENT AGREEMENTS [PHILIPPINES, A PARTY-SIGNATORY]**

The following is a rundown of international agreements [in force and in effect] to which the Philippines is a party-signatory, which are of commercial or economic nature and significance:

- **Friendship Commerce and Navigation Treaty:**
  1. "The Treaty of Amity, Commerce and Navigation between the Republic of the Philippines and Japan" where they express their intent to maintain and strengthen amicable relations existing between them on a mutually advantageous basis.
- **Bilateral Investment Treaties:**
  1. Philippines and Kingdom of Great Britain and Northern Ireland
  2. Philippines and Kingdom of Netherlands
  3. Philippines and Republic of Italy
  4. Philippines and Socialist Republic of Vietnam
  5. Philippines and Chinese Taipei
  6. Philippines and People's Republic of China
  7. Philippines and Kingdom of Spain
  8. Philippines and Romania
  9. Philippines and Republic of Korea
  10. Philippines and France
  11. Philippines and Australia
  12. Philippines and Czech
  13. Philippines and Thailand
  14. Philippines and Iran
  15. Philippines and Canada
  16. Philippines and Chile
  17. Philippines and Switzerland
  18. Philippines and Germany
  19. The ASEAN Agreement for the Promotion and Protection of Investments

All the foregoing treaties commonly embody the following basic tenets:

[1] Promotion of investments in either economy by investors of the other economy through the creation of favorable conditions of investments to foster their respective economic developments.

[2] Provision on Most-Favoured-Nation (MFN) Treatment arrangement where respective investors are accorded treatment no less favorable than that accorded to investors of any third State.

[3] Provision on expropriation which ordains that if any investors of either economy suffer losses in the other economy by reason of national emergency, revolution, revolt or similar events, the host economy shall accord treatment to that economy no less favorable than that it accords to investments of any third State.

[4] Provision on transfer of investments which guarantees the free transfer of investments and returns held in the territory of one contracting economy to the other economy.

[5] Provision on subrogation of rights.

## 18. DISPUTES SETTLEMENT

### *Government vs. Government:*

As a member of the WTO, the Philippines adheres to the procedures for dispute settlement prescribed by WTO. Consequently, it considers these procedures as being applicable to any case or controversy falling within WTO's jurisdiction.

### *Private Party/ies vs. Government:*

The Philippines adheres to the dispute settlement procedures prescribed under the International Convention on the Settlement of Investment Disputes Between States and Nationals of Other States [ICSID] as well as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards [New York Convention], being a signatory thereof.

### *Private Party/ies vs. Private Party/ies:*

The basic legal framework applicable in the resolution of conflicts and disputes between private parties are as follows:

- Executive Order No. 1008 - provides for the creation of an Arbitration Machinery in the Construction Industry of the Philippines.
- Republic Act No. 876 - provides for arbitration and submission agreements, appointment of arbitrators and the procedure for arbitration in civil controversies.
- Presidential Decree No. 442, as amended - provides for compulsory and voluntary arbitration in labor-related conflicts.

## 20. Advantages

The Philippine government has place high priority on attracting foreign investments which create new jobs, higher incomes, higher public sector revenue. The government has for the past ten (10) years had many ways of achieving such goals for example, by providing modern, efficient infrastructure, educating the workforce with skills in demand by industry, setting up free ports, and special exports zones and the like. While they are only one of the

tools available to encourage foreign investment in the Philippines in encouraging higher levels of investment, fiscal incentives are extremely available under existing laws. These fiscal incentives accelerate the pace and level of total investments in the economy, these incentives encourage renewable energy investments to develop more rapidly and should be used to support this particular sector where the Philippine has strong comparative advantage. The Renewable Energy Law and the Biofuels Act , with the provisions from the Foreign Investments Act have listed the fiscal and non-fiscal incentives for the Renewable Energy foreign investments.

The following inventory of Philippine regulations would show the enormous incentives, privileges available for foreign investments in the Philippines:

### **Government Renewable Energy & WTE Investment Concession**

**A. Openness to Foreign Investments** –The Philippine government is committed a positive attitude towards foreign investment and its role in the Board of Investment to assist foreign and domestic investors with regulatory requirements, incentives and market guidance transparency. Philippines’ being receptive to suggestions and criticisms from the private sector. Many foreign and domestic businesses contribute reforms in the economic system. The American Chamber of Commerce in the Philippines continued to promote its socio-economic “**Roadmap II More Foreign Investments**” which identifies the opportunities for more foreign investments in the Philippines.

The harnessing and utilization of Renewable Energy comprises a critical concern for energy supply in the country. This is evident in the energy sector where in the resources has lessened the country’s dependency on imported and polluting fuel. It is the Philippine government policy to facilitate the energy sector’s transition to a prominent, viable and competitive fuel option. Ensuring the success of this transition. Moreover, current initiatives in the pursuit of market based environment that is conducive to private sector investment and research and development.

Current fiscal incentives are available for alternative source of energy foreign investments. Alternative scenario has been drawn up which sets higher targets for alternative source of energy capacity based on the realization of market based industry and the availability of new international financing schemes to support alternative energy source based capacity.

### **I. The 2009 INVESTMENT PRIORITIES PLAN (IPP)**

1. Book I. Investment with Incentives, of the Omnibus Investment Code (1987) prescribes incentives to qualified firms included in the annual investment Priorities Plan (IPP), administered by the Board of Investments.
2. Under Preferred Activities of the 2008 Investment Priority Plan, income tax holiday covers the development of physical infrastructure, power generation using renewables,

and other energy sources adopting environmentally friendly technologies. 3. Under Section 2 of the Infrastructure, Power Generation projects as specified in the Power Development Plan that may qualify for registration include those utilizing indigenous and renewable energy sources such as biofuel, biomass, waste to energy conversion, solar wind, geothermal, hydro and tidal.

3. The basic incentives offered to all Board of Investments-registered companies include:

- Income Tax Holiday: new projects with pioneer status receive from seven (7) years up to maximum of eight years income tax holiday;
- Additional deduction for wages: for the first five years after registration, Additional deduction from taxable income;
- Income tax holiday all throughout the full operation when the foreign investment is under the EPIRA;
- Additional deduction from taxable income for necessary and major infrastructure works for companies located in rural areas;
- a company may deduct from taxable income an amount equivalent to expenses incurred in the development WTE projects;
- Employment of foreign nationals: enterprise may employ foreign nationals in Supervisory, technical, or advisory position under simplified visa requirements.
- Biofuel and Biomass foreign investments are entitled to “pioneer incentives”

**II. INTELLECTUAL PROPERTY RIGHTS** – The Philippines has made progress in recent years in protecting intellectual property rights. Foreign inventors and importers are encouraged to register patents, trademarks at the Bureau of Patents.

The Intellectual Property Code (Republic Act No. 8293) provides the legal framework for IPR protection in the Philippines. The holder of the Biosphere Process Systems Patent and Trademark is guaranteed an additional right of exclusive importation of his invention.

**III. CONVERSION AND TRANSFER POLICIES** – There are generally no restrictions on the full and immediate transfer of funds associated with foreign investments like repatriation, the payment of royalties, lease payments and similar fees. To obtain foreign exchange from the banking system for debt servicing of foreign loans and foreign investments must be registered with the Bangko Sentral ng Pilipinas. There is no difficulty in obtaining foreign exchange under the Philippine banking system. There are no mandatory foreign exchange surrender requirements imposed on export earners. In a move to curb foreign exchange speculation and volatility, the BSP has required a 90-

day minimum peso time deposits since January 2000, during which an investor is not allowed to purchase foreign exchange from banks for peso proceeds from the pre-terminated time deposits maybe invested in other instruments, registered anew.

**IV. LEGAL SYSTEM** --- The Philippine government is pursuing judicial reforms regarding foreign investments when the Alternative Dispute Resolution (ADR) Act was signed into law, The ADR was based on the successful court backlogs in the Court. The Philippines is also a member of the International Center for the Settlement of Investment Disputes (CSID) and the Convention of Arbitrage Awards.

**V.ACCOUNTING STANDARDS** --- The Philippines had adopted all the international financial reporting standards (IFRS) and revised internal accounting rules.

These standards are now embodied in the Philippine Financial Reporting Standards (PFRS) and Philippine Accounting Standards and the adoption of IASB-prescribed standards in 2005. The Bangko Sentral ng Pilipinas has allowed debts, small and medium enterprises (SMEs) and firms that are not publicly listed, that are not debt/securities issuers, that are public utilities or essential public service providers are exempt from the new accounting and financial reporting standards.

The Securities and Exchange Commission requires that management certify a company's financial statements. There is an outline of "Accreditation and Reportorial Companies". The regulations instituted a system of accreditation for external auditors of firms that issue securities to the investors. That the auditors cannot disclose to the SEC any material findings (i.e. fraud, or error, losses, or potential losses aggregating 10 percent or more) within five days from receipt of the external-audit findings. The SEC also issued circulars on new and /or revised Philippine Standards on auditing, review engagements, assurance engagements statements. These circulars outlined additional measures and policies for compliance by external auditors to improve independence.

A number of the larger local accountancy firms are affiliated with international accounting firms, including Pricewaterhouse Company, and Deloitte & Touche, BDO Seidman and Grant Thornton.

