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Business Organizations in the Philippines

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BUSINESS ORGANIZATIONS IN THE PHILIPPINES

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INTRODUCTION

According to the Industrial Development Center (IDC), a joint project of the Philippines and the United States created in February 1955 to promote industrial production and employment, the Philippines "is one of Asia's wealthiest in potentials for growth."[1]

The Philippines consists of more than 7,000 islands, and has a total land area larger than Denmark, Belgium and Holland combined. Under Spanish dominion for 333 years, it was acquired by the United States through the Treaty of Paris of December 10, 1898. American sovereignty lasted until July 4, 1946, when the Philippines gained its independence and became known as the Republic of the Philippines.

Total potential agricultural area is estimated at 17.2 million hectares (42.5 million acres); however, to date only 11.7 million hectares have been classified and made available for cultivation. Of almost 3.5 million hectares of grassland only a little over one-half is covered by pasture permits, and of one-half million hectares of swampland available for fishpond development, some 380,000 hectares are still undeveloped.

Marine areas are estimated at 166 million hectares and thus far only the inshore areas have been exploited.[2] In the language of the Economic Mission of the International Bank for Reconstruction & Development (IBRD), which visited the Philippines in 1961, "the great marine fish resources are still scarcely touched and some 500,000 hectares of fresh-water and mangrove swamplands are available for additional development of fishponds."

In 1960, seven companies began drilling for oil. Today, all are still actively engaged in operations. Stanvac, drilling in Echague, Isabela, encountered a sizeable gas deposit (7,000,000 cubic feet per day). In Cebu, oil was actually discovered, although not in commercial quantity. On Nonoc Island, Surigao, one of the world's richest nickel deposits is still awaiting private investment.

The country's major exports are coconut products (copra, desiccated coconut, coconut oil), centrifugal sugar, abaca, logs and lumber, pine-

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[1] IDC, ANN. REP. (1961). The IDC has its offices at Montinola Building, corner Mabini & F. Faura streets, Manila.

[2] Macaspac, *The Future of (Philippine) Agriculture,* PROGRESS (1960).

apple, and minerals and metals such as copper concentrates, chromite ore, and iron ore.

Major imports are: producers' goods (such as unprocessed raw materials); machinery and transport equipment; manufactured goods (textiles, base metals, and paper); food (dairy products, fish and fish preparations, meat, and cereals); mineral fuels and lubricants; chemicals and consumer goods. Total imports from foreign countries in 1963 amounted to 618.2 million dollars. Foreign trade is primarily with the United States, with Japan a distant second.

The Philippines' aggregate steel consumption is currently about 360,000 tons per year. To meet domestic demand two projects are being contemplated: an integrated steel operation at Iligan City in Mindanao which will produce electrically processed pig iron for conversion into semi-finished and finished products with an initial capacity of 230,000 tons; and the Santa Inez project in Luzon which involves production of 110,000 tons of billets for use by existing re-rollers as well as 20,000 tons of pig iron which will be used mainly by foundries now processing imported materials.[3]

Reliance upon a few major exports of raw materials, encouraged by preferential free trade relations with the United States, is now considered by many Filipinos as undesirable,[4] and great efforts are being made to encourage new industries in the Philippines.

The per capita disposable income of the Filipino is about 350 pesos.[5] The estimated unemployed labor population is around 1.2 million, or 1.3% of the total labor force.[6]

The country is currently in a period of industrial revolution. Manufacturers and producers of paints, bottles, carton containers, nails, steel bars, flour, fertilizers, animal feeds, canned goods, fruits and vegetables, textiles, knitted goods and garments, sewing machines, footwear, cement, plywood, glass, roofing materials or galvanized sheets, rubber tires, and other products have appeared. Most of these are in the category of light industries, geared principally for domestic consumption.[7]

[3] Appendix II to MACAPAGAL, FIVE-YEAR INTEGRATED SOCIO-ECONOMIC PROGRAM FOR THE PHILIPPINES 27 (1962).

[4] A gradual or transitional period was devised in the Bell Trade Act of 1946, later revised by the Laurel-Langley Agreement of 1954 and signed on Sept. 6, 1955.

[5] According to H. M. Henares Jr. (now Chairman, National Economic Council) in his article *Bold, New Industries,* PROGRESS (1959), the per capita income of the Filipino in 1957 was $193.92 (in U.S. currency), the 3d largest in the Far East, being surpassed only by industrialized Japan and by Malaya whose 6 million population controls the world's supply of rubber and tin.

[6] IDC, ANN. REP. (1961).

[7] Henares, *supra* note 5.

A rich field of investment in cacao, arabica coffee, rubber, citrus, livestock, chemical fertilizer, plywood manufacture, paper and pulp, steel, cement, copper and chrome, coal mining, road transport, and basic industries awaits the investor in the Philippines.

The Philippines is a developing nation, but development has not been as rapid as in other countries devastated by the last world war. Consequently, it is the avowed policy of the Philippines to attract foreign capital and investments, preferably under "joint-business ventures" with Filipino capitalists and entrepreneurs.[8]

The greatest deterrent to foreign investment in the Philippines was the foreign exchange controls instituted in 1949 to protect the country's deteriorating foreign exchange international reserve.[9] However, the Central Bank of the Philippines abolished controls on foreign exchange, and business in the Philippines is now operating under a climate of comparative free enterprise.[10]

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[8] "While we uphold that the principal responsibility for development should belong to Filipino citizens who must be the principal determinants as well as chief beneficiaries of Philippine economic progress, we at the same time caution against the type of radical nationalism and nationalization measures that deter the coming of foreign assistance in our economic development. We must be sincere in attracting foreign capital to invest in productive enterprises in our country in joint ventures with Filipino businessmen and must show this sincerity not in words but in deeds." MACAPAGAL, FIVE-YEAR INTEGRATED SOCIO-ECONOMIC PROGRAM FOR THE PHILIPPINES 22-23 (1962).

[9] For a historical background of foreign exchange controls in the Philippines, see R.A. No. 330 (1948); CENT. BANK CIRC. No. 20, Dec. 9, 1949; R.A. No. 426 (1950); R.A. No. 601 (1951) (17% tax on foreign exchange); R.A. No. 650 (1951) (import control law); CENT. BANK CIRC. No. 44, June 12, 1953 and its implementing regulations, June 25, 1953; R.A. No. 901 (1953) (tax exemptions of new and necessary industries); R.A. No. 14 (1955) (barter law); CENT. BANK CIRC. No. 75, Sept. 2, 1957; CENT BANK CIRC. No. 79, Dec. 9, 1957.

[10] CENT. BANK CIRC. No. 133, dated Jan. 21, 1962 as amended by Circular No. 139, March 2, 1962, reads as follows: "Pursuant to the provisions of Republic Act No. 2609 and Republic Act No. 265, the Monetary Board, by unanimous vote and with the approval of the President of the Philippines, and in accordance with executive and international agreements to which the Republic of the Philippines is a party, hereby amends Circular No. 121 providing for the gradual lifting of the restrictions on transactions involving foreign exchange as follows:

"1. All exports shall be previously authorized by the Central Bank and receipts of foreign exchange therefrom shall be subject to the following:

"(a) Eighty per cent (80%) of all export receipts as well as all receipts from invisibles shall be retained by the authorized agent banks for sale at the prevailing free market rate.

"(b) Twenty percent (20%) balance of export receipts shall be surrendered to the Central Bank at par value (₱2.00 to $1.00).

"(c) The proceeds of exports must be received in currencies prescribed to form part of the international reserve. Within a period of 90 days from date of shipment or within such period as may in special cases be established, exporter must repatriate in instruments of international exchange the total value of their exports and must liquidate this value within 10 days from its repatriation. Payments for exports on a cash, collection or consignment basis must be arranged through an authorized agent bank, which must specifically contract with the exporter to buy the exchange proceeds. The bank issues a certificate that payment has been made or arranged in an approved manner, to enable clearance of the exports through customs.

"2. Only authorized agent banks may sell foreign exchange for imports. Such ex-

At the end of 1958, total U.S. foreign investment was estimated to exceed 40 billion dollars.[11] At about the same period, total U.S. private investment in the Philippines was estimated to be only 266 million pesos,[12] or less than 700,000 dollars. This amount represents an infinitesimal portion of the billions of American dollars invested in foreign countries.[13]

It is surprising that so little American capital has been invested in

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change should be sold at the prevailing free market rate to any applicant, without requiring prior specific licensing from the Central Bank, subject to the following conditions:

"(a) All imports must be covered by letters of credit except small transactions involving not more than $100.00.

"(b) Import letters of credit must be accompanied by a special time deposit in the following cases:

Unclassified items Non-essential consumer goods	150%
Non-essential producers goods Semi-essential consumer goods	100%
Semi-essential producers goods	50%

"These time deposits shall be kept for periods not shorter than 120 days, and shall have a reserve requirement of 100%. These special time deposits and their reserve requirements may be either in cash or in Government notes, securities, or bonds.

"3. Authorized agent banks may sell foreign exchange for invisibles at the prevailing free market rate to any applicant without requiring prior specific licensing from the Central Bank. For capital transfers, a special form prescribed by the Central Bank must be filled out. Blocked fidiciary accounts shall revert to the status of ordinary deposits, and all special requirements governing them are hereby revoked.

"4. The free market rate shall not be administratively fixed but shall be determined through transactions in the free market.

"5. For statistical purposes, all authorized agent banks are required to submit a daily report of their purchase and sale of foreign exchange on the attached form. A special form prescribed by the Central Bank must be filled out for capital transfers.

"6. Imports shall be released from the port of entry only upon presentation of a release certificate issued by the Central Bank based on letters of credit opened.

"7. The margin levy is suspended. (The Central Bank's margin over banks' selling rates was fixed at 15%, pursuant to it Circular No. 122, March 15, 1961, pursuant to R.A. No. 2609 (1959)).

"8. All existing circulars, rules, regulations and conditions governing transactions in foreign exchange not inconsistent with the provisions of this Circular are deemed incorporated hereto and made integral parts hereof by reference.

This Circular shall take effect as of today.

For the Monetary Board:
ANDRES V. CASTILLO,
Governor."

[11] Young, *Introduction, Southwestern Legal Foundation,* INSTITUTE ON PRIVATE INVESTMENTS ABROAD 2 (1959).

[12] RESEARCH PROJECT ON JOINT INTERNATIONAL BUSINESS VENTURES, COUNTRY STUDY No. 3, THE PHILIPPINE ISLANDS app. X (1958) (unpublished), quoting U.S. DEP'T OF COMMERCE SURVEY OF CURRENT BUSINESS. However, according to Leslie Gould, financial editor of the New York Journal-American, U.S. direct investments in the Philippines in 1964 amounted to around $452 million. (Manila Daily Bulletin, July 2, 1964.)

[13] Notwithstanding the fact that during the 1950-1956 period, annual rates of return of U.S. investments in the Philippines were consistently higher than the corresponding rates realized by U.S. investments all over the world (19.1% vs. 16.2%). ITCHOP, STATISTICAL INQUIRY INTO FOREIGN INVESTMENTS IN THE PHILIPPINES (1958) (thesis submitted to the Graduate School, University of the Philippines, for M.A. degree in Statistics).

the Philippines, particularly in view of the special privileges granted to United States citizens. Of all the countries in need of development, only the Philippines has a form of government which closely approximates that of the United States. The Constitution of the Republic of the Philippines, as well as its laws, were patterned after American legal institutions, and Philippine courts cite American jurisprudence as the "rule of law."

The following provisions of the Constitution of the Republic of the Philippines will sound familiar to American and English lawyers and jurists:

> 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.[14]
>
> 2. Private property shall not be taken for public use without just compensation.[15]
>
> 3. No law impairing the obligation of contracts shall be passed.[16]
>
> 4. No *ex post facto* law or bill of attainder shall be enacted.[17]

These constitutional provisions are not mere policy statements of a political party in power but are the fundamental law of the state and are strictly enforced by the Philippine Supreme Court. This is exemplified by the Supreme Court's pronouncement that:

> The State, under the police power, is possessed with plenary power to deal with all matters relating to the general health, morals, and safety of the people, *so long as it does not contravene any positive prohibition of the organic law.*[18]

In addition, the Philippine Constitution contains a new provision in stating that:

> The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals.[19]

This has been held to refer only to "landed estates" by the Supreme Court. This constitutional provision contemplates "large estates, trusts in perpetuity, and land that embraces a whole town, or a large section

[14] PHIL. CONST. art. III, § 1(1).
[15] PHIL. CONST. art. III, § 1(2).
[16] PHIL. CONST. art. III, § 1(10).
[17] PHIL. CONST. art. III, § 1(11).
[18] Case v. Board of Health, 24 Phil. 250, 252 (1913). (Emphasis added.)
[19] PHIL. CONST. art. XIII, § 4.

of a town or city which bears direct relation to the public welfare."[20] To permit the expropriation of small areas would be a taking of private property in order to give it to other private individuals, and if carried out, "will place the Government of the Republic in the awkward predicament of veering towards socialism, a step not foreseen nor intended by our Constitution."[21]

Unlike the U.S. Constitution, the Philippine Constitution contains a special provision for the promotion of social justice: "the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State."[22]

Interpreting this special constitutional provision, the Philippine Supreme Court held that the term "social justice" does not mean destruction of property rights:

> The promotion of social justice ordained by the constitution does not supply a paramount basis for untrammeled expropriation of private land by the Rural Progress Administration or any other government instrumentality. Social justice does not champion division of property or equality of economic status; what it and the Constitution do guarantee are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, and equitable sharing of the social and material goods on the basis of efforts exerted in their production.[23]

When administrative officials, including the President of the Republic, act contrary to the intent and purpose of the Constitution, the Philippine Supreme Court does not hesitate to reprimand officials who are over-zealous in the enforcement of the laws.

> Ours is supposed to be a regime under a rule of law. Adoption, as a government policy, of the theory of the 'end justifies the means,' brushing aside constitutional and legal restraints, must be rejected, lest we end up with the end of freedom.[24]

Speaking on Philippine Constitution Day in 1938 (February 10th), the Hon. Claro M. Recto, former Supreme Court justice and President of the Philippine Constitutional Convention, stated that:

> Nowhere is the Convention's conservatism more patently exhibited than in the Bill of Rights of the Constitution. Even attempts to recast familiar

[20] Guido v. Rural Progress Administration, 84 Phil. 847, 853 (1949).
[21] *Id.* at 856 (concurring opinion).
[22] PHIL. CONST. art. II, § 5.
[23] Guido v. Rural Progress Administration, 84 Phil. 847, 856 (1949).
[24] Gonzales v. Hechanova, Gen. Reg. No. L-21897 (Oct. 22, 1963).

> phraseology of the Bill of Rights of former organic laws were vigorously opposed, and eventually voted down. This was prompted in part by a desire to preserve intact and undisturbed the jurisprudence on the subject built through the years. The result was the reproduction, almost bodily, of the Anglo-American Bill of Rights in our Constitution.

People familiar with the Anglo-American Bill of Rights will feel secure on Philippine soil with regard to protection of their life, liberty, and property. It is quite surprising that in some developing countries where the right of private property is made dependent upon the will of the legislature rather than the courts,[25] American and other alien capital has been invested more liberally than in the Philippines where the right of private property is protected by the Constitution and by the Courts. Perhaps a little enlightenment will clear away some of the apprehensions about doing business in the Philippines.

FORMS OF BUSINESS WHICH MAY BE ORGANIZED UNDER PHILIPPINE LAW

Business in the Philippines may be conducted either in the form of a single proprietorship, a partnership, or a private corporation. Other forms of business associations may also be used, although not specifically provided for by Philippine law. These are the joint-stock company, the business trust, and the joint-business venture. The joint-business venture, which will be discussed below,[26] should not be confused with the joint-account or *cuentas en participación* which is expressly provided for in the *Code of Commerce.*[27] The anonymous partnership or *sociedad anónima* is also expressly provided for in the *Code of Commerce,* but this form of business association was abolished by the Corporation Law, enacted in 1906.[28]

The joint-account or *cuentas en participación* is neither a partnership nor a corporation; it is merely a business venture established between two or more businessmen interested in a certain business transaction, without creating a juridical entity. Under the *Code of Commerce,* only the designated manager of the joint-account may sue and be sued in his personal capacity for transactions made by the

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[25] See *Fourth Amendment* to the Indian Constitution in PYLEE, CONSTITUTIONAL GOVERNMENT IN INDIA 282-85, 317, 570.

[26] See text accompanying note 169 *infra.*

[27] PHIL. CODE OF COMMERCE arts. 239-43 (1888). The present Code of Commerce is the Spanish Code of Commerce of August 22, 1885, which was extended to the Philippines by the Spanish Royal Decree of August 6, 1888, and became effective on December 1, 1888.

[28] PHIL. CORP. LAW § 191 [1906] (Act No. 1459, as amended).

business venture. The law does not prescribe any legal formalities in organizing this kind of business association.[29]

The business trust may follow the pattern of an American "Massachusetts Trust," or may be organized under the general provisions on Trusts provided for in the new *Philippine Civil Code.*[30]

The joint-stock company is not expressly provided for by Philippine law, but it may be organized under the general provisions of the law on contracts of the *Civil Code.* For purposes of taxation, a joint-stock company is treated in the same category as partnerships and private corporations.[31]

The anonymous partnership or *sociedad anónima* was the most common form of business association in the Philippines prior to enactment of the present Corporation Law.[32] It is a Spanish type of private corporation, possessing the characteristics of both a partnership and a corporation. Its similarity to a partnership is based on the fact that it can be created by mere agreement of the parties, while its corporate attributes are found in the use of capital stock represented by transferable shares. However, the *sociedad anónima* is neither a partnership nor a private corporation as these entities are known under Philippine law. Unfortunately, a *sociedad anónima* is no longer allowed to be organized by virtue of the provisions of section 191 of the present Philippine Corporation Law. However, those *sociedades anónimas* already existing and duly organized at the time the Corporation Law took effect

> which elect to continue their business as such *sociedades anónimas* instead of reforming and reorganizing under and by virtue of the provisions of this Act shall continue to be governed by the laws that were in force prior to the passage of this Act in relation to their organization and method of transacting business and to the rights of members thereof between themselves, but their relations to the public and public officials shall be governed by the provisions of this Act.[33]

The majority of the members of the Supreme Court in *Benguet Consolidated Mining Co. v. Pineda,*[34] held that the above provisions of the Philippine Corporation Law prohibit extension of the terms of *sociedades anónimas,* on the alleged ground that such an extension is

[29] PHIL. CODE OF COMMERCE art. 240.
[30] See PHIL. CIVIL CODE arts. 1440-57.
[31] See PHIL. NAT'L INT. REV. CODE § 84(b) (C.A. No. 466, as amended).
[32] PHIL. CORP. LAW (P.A. No. 1459).
[33] PHIL. CORP. LAW § 191 (P.A. No. 1459).
[34] 52 Off. Gaz. 1961 (1956).

a matter which affects its relations to the public and public officials, and should, therefore, be governed by section 18 of the Corporation Law which expressly prohibits the extension of the terms of private corporations beyond the term as originally stated in the articles.

THE SINGLE PROPRIETORSHIP

The simplest form of doing business is the single proprietorship. This is a business carried on and owned by a single individual, in his own name and for his own account, requiring no legal formalities or technicalities. However, if the individual would prefer to transact business by adopting a business name distinct and separate from his own name, he should register such business name in the Bureau of Commerce pursuant to the Business Names Act.[35] A business name may be used, without prejudice to renewals, for a period of five years, upon payment of a registration fee. With the exception of retail trade, discussed below, aliens may conduct business in the form of a single proprietorship.

If a business is to be carried on by two or more persons, combining their industry and/or capital, it may be organized in the form of a partnership, or in the form of a private corporation if there are at least five incorporators. Partnerships are organized in accordance with the provisions of the *Civil Code;* private corporations are organized in accordance with the provisions of the Corporation Law. Inasmuch as these forms are common methods of transacting business, they will be discussed in greater detail, with emphasis on problems which may be encountered by alien businessmen.

THE PARTNERSHIP

The *Philippine Civil Code* defines a partnership as follows:

> By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.
>
> Two or more persons may also form a partnership for the exercise of a profession.[36]

Business partnerships may be general or limited. General partnerships are composed entirely of general partners whose liability for partnership debts to third persons is *in solidum.* On the other hand,

[35] Act No. 3883 as amended by Act. No. 4147 and R.A. No. 863.
[36] PHIL. CIVIL CODE art. 1767.

limited partnerships are composed of at least one general partner and a limited partner or partners. Unlike general partners, the limited partners are liable for partnership debts only to the extent of their contribution to the partnership. Only capital contributing partners may be classified as limited partners in the articles of partnership.[37]

A partnership may be organized without written contract except where: (1) the partnership capital, money or property, exceeds 3,000 pesos; (2) the contribution of any partner consists of real property; (3) the partnership is a limited one.

When the partnership capital exceeds 3,000 pesos, the partnership contract must appear in a public instrument which has been duly registered with the Securities & Exchange Commission. However, failure to comply with this formal requirement "shall not affect the liability of the partnership and the members thereof to third persons."[38] Thus, a partnership failing to comply with these regulation requirements will be held liable for its transactions, but it will have no legal method by which its rights as a partnership can be enforced. This doctrine is based on three separate principles: (1) that one cannot enrich himself at the expense of another, (2) on the doctrine of estoppel, (3) actual or apparent partnership, as provided for in article 1825 of the *Philippine Civil Code.*

A partnership may be established with or without a fixed term. Unlike a private corporation[39] which may not be incorporated for more than 50 years, a partnership has no limitation on its duration. However, the partnership can be dissolved in accordance with the law at any time.

A general partnership may be dissolved by: (a) the voluntary will of any or all of the partners; (b) the termination of the definite term or particular undertaking specified in the contract of partnership; (c) the *bona fide* expulsion of any partner from the partnership pursuant to a power conferred on the partners by the contract of partnership; (d) an event which makes it unlawful for the business of the partnership to be carried on, or for the members to carry on the business as partners; (e) the loss of any specific thing contributed to or to be contributed to the partnership before the partnership acquires title to such property; (f) the death of any partner; (g)

[37] PHIL. CIVIL CODE art. 1845.
[38] PHIL. CIVIL CODE art. 1772.
[39] Insurance corporations may now extend their term once for another 50 years. (R.A. No. 1932).

the insolvency of any partner or of the partnership; or (h) a judicial decree of dissolution for any of the causes provided by law.[40]

These causes of dissolution of a general partnership apply equally to a limited partnership, except that the partner who withdraws, dies, becomes insolvent or insane, or is given a sentence of civil interdiction must be a general partner in the limited partnership.[41]

Expiration of the term fixed in the articles of partnership dissolves the partnership. However, if notwithstanding such expiration, the partners continue the business without any express agreement, the partnership will be deemed to be a partnership at will (a partnership without a fixed term) with the partners' rights and liabilities remaining the same as they were at termination.[42]

Dissolution of a partnership by expiration of the term, death of a general partner, or for any of the causes provided by law will not prevent the remaining partners from expressly agreeing among themselves to continue the business of the partnership, unless the dissolution was due to a legal impossibility to continue the business, or unless the partnership is a limited one and the partner who died was the only general partner in the partnership.[43] In those cases where the partnership can be continued and is in fact continued by the remaining partners, the creditors of the dissolved partnership will also be creditors of the persons or partnership continuing the business.[44] Also, the legal representative of the deceased or retired partner

> may have the value of his interest at the date of dissolution ascertained and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option . . . in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership.[45]

The Philippine law on partnerships[46] contains specific provisions regarding the sharing by partners in profits and losses. The following rules govern this sharing:

1. The profits and losses shall be distributed in accordance with the stipulation of the partners, if such a stipulation exists.

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[40] PHIL. CIVIL CODE art. 1830.
[41] PHIL. CIVIL CODE art. 1860.
[42] PHIL. CIVIL CODE art. 1785.
[43] An example would be a partnership established to engage in retail trade composed of aliens which, although lawful at one time, was made unlawful by enactment of the Retail Trade Nationalization Law. R.A. No. 1180 (1954), PHIL. ANN. LAWS tit. 18, §§ 44-49 (1956).
[44] See PHIL. CIVIL CODE art. 1840.
[45] PHIL. CIVIL CODE art. 1841.
[46] PHIL. CIVIL CODE arts. 1797, 1798.

2. In the absence of a stipulation, the share of each partner in the profits and losses shall be in proportion to the amount each partner may have contributed, but the industrial partner (partner contributing only industry) will not be liable for losses. As for profits, the industrial partner receives such a share as may be just and equitable under the circumstances.

3. The share of each partner in profits and losses may also be made in accordance with the decision of a third person appointed by common consent.

The first of these rules provides for sharing in the profits and losses in accordance with that stipulated. However, any stipulation which excludes a partner from sharing profits or which exempts any capitalist partner from sharing losses is void.[47] If such an exclusionary stipulation exists, the second rule above will be applied. Should there be a stipulation with respect to sharing profits but no stipulation regarding losses, the law provides that the share of each in the losses will be in the same proportion as that stipulated for sharing profits.[48]

On the other hand, Philippine partnership law fails to provide a rule governing the partners' share of profits if the stipulation refers only to sharing losses. The reason for this silence is that since partnerships are always established to earn profits, it would be unusual for the partners to be more concerned with the division of losses than with profit distribution. Should such an unusual stipulation be made, it is submitted that the partners will share profits in proportion to their respective contributions, and the industrial partner will share losses as stipulated. An industrial partner should be exempt from sharing losses only when there is no stipulation regarding such division.

The obligation of partners to share partnership losses should not be confused with the liability of partners for partnership debts, incurred in favor of third persons. The former situation may be governed by stipulation, but the latter is always governed by law. Hence, while an industrial partner may be exempt from sharing losses, he will always be liable with the other partners for a pro rata share of the partnership liabilities.[49] Pro rata liability in this instance means joint liability, as distinguished from solidary liability.[50]

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[47] PHIL. CIVIL CODE arts. 1799.
[48] PHIL. CIVIL CODE art. 1797.
[49] PHIL. CIVIL CODE art. 1816.
[50] Co-Pitco v. Yulo, 8 Phil. 544 (1907).

Except in situations specified by law or by the Constitution, partnerships in the Philippines may be organized without discrimination as to citizenship or limitation with respect to area or field of business.

CORPORATIONS

The Philippine Corporation Law[51] governs business corporations in the Philippines. Unlike a partnership, a private corporation cannot be created by mere agreement. While a partnership may come into existence when the partners sign the articles of partnership, a private corporation does not acquire juridical personality[52] until a certificate of incorporation is issued to the incorporators by the Securities & Exchange Commission.[53] A partnership may be formed by two or more persons, but a private corporation requires incorporation by no less than five persons, a majority of whom must be Philippine residents.[54]

The articles of incorporation[55] are required to be signed and sworn to by the required number of incorporators, filed with the Securities & Exchange Commissioner, and contain the following:

(1) The name of the corporation;
(2) The purpose or purposes for which the corporation is formed;
(3) The place where the principal office is to be established, and this must be within the Philippines;
(4) The names and residences of the incorporators;
(5) The number of directors, not less than 5 nor more than 11, in the case of ordinary stock corporations;
(6) In the case of stock corporations, the amount of capital stock in the lawful money of the Philippines, the number and classes of shares into which the stock is divided, the amount of capital stock actually subscribed, and the names and residence of the subscribers, as well as the amount subscribed by each and the sum paid by each on his subscription.

The articles of incorporation must also be accompanied by an affidavit of the treasurer, who is elected by the subscribers, showing that

[51] PHIL. CORP. LAW, P.A. No. 1459 (1906).
[52] Philippine partnerships, duly organized in accordance with law, possesses distinct juridical personality.
[53] PHIL. CORP. LAW, P.A. No. 1459, § 11 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 11 (1956).
[54] PHIL. CORP. LAW, P.A. No. 1459, § 6 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 6 (1956).
[55] PHIL. CORP. LAW, P.A. No. 1459, § 6 (1906), PHIL. ANN. LAWS tit. 25, § 6 (1956).

> at least twenty per centum of the entire number of authorized shares of capital stock has been subscribed, and that at least twenty-five per centum of the subscription has been either paid to him in actual cash for the benefit and to the credit of the corporation, or that there has been transferred to him in trust and received by him for the benefit and to the credit of the corporation property the fair valuation of which is equal to twenty-five per centum of the subscription.[56]

Contrary to the common belief and practice of many organizers of corporations, each subscriber need not pay twenty-five per cent of his individual subscription; it is sufficient if at least twenty per cent of the entire capital stock stated in the articles of incorporation has been subscribed to and at least twenty-five per cent of such subscribed capital stock has been paid for by any or some of the subscribers. Those subscribers who do not make any or full payment of their subscriptions will be liable to pay interest on unpaid subscriptions at the rate of six per cent per annum from the date of subscription, "unless otherwise provided in the by-laws." This legal provision has been erroneously interpreted in some quarters to mean "unless otherwise *exempted* in the by-laws."[57] There is a great difference between "unless otherwise provided" refers to "6% interest per annum" payable "from the date of subscription," thus the phrase "unless otherwise provided in the by-laws" logically means "unless a higher rate of interest is provided in the by-laws." The legislature, in approving the Corporation Law, could not have intended to give a corporation the right to exempt subscribers from the payment of interest on unpaid subscriptions, for if this was the case there would be no incentive on the part of subscribers to pay their subscribers in full at the time of subscription. On the contrary, the corporation law provides that unpaid subscriptions will be subject to calls and declaration of stock delinquency, and delinquent stock will be liable for accrued interest from date of subscription. That this accrued interest legally may not be dispensed with by the by-laws can also be inferred from the following provision of the Corporation Law:

> On the day and at the place and hour of sale specified in the notices of delinquency and sale of stock for unpaid subscriptions the secretary or clerk shall, unless otherwise ordered by the Board of Directors, sell or cause to be sold at public auction, to the highest bidder, for cash so many shares of the stock described in the notices as may be necessary

[56] PHIL. CORP. LAW, P.A. No. 1459, § 9 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 9 (1956).

[57] See Velasco v. Poizat, 37 Phil. 802 (1918).

to pay the amount due on the subscription, with *interest accrued,* expenses of advertising and costs of sale.[58]

In corporations formed to operate public utilities, the Philippine Constitution provides that:

> No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines sixty *per centum* of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years....[59]

In *People v. Quasha,*[60] the Philippine Supreme Court held that a private corporation organized to operate a public utility may be incorporated even though sixty per cent of its capital stock is not owned by citizens of the Philippines, if at the time of operation the requirements of the Constitution with regard to the sixty per cent capital stock ownership are complied with. The decision makes a distinction, allegedly justified by the language of the Constitution, between the right of incorporation and the right of operation. Assuming the correctness of this decision, it should not be extended to corporations which are not organized for the purpose of operating a public utility. Thus, corporations organized for conservation and utilization of the country's natural resources may not legally be incorporated, nor can they begin to operate, unless at least sixty per cent of their capital is owned by citizens of the Philippines. This proposition is set forth in the following constitutional provision:

> All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution.[61]

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[58] PHIL. CORP. LAW, P.A. No. 1459, § 43 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 45 (1956). (Emphasis added.) See also PHIL. CORP. LAW, P.A. No. 1459, §§ 38, 39, 42, 44 (1906), PHIL. ANN. LAWS tit. 25, §§ 40, 41, 44, 46 (1956).

[59] PHIL. CONST. art. XIV, § 8.

[60] 49 Off. Gaz. 2826 (1953).

[61] PHIL. CONST. art. XIII, § 1.

However, the Parity Agreement or Ordinance appended to the Constitution provides that special privileges will be granted to citizens of the United States:

> Notwithstanding the provisions of Section one Article thirteen, and Section eight, Article fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement[62] entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen forty-six, pursuant to the provisions of Commonwealth Act numbered seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.[63]

It should also be noted that the Constitution of the Philippines uses the phrase sixty per cent of the *capital* with respect to the operation of public utilities and utilization of natural resources, while the law on coastwise shipping requires seventy-five per cent "of the capital stock."[64] Strictly speaking, there is a distinction between capital stock and capital. However, for purposes of this ownership requirement, the terms capital stock and capital must be understood to mean "issued or outstanding capital stock," inasmuch as ownership of stock may only be determined by the issuance and registration thereof in the corporate books. Hence, corporations engaged in the exploitation, development, and utilization of the country's natural resources, as well as in the operation of public utilities, must have at least sixty per cent of their outstanding capital stock owned by citizens of the Philippines with the distinction noted above in regard to ownership of public utilities.[65] In addition, American citizens may enjoy the same rights and privileges as Filipino citizens until July 3, 1974.

De facto corporations under Philippine law. When does a corporation, which attempts to organize itself under Philippine law, acquire

[62] Otherwise known as the P.I.-U.S. Trade Agreement of 1946, revised by the Laurel-Langley Agreement.
[63] 2 PHIL. CONST. ANN. 450 (1956).
[64] R.A. No. 1937, § 806 (1957), PHIL. ANN. LAWS tit. 71, § 806 (1958).
[65] See text accompanying note 60 *supra.*

the status of a *de facto* corporation? Under many American statutes, filing the articles with the county clerk and Secretary of the particular state is sufficient to give rise to corporate existence.[66] Under Philippine law, it is the issuance of the certificate of incorporation by the Securities & Exchange Commission which gives rise to incorporation.[67] Thus, the act of an alleged corporation in the process of incorporation cannot be an act of a *de facto* corporation.[68] In order that a *de facto* corporation may exist, all of the essential requisites or mandatory provisions essential to incorporation must be at least complied with; and determination of the mandatory provisions for valid incorporation depends upon the statutory requirements.

Classification of shares of stock. In the State of Illinois, shares of stock of a corporation may not validly be classified as non-voting stock.[69] In the Philippines, shares of stock may be classified or "divided into classes with such rights, voting powers, preferences, and restrictions as may be provided for in the articles of incorporation."[70] In the absence of any specific classification or distinctions in the articles of incorporation, the shares of stock will be deemed voting stock, common, and without preferences over the others. This is based upon statutory language to the effect that, "except as otherwise provided by the articles of incorporation, and stated in the certificate of stock, each share shall be in all respects equal to every other share."[71]

However, in some instances, the law expressly gives all shares the right to vote without distinction, and shares classified by the articles as non-voting would nevertheless be entitled to be voted. Those cases where all shares of stock are given the right to vote by the Philippine Corporation Law are as follows:

(1) Increasing or decreasing the number of directors.[72]

(2) Increasing or decreasing the capital stock.[73]

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[66] Mokelumne Hill Mining Co. v. Woodbury, 14 Cal. 424, 73 Am. Dec. 658 (1859).

[67] PHIL. CORP. LAW, P.A. No. 1459, § 11 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 11 (1956).

[68] Cagayan Fishing Dev. Co. v. Sandiko, 65 Phil. 223 (1937).

[69] People *ex. rel.* Watseka Telephone Co. v. Emmerson, 302 Ill. 300, 134 N.E. 707 (1922).

[70] PHIL. CORP. LAW, P.A. No. 1459, § 5 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 5 (1956).

[71] *Ibid.*

[72] PHIL. CORP. LAW, P.A. No. 1459, § 6(6) (1906), as amended, PHIL. ANN. LAWS tit. 25, § 6 (1956).

[73] PHIL. CORP. LAW, P.A. No. 1459, § 17 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 17 (1956).

(3) Amending the articles of incorporation.[74]
(4) Adoption of by-laws.[75]
(5) Amendment or repeal of the by-laws.[76]
(6) Delegating to the board of directors the power to amend the by-laws.[77]
(7) Repealing the power delegated to the board of directors to amend the by-laws.[78]
(8) Sale or disposition of treasury stock.[79]
(9) Voluntary dissolution of the corporation.[80]

On the other hand, only shares of stock classified as voting stock by articles of incorporation may vote in the following cases:

(a) Issuance of stock or stock dividend.[81]
(b) Investment of corporate funds in another corporation or business.[82]
(c) Sale or disposition of all or substantially all the corporate assets.[83]
(d) Election of directors.[84]

Consideration for issuance of shares of stock. The Philippine Corporation Law provides that private corporations organized thereunder may not issue shares of stock except in exchange for: actual cash paid to the corporation; or property actually received by it at a fair valuation equal to the par or issued value of the shares of stock so issued; or profits earned by it but not distributed among the stockholders.[85]

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[74] PHIL. CORP. LAW, P.A. No. 1459, § 18 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 19 (1956).
[75] PHIL. CORP. LAW, P.A. No. 1459, § 20 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 21 (1956).
[76] PHIL. CORP. LAW, P.A. No. 1459, § 22 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 23 (1956).
[77] *Ibid.*
[78] *Ibid.*
[79] PHIL. CORP. LAW, P.A. No. 1459, § 45 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 47 (1956).
[80] PHIL. CORP. LAW, P.A. No. 1459, § 62 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 63 (1956).
[81] PHIL. CORP. LAW, P.A. No. 1459, § 16 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 16 (1956).
[82] PHIL. CORP. LAW, P.A. No. 1459, § 17½ (1906), as amended, PHIL. ANN. LAWS tit. 25, § 18 (1956).
[83] PHIL. CORP. LAW, P.A. No. 1459, § 28½ (1906), as amended, PHIL. ANN. LAWS tit. 25, § 30 (1956).
[84] PHIL. CORP. LAW, P.A. No. 1459, § 31 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 33 (1956).
[85] PHIL. CORP. LAW, P.A. No. 1459, § 16 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 16 (1956).

It must be noted that the Philippine statute does not expressly authorize the issuance of shares in exchange for services. Thus, there is a question whether, notwithstanding the silence of the law, shares of stock of a Philippine corporation may be issued in exchange for services rendered. A New York case, construing a law similar to the Philippine statute, held that shares of stock may not be issued in exchange for services rendered. The court stated that "services rendered in bringing a corporation into existence are neither cash nor property."[86] The Philippine Supreme Court has not yet ruled on the issue, but it is submitted that if the service has actually been rendered to the corporation, and it is compensable in money, and the par or issued value of the shares given to the subscriber or stockholder is at least equal to the value of the services rendered, such a transaction could be regarded as issuance of shares in exchange for cash. What the law prohibits is issuance of watered stock, or stocks issued without the corporation receiving an equivalent in money or property.

Validity of a Mortgage of Shares of Stock. The Philippine Corporation Law is silent on the validity of a mortgage or pledge of shares of stock, but it contains a general provision regarding the validity of all *transfers* of shares of stock:

> The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or the vice-president, countersigned by the secretary or clerk and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate indorsed by the owner or his attorney in fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation, . . . the date of the transfer, the number of the certificate, and the number of shares transferred.[87]

The Philippine Supreme Court has held that the word "transfer" in the above provision means "absolute and unconditional conveyance."[88]

Thus, a mortgage, not being an absolute transfer or sale, need not be registered in the corporate books in order to be valid against third persons. It is sufficient if the requirements for validity of a mortgage

[86] Herbert v. Duryea, 54 N.Y. Supp. 311, 313 (1898).
[87] PHIL. CORP. LAW, P.A. No. 1459, § 35 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 37 (1956).
[88] Monserrat v. Ceron, 58 Phil. 469 (1933); Chua Guan v. Samahang Magsasaka, Inc., 62 Phil. 472 (1935).

against third persons as provided in the Philippine Chattel Mortgage Law[89] have been complied with. The Court stated that a mortgage of shares of stocks must be registered in the Chattel Mortgage Registry of the province where the corporation has its principal place of business and not in the corporate books.[90]

The correctness of this decision deserves some analysis. The Court depended upon the U.S. Uniform Stock Transfer Act in interpreting the meaning of the word "transfer" as it appears in the Philippine Corporation Law. However, this act has never been adopted as part of the Philippine Corporation Law. In addition there are several U.S. jurisdictions that have not incorporated the Uniform Stock Transfer Act into their corporation law. Where such adoption has not taken place, the word "transfer" should be understood to refer to any kind of transfer.

Moreover, there is a very practical reason for requiring that a mortgage of shares of stock, to be valid against third persons, be registered in the stock and transfer book of the corporation. Persons who would like to know the status of certain shares of stock will logically go to the corporation that issued them. The Corporation Law is a special law governing transfers of shares of stock; the mortgage law, however, is a general law governing transfers by mortgage of property in general. In case of conflict between the special law and the general law on the same subject matter, the special law should prevail. For the same reason, although the Philippine law on pledge provides that a pledge of personal property is valid as against third persons if the pledge appears in a public instrument,[91] it is submitted that where the subject matter of the pledge concerns shares of stock, the contract of pledge also must be registered in the corporate books.

Right of a private corporation to form a partnership with another person or entity. May a Philippine corporation form a partnership with another person or corporation to engage in business? American decisions on this point are generally of the opinion that a corporation cannot form a partnership. It is alleged that an incorporator must always be a natural person. However, unless the corporation law expressly limits the incorporators to natural persons, this allegation is questionable, except when shown that it is inherently absurd for a private corporation or juridical entity to form a partnership with an-

[89] P.A. No. 1508 (1906), PHIL. ANN. LAWS tit. 16 (1956).
[90] See cases cited note 88 *supra*.
[91] PHIL. CIVIL CODE art. 2096.

other. In American law, a partnership has no juridical personality, separate and distinct from the personality of the partners. For this reason, an American court has held that:

> An act of the corporation done either by direct vote or by agents authorized for the purpose is the manifestation of the collected will of the society. In a partnership, each member binds the society as a principal. No member of the corporation as such can bind the society. If, then, this corporation may enter into partnership with an individual, there would be two principals, the legal person and the natural person, each having, within the scope of the society's business, full authority to manage its concerns, including even the disposition of its property... The partner may manage and conduct the business of the corporation, and bind it by his acts. In so doing, he does not act as an officer or agent of the corporation by authority received by it, but as a principal in a society in which all are equal, and each capable of binding the society by the acts of its individual will... Indeed, the effect of all our statutes, the settled policy of our legislature, for the regulation of manufacturing corporations, is that the corporation is to manage its affairs separately and exclusively;... And the formation of a contract or the entering into a relation, by which the corporation, or the officers of its appointment, should be divested of that power, or by which its franchise should be vested in a partner, with equal power to direct and control its business, is entirely inconsistent with that policy.[92]

This concept is not readily applicable under Philippine law. First, the Philippine Corporation Law, unlike many American corporation laws, does not limit incorporators to natural persons; the Philippine law merely requires "five or more persons" who may form a corporation. There is nothing inherently wrong with a juridical entity acting as one of the incorporators because the only purpose of incorporating is to help create a juridical being for business purposes. As one American court said, "there never has been and is not now any essential illegality in the power of a corporation to form a partnership, and... the existence and valid exercise of such power depends solely upon its being embodied in the charter."[93]

Second, since under Philippine law, a partnership formed between a private corporation and another person (individual or juridical entity) has its own distinct and separate personality, it cannot be said that the affairs of the corporation are being managed by the partner; the property and affairs of the newly formed partnership are its own

[92] Whittenton Mills v. Upton, 76 Mass. (10 Gray) 582, 595-97, 71 Am. Dec. 681, 683-84 (1858).
[93] News Register Co. v. Rockingham Pub. Co., 118 Va. 140, 86 S.E. 874, 876 (1915).

and not those of the corporation. The corporation is merely a partner in another newly created entity; the latter owns and directs its own affairs. In other words, if corporation *A* forms a partnership with *B*, they form another being, *C*. Partner *B* may manage the affairs of *C*, but not of *A*. In American jurisprudence, partner *B* in managing the affairs of *C*, manages also the affairs of *A* because under American law *C* has no distinct personality from that of the partners.

This legal question has not been directly decided by the Philippine Supreme Court, but in one case[94] the Court assumed the legality of such a relationship. The question was whether, under the terms of the contract between the parties, plaintiff was a mere employee or a partner of defendant corporation. Considering the terms of the contract as signed, the Court held that plaintiff was a mere employee, not a partner; the implication is that had the terms of the contract been otherwise, the defendant corporation would have been a partner.

Right to Acquire Agricultural Lands. With regard to foreign corporations acquiring agricultural lands, the applicable constitutional and statutory provisions have the following effects:[95]

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[94] Bastida v. Menzi & Co., 58 Phil. 188 (1933).

[95] The Constitution of the Philippines expressly provides:

All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant. PHIL. CONST. art. XIII, § 1.

No private corporation or association may acquire, lease, or hold *public agricultural lands* in excess of one thousand twenty-four hectares, nor may any individual acquire such lands by purchase in excess of one hundred forty-four hectares, or by lease in excess of one thousand twenty-four hectares, or by homestead in excess of twenty-four hectares. Lands adapted to grazing, not exceeding two thousand hectares, may be leased to an individual, private corporation, or association. PHIL. CONST. art. XIII § 2. (Emphasis added.)

Save in cases of hereditary succession, no private agricultural lands shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines. PHIL. CONST. art. XIII, § 5.

The Philippine Corporation Law further provides:

. . . every corporation authorized to engage in agriculture shall be restricted to the ownership and control of not to exceed one thousand twenty-four hectares of land; and it shall be unlawful for any corporation organized for the purpose of engaging in agriculture or in mining to be in anywise [sic] interested in any other corporation organized for the purpose of engaging in agriculture or in mining; it shall be unlawful for any person owning stock in more than one corporation organized for the

1. That foreign corporations may lawfully acquire agricultural lands, if at least sixty per cent of their subscribed capital stock are owned by citizens of the Philippines (or of the United States under the Parity Agreement incorporated in the Philippine Constitution).

2. Assuming that at least sixty per cent of a corporation's subscribed capital stock is owned by citizens of the Philippines (or of the United States under the Parity Agreement), the area shall in no case exceed 1,024 hectares of agricultural land.

3. In some cases, private corporations may not be allowed to own as much as 1,024 hectares of agricultural land if such area is not necessary for the purposes of the corporation, as may be inferred from the following provision of the Corporation Law:

> Every corporation has the power:
>
> ....
>
> (5) To purchase, hold, convey, sell, lease, let, mortgage, encumber, and otherwise deal with such real and personal property as the purposes for which the corporation was formed may permit, and the transaction of the lawful business of the corporation may reasonably and necessarily require....[96]

4. An agricultural corporation cannot have an interest in any other agricultural or mining corporation, notwithstanding the provisions of section seventeen and one-half of the Philippine Corporation Law, which authorizes a private corporation to invest its funds in any other corporation or business when approved by two-thirds of its voting stock.

5. Stockholders in more than one agricultural (or mining) corporation cannot own more than fifteen per cent of the voting, outstanding capital stock of any other agricultural (or mining) corporation.

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purpose of engaging in agriculture or in mining to own more than fifteen *per centum* of the capital stock then outstanding and entitled to vote of each of such corporations; it shall be unlawful for any corporation to own in excess of fifteen *per centum* of the capital stock then outstanding and entitled to vote of any corporation organized for the purpose of engaging in agriculture or in mining; any stockholder of more than one corporation organized for the purpose of engaging in agriculture or in mining may hold his stock in such corporations solely for investment and not for the purpose of bringing about or attempting to bring about a combination to exercise control of such corporations or to directly or indirectly violate any of the provisions of the Public Land Law, and any corporation holding stock in any corporation organized for the purpose of engaging in agriculture or in mining may hold such stock solely for investment, and not for the purpose of bringing about or attempting to bring about a combination to affect control of such corporation, or to directly or indirectly violate any of the provisions of the Public Land Law. P.A. No. 1459, § 13(5) (1906), PHIL. ANN. LAWS tit. 25, § 13(5) (1956).

[96] P.A. No. 1459, § 13(5) (1906), PHIL. ANN. LAWS tit. 25, § 13(5) (1956).

No private agricultural land can be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines. This means that foreign corporations, except those with at least sixty per cent of their capital stock owned by citizens of the Philippines (or of the U.S. until 1974[97]), are not qualified to be the transferee or assignee of agricultural lands. The phrase "agricultural lands" has been interpreted to mean all lands except "timber or mineral lands," and therefore, includes residential lands.[98]

The Dole Philippines, Inc. case. In April 1963, a contract was executed between Dole Philippines, Inc., an American-owned corporation (incorporated under Philippine law), and the Government-owned National Development Company, whereby Dole was allowed to engage in pineapple production on an 8,000-hectare agricultural land tract in Cotabato, Mindanao. This contract was renewable up to the year 2013—long after the termination of the Parity Agreement in 1974.

The National Development Company was created by law[99] to serve as an agency of the Government of the Philippines in order to further government economic policies. Its charter provides that the National Development Company

> may engage in commercial, industrial, mining, agricultural, and other enterprises which may be necessary or contributory to the economic development of the country or important in the public interest, and for this purpose, *it may hold public agricultural lands in excess of the areas permitted to private corporations, associations or persons by the Constitution* and by the laws of the Philippines, for a period not exceeding 25 years, renewable by the President of the Philippines for another period not exceeding 25 years; to acquire, hold, mortgage, and alienate personal and real property in the Philippines or elsewhere; to make contracts and enter into such arrangements as it may consider convenient and advantageous to its interests, for the development, exploitation, and operation of any of its land or mineral holdings, as well as of its industrial enterprises; . . . to mortgage or pledge . . . any property which may be acquired by it; . . . to make contracts of any kind and description. . . .[100]

This act contains some provisions of questionable validity. For

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[97] See text accompanying note 62 *supra.*

[98] Krivenko v. Register of Deeds, 79 Phil. 461 (1947).

[99] C.A. No. 182, § 3 (1937), as amended by C.A. No. 411 (1938), PHIL. ANN. LAWS tit. 26, §§ 65-70 (1956). See also P.A. No. 2849 (1919) repealed by C.A. 182, § 6 (1937).

[100] C.A. No. 182, § 3 (1937), as amended by C.A. No. 311 (1938). (Emphasis added.)

example, the grant of power to the National Development Company to hold public agricultural lands in excess of the areas permitted to private corporations, associations, or persons by the Constitution is patently in contravention of the Constitutional provision which expressly prohibits all private corporations from acquiring, leasing, or holding public agricultural lands in excess of 1,024 hectares.[101] The National Development Company is a private corporation, since the law creating it provides that "the said corporation shall be subject to the provisions of the Corporation Law."[102]

The National Development Company, despite the absolute terms of the act creating it, cannot lawfully enter into such contracts and arrangements that it may consider convenient and advantageous to its interests for the development, exploitation and operation of any of its land or mineral holdings, because the general limitation governing the validity of all contracts must be deemed applicable. It is elementary that the provisions of the Constitution are paramount, and all the other laws concerning land must conform.[103]

However, the lands involved in the case of Dole Philippines, Inc. are private agricultural lands, not public agricultural lands, and the National Development Company may lawfully acquire more than 1,024 hectares of private lands under the authority of its Charter. But Dole is a private agricultural corporation organized under the Philippine Corporation Law and should not be able to lawfully lease from the National Development Company more than 1,024 hectares of land. The Corporation Law expressly provides: "And every corporation authorized to engage in agriculture shall be restricted to the ownership and control of not to exceed 1,024 hectares of land."[104]

It may be contended that, in order for a private corporation to come within the restriction, the corporation must both own and control the agricultural land. But it is submitted that only control alone is sufficient to bring a private corporation within the legal limitation, because the term "and" may be read as "or" in the construction of a statute if the intent and purpose of the law require such a construction. The intent and purpose of the Corporation Law, as demonstrated

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[101] PHIL. CONST. art. XIII, § 2.

[102] C.A. No. 182, § 3 (1937), as amended by C.A. No. 311 (1938). The NDC is not a public corporation as this term is understood under the Philippine Corporation Law which says: "Public corporations are those organized for the government of a portion of the state." P.A. No. 1459, § 3.

[103] PHIL. CONST. art. 13, § 2.

[104] PHIL. CORP. LAW § 16 (1906), P.A. No. 1459 (1906), as amended by P.A. No. 3518, § 9 (1929), PHIL. ANN. LAWS tit. 25, § 16 (1956).

by its provisions, is to limit the powers of two classes of corporations—agricultural and mining corporations.[105]

The limitations upon agriculture and mining corporations in the present Philippine Corporation Law may not be conducive to economic growth, and, along with several general corporation provisions,[106] should be revised when the proposed Corporation Code comes up for consideration.

Furthermore, if the meaning of the statutory provision is that the corporation must both "own and control" the land in order for it to come within the prohibition, then a corporation that owns more than 1,024 hectares of land, but leases it to another does not violate the law, since both ownership and control are not present. Such an interpretation would be absurd, and violations of the law would be relatively easy. The law prohibits "ownership and control," which is either ownership without control or control without ownership.[107]

Admittedly, Dole Philippines, Inc., will promote economic development of the Philippines in line with the socio-economic program of the Government, bring substantial investment into the country, utilize what is now unproductive land, and employ thousands of Filipinos.[108] Still,

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[105] See Harden v. Benguet Consol. Mining Co., 58 Phil. 141 (1933). Among these limitations are:

(a) No *agricultural* corporation shall own and control more than one thousand twenty-four hectares of land, public or private;

(b) No *agricultural* or *mining* corporation shall in anywise [sic] be interested in any other *agricultural* or *mining* corporation;

(c) No non-agricultural or non-mining corporation shall own in excess of fifteen *per centum* of the capital stock then outstanding and entitled to vote of any *agricultural* or *mining* corporation;

(d) A non-agricultural or non-mining corporation holding stock in any *agricultural* or *mining* corporation shall hold such stock solely for investment, and not for the purpose of bringing about or attempting to bring about a combination to effect control of such corporations, or to directly or indirectly violate any of the provisions of the Public Land Law;

(e) No stockholder owning stock in more than one *agricultural* or *mining* corporation shall own more than fifteen *per centum* of the capital stock then outstanding and entitled to vote of each of such corporations;

(f) Any stockholder of more than one *agricultural* or *mining* corporation must hold his stock in such corporations solely for investment and not for the purpose of bringing about or attempting to bring about a combination to effect control of such corporations, or to directly or indirectly violate any of the provisions of the Public Land Law.

See PHIL. CORP. LAW, P.A. No. 1459, § 13(5) (1906), PHIL. ANN. LAