

**Philippines Issues New Foreign Investment Negative List**

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**1. Introduction**

The Philippine Foreign Investment Negative List, which has not been updated since 2018, was updated this July with the release of the Twelfth Regular Foreign Investment Negative List (Executive Order No. 175). The Foreign Investment Negative List enumerates businesses and professions where foreign ownership, investment or practice in the Philippines is prohibited or restricted by relevant laws.



It was noted that passage of some laws were necessary to update the Negative List, and the amendments to the Public Services Act, the Retail Trade Liberalization Act, and the Foreign Investment Law at the end of the Duterte administration made the amendment to the Foreign Investment Negative List possible. The current amendments to the Foreign Investment Negative List reflect these three important legislative changes. These amendments are in keeping with the policy of easing foreign investment restrictions. (For more information on these three amendments, please refer to the February, March, and April newsletters)

The salient provisions of the 12th Foreign Investment Negative List are explained below.

**2. Major Amendments in the 12th Foreign Investment Negative List**

Other than the activities and products requiring the clearance of the Department of National Defense, the 12th Regular Foreign Investment Negative list retained most of the foreign equity restrictions under the 11th Foreign Investment Negative List. It however reflects the less restrictive amendments to the laws related to the foreign investment in the Philippines.

Below is a comparative table of the pertinent changes in the 11<sup>th</sup> Foreign Investment Negative List and the 12<sup>th</sup> Foreign Investment Negative List.

**【Table1: Comparative Table of Major Changes to the Foreign Investment Negative List】**

11 <sup>th</sup> Foreign Investment Negative List	12 <sup>th</sup> Foreign Investment Negative List
1 . Foreigners may teach at higher education levels (R.A. No. 8292 provided that the subject being taught is not a professional subject (i.e., included in a government board or bar examination.)	1. Subject to reciprocity, professional teaching is allowed, including teaching at the primary and secondary levels (Annex No. 39). In addition, the exclusion for teaching professional courses has been removed, allowing foreigners to teach professional courses as long as they comply with current laws and regulations (including government commissions or judicial examinations).

<p>2. No foreign equity in retail trade enterprise with paid-up capital of less than <u>USD2,500,000</u> (R.A. No. 8762)</p>	<p>2. The required capitalization requirement for foreign investment in retail trade enterprises was decreased to a paid-up capital of at least <u>PHP25,000,000</u> (Section 2, R.A. No. 11595, amending R.A. No. 8762)</p>
<p>3. No foreign equity in Cooperatives</p>	<p>3. Generally, no foreign equity is allowed in Cooperatives but investments of former natural born citizens of the Philippines are now allowed.</p>
<p>4. Up to 40% foreign equity was allowed in contracts for construction and repair of locally-funded public works, except:  a. Infrastructure/development projects covered in R.A. No. 7718; and  b. Projects which are foreign-funded or assisted and required to undergo international competitive bidding.</p>	<p>4. Replaced by a broader provision allowing up to 40% foreign equity in procurement of infrastructure projects under R.A. No. 9184</p>
<p>5. Operation of Public Utilities is subject to 40% limitation in foreign ownership equity.</p>	<p>5. Operation of Public Utilities is still subject to 40% limitation in foreign ownership equity, but the businesses considered as Public Utility has been redefined pursuant to the amendments to the Public Service Act, as follows:  - Distribution of electricity  - Transmission of Electricity  - Petroleum and Petroleum Products Pipeline Transmission Systems  - Water Pipeline Distribution systems and wastewater Pipeline systems, including sewerage pipeline systems  - Seaports  - Public Utility Vehicles</p>
<p>6. Only up to 40% foreign equity was allowed for the manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) Clearance.</p>	<p>6. Deleted. Hence, manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) Clearance may now be 100% owned by foreigners.</p>
<p>7. Domestic market enterprises which involve advanced technology or <u>employ at least 50 direct employees</u> with paid up capital of less than the equivalent of USD100,000 was subject to maximum of 40% foreign equity restriction.</p>	<p>7. The exception to the USD200,000 minimum capitalization requirement for Micro and small domestic market enterprises: those where 100% foreign ownership is allowed if their paid-in equity capital is at least equivalent of US\$100,000 has been amended as follows:  (i) that involve advance technology as determined by the Department of Science and Technology (hereinafter referred to as, "DOST"); or  (ii) are endorsed as startup or startup enablers by the lead host agencies, namely the Department of Trade and Industry, Department of Information and Communications Technology or DOST, under the Innovative Startup Act; or</p>

	(iii) <u>with a majority of their direct employees are Filipinos which in no case shall be less than fifteen (15).</u>
8. The professions listed on the right were not included in the annex of professions subject to reciprocity.	8. The following are the added professions where foreigners may practice in the Philippines subject to reciprocity: <ul style="list-style-type: none"> <li>- Criminology</li> <li>- Food technology</li> <li>- Marine deck engineering</li> <li>- Professional teaching</li> <li>- Radiologic and x-ray technology</li> <li>- Speech Language Pathology</li> </ul>
9. The list of corporate practice allowed in professions includes: <ul style="list-style-type: none"> <li>- Aeronautical engineering</li> <li>- Agricultural biosystems engineering</li> <li>- Architecture</li> <li>- Chemistry</li> <li>- Electronics engineering</li> <li>- Environmental planning</li> <li>- Forestry</li> <li>- Guidance and counselling</li> <li>- Interior design</li> <li>- Landscape architecture</li> <li>- Naval architecture</li> <li>- Psychology</li> <li>- Real estate service (real estate consultant, real estate appraiser, real estate assessor, real estate broker and real estate sales person)</li> <li>- Sanitary engineering</li> <li>- Social work</li> </ul>	9. Architecture is considered as corporate practice of professions with foreign equity restriction.

**3. Outline of the 12<sup>th</sup> Regular Foreign Investment Negative List (Executive Order No. 175, June 27, 2022)**

The Foreign Investment Negative List have two (2) components lists, A and B.

- List A enumerates the areas of activities reserved to Philippine Nationals by mandate of the constitution and specific law.
- List B enumerates the areas of activities and enterprises regulated pursuant to law which are defense-related activities, requiring prior clearance and authorization by the Department of National Defense, or which have implications on public health and morals.

**i. List A**

List A enumerates certain areas of activities which the laws or the constitution mandates to be reserved to Filipinos. There are areas of activities that are totally closed to foreign ownership, there are also industries where foreign participation is allowed to the extent of 25%, 30%, up to 40%, as follows:



Limit on Foreign Equity	Industry
No Foreign Equity Allowed / 0% Foreign Ownership	<ul style="list-style-type: none"> <li>• Mass media (Except recording and internet business)</li> <li>• Practice of professions; except in cases specifically allowed by law following the prescribed conditions stated therein; and the listed professions found in the Annex on Professions of the 12<sup>th</sup> Foreign Investment Negative list, which indicates that:               <ul style="list-style-type: none"> <li>➢ Professions where foreigners are not allowed to practice in the Philippines, except if subject to reciprocity as provided in pertinent laws; and</li> <li>➢ Corporate practice of professions with foreign equity restrictions under pertinent laws.</li> </ul> </li> <li>• Retail trade enterprises with paid-up capital of less than twenty-five million pesos (PHP25,000,000) (Please see <a href="https://oneasia.legal/8203">https://oneasia.legal/8203</a>)</li> <li>• Cooperatives (except investments of former natural born citizens of the Philippines)</li> <li>• Organization and operation of private detective, watchmen or security guards agencies</li> <li>• Small-scale mining</li> <li>• Utilization of marine resources in archipelagic waters, territorial sea and exclusive economic zones, as well as small-scale utilization of natural resources in rivers, lakes, bays and lagoons</li> <li>• Ownership, operation and management of cockpits</li> <li>• Manufacture, repair, stockpiling and/or distribution of nuclear weapons</li> <li>• Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines (various treaties to which the Philippines is a signatory and conventions supported by the Philippines)</li> <li>• Manufacture of firecrackers and other pyrotechnic devices.</li> </ul>
Up to 25%	<ul style="list-style-type: none"> <li>• Private recruitment, whether for local or overseas employment</li> <li>• Contracts for the construction of defense-related structures</li> </ul>
Up to 30%	<ul style="list-style-type: none"> <li>• Advertising</li> </ul>
Up to 40%	<ul style="list-style-type: none"> <li>• Procurement of infrastructure projects pursuant to the Government Procurement Reform Act.</li> <li>• Exploration, development and utilization of natural resources</li> <li>• Ownership of private lands (except natural born citizen who has lost his Philippine citizenship and who has the legal capacity to enter into a contract under Philippine laws)</li> <li>• Operation of public utilities Public utilities have been clearly defined under the Public Service Act. For more information, you can check our previous newsletter in the following link <a href="https://oneasia.legal/8416">https://oneasia.legal/8416</a></li> <li>• Educational institutions (other than those established by religious groups and mission boards, for foreign diplomatic</li> </ul>



	<p>personnel and their dependents, and other foreign temporary residents, (Section 4, Article XIV of the Constitution), or for short-term high-level skills development that do not form part of the formal education system as defined un section 20 of Batas Pambansa No. 232</p> <ul style="list-style-type: none"> <li>• Culture, production, milling, processing, trading except retailing, of rice and corn and acquiring by barter, purchase or otherwise, rice and corn and the by-products thereof, subject to period of divestment</li> <li>• Contracts for the supply of materials, goods and commodities to government owned or controlled corporations, company, agency or municipal corporation</li> <li>• Operation of deep sea commercial fishing vessels</li> <li>• Ownership of condominium units</li> <li>• Private radio communications network</li> </ul>
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**ii. List B**

As mentioned earlier, the new Foreign Investment Negative List removed the activities and products that requires clearance of the Department of National Defense from the enterprises that limits foreign ownership up to 40%. Hence, there is no longer any foreign ownership participation restriction in terms of these products and activities, and foreigners can own up to 100% of these enterprises.

Below is the list of enterprises which foreign ownership is limited up to forty percent (40%) for reasons of security, defense, risk to health and morals and protection of small and medium scale enterprises.

**【Table 3:List B Business sectors where foreign ownership is restricted for reasons of security, defense, public health, order, and protection of small and medium enterprises】**

Limit on Foreign Equity	Industry
Up to 40%	<ul style="list-style-type: none"> <li>• Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police clearance:               <ul style="list-style-type: none"> <li>- Firearms (handguns to shotguns), parts of firearms and ammunition therefore, instruments or implements used or intended to be used in the manufacture of firearms;</li> <li>- Gunpowder</li> <li>- Dynamite</li> <li>- Blasting supplies;</li> <li>- Ingredients used in making explosives:                   <ul style="list-style-type: none"> <li>- Chlorates of potassium and sodium</li> <li>- Nitrates of ammonium, potassium, sodium barium, copper (11), lead (11), calcium and cuprite</li> <li>- Nitric acid</li> </ul> </li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>- Nitrocellulose</li> <li>- Perchlorates of ammonium, potassium and sodium</li> <li>- Dinitrocellulose</li> <li>- Glycerol</li> <li>- Amorphous phosphorus</li> <li>- Hydrogen peroxide</li> <li>- Strontium and nitrate powder</li> <li>- Toluene</li> </ul> <p>- Telescopic sights, sniper scope and other similar devices.</p> <p style="text-align: center;">The manufacture or repair of the above listed items may be authorized by the Chief of the Philippine National Police to non-Philippine nationals; provided that a substantial percentage of output as determined by it, is exported.</p> <ul style="list-style-type: none"> <li>• Manufacture and distribution of dangerous drugs</li> <li>• Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks posed to public health and morals, except wellness centers</li> <li>• All forms of gambling (except those covered by investment agreements with PAGCOR)</li> <li>• Micro and small domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000</li> <li>• Micro and small domestic market enterprises with paid-in equity capital of less than the equivalent of US\$100,000: (see: <a href="https://oneasia.legal/8333">https://oneasia.legal/8333</a>) (i) that involve advance technology as determined by the Department of Science and Technology (hereinafter referred to as, "DOST"); or (ii) are endorsed as startup or startup enablers by the lead host agencies, namely the Department of Trade and Industry, Department of Information and Communications Technology or DOST, under the Innovative Startup Act; or (iii) with a majority of their direct employees be less than fifteen (15).</li> </ul>
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#### 4. Conclusion

Investors intending to do business in the Philippines should be aware of the enterprises which is open for foreign investments and those that are limited or totally reserved to Filipino nationals. As has been mentioned above, the 12<sup>th</sup> Regular Foreign Investment Negative list reflect the changes to the Public Service Act, Retail Trade Liberalization Act, and the Foreign Investment Act, which were amended to lessen barriers to entry of foreign investors to the Philippines. For more details, you can visit our previous newsletters on these matters in the following links:

<https://oneasia.legal/8416>

<https://oneasia.legal/8203>

<https://oneasia.legal/8333>

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