**VI. BILATERAL INVESTMENT AGREEMENTS** — The Philippine had signed bilateral investment agreements with Argentina, Australia, Austria, Bahrain, Cambodia, Chile, China, the Czech Republic, Denmark, Equatorial Guinea, Finland, France, Germany, India, Indonesia, Iran, Myanmar, Netherlands, Pakistan, Portugal, Romania, Russian Federation, Saudi Arabia, Spain, Sweden, Switzerland, Taiwan, United Kingdom, Venezuela. The general provision of the Bilateral investment agreement include: the promotion and non-discrimination; the free transfer of capital, payments of earnings, freedom expropriation and nationalization.

**VII. TAXATION.** The Philippines has a Tax Treaty with the United States for the purpose of avoiding procedures enforcing taxes of both countries. The Treaty also seeks to encourage Bilateral trade and investments by allowing the exchange of defined tax rules and in some cases preferential tax rates.

Most Favored Nation Clause (royalties): Pursuant to the most favored nation (MFN) clause by the Philippine – US tax treaty, this treaty allows a lower rate in the use or right to use any patent, trademark, design, model, plan, secret formula or process; or the use or right to use information concerning industrial, commercial, or scientific experience.

**Permanent Establishments.** A foreign company that renders services to Philippine Clients without setting-up a branch office is exempted to pay Philippine taxes if the services rendered to a Philippine client requires its personnel stay in the country for more than 183 days.

**Taxes on OBUs and FCDUs:** The Comprehensive Tax Reform Program (CTRP) exempts OBUs and FCDUs, both Philippine and foreign from payment of documentary stamp tax and branch profit remittance taxes.

### **VIII. PHILIPPINE ENERGY SECTOR GOALS FOR 2007, under the Philippine Energy Plan (PEP)**

1. Reduction of coal imports by 20 % in ten (10) years;
2. Increase renewable energy based capacity by 100% in ten (10) years;

#### **The Energy Sector Agenda for 2005-2013**

1. Energy Independence
  - by aggressively development of renewable energy potential such as biomass, solar, wind and ocean resources.
2. Power Sector Reforms:
3. Implement privatization process
4. Create an investment climate attractive to investors.

The Philippines is committed to form strategic alliance with other countries with regard to renewable energy development in the world.

**Compiled By:**

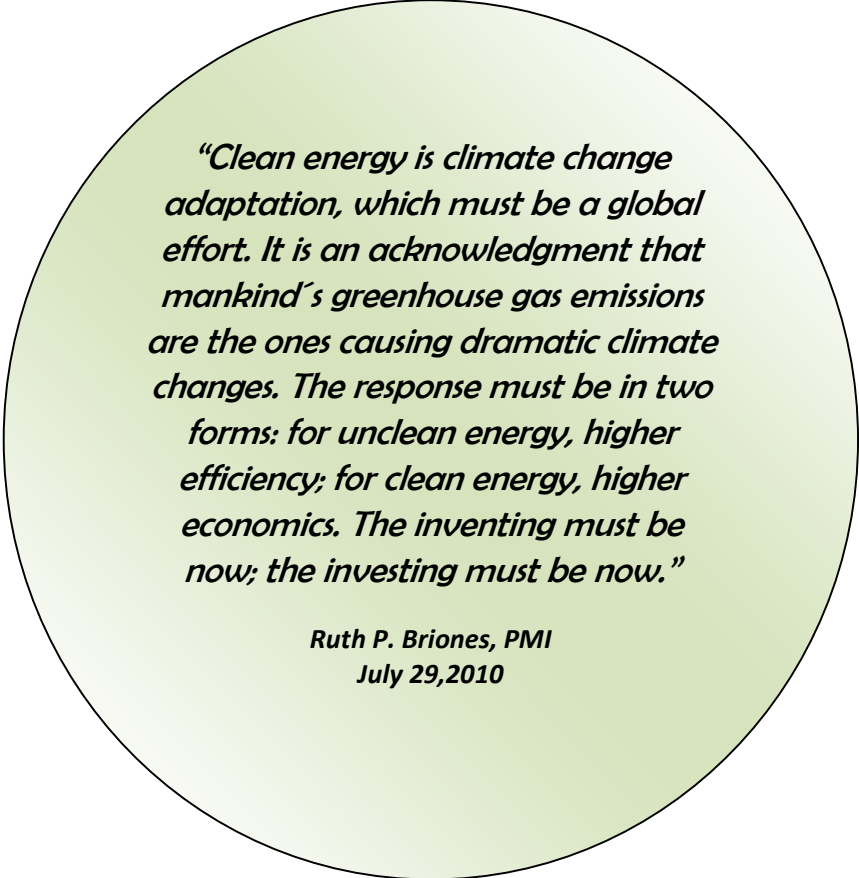
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*“Clean energy is climate change adaptation, which must be a global effort. It is an acknowledgment that mankind’s greenhouse gas emissions are the ones causing dramatic climate changes. The response must be in two forms: for unclean energy, higher efficiency; for clean energy, higher economics. The inventing must be now; the investing must be now.”*

*Ruth P. Briones, PMI*

*July 29,2010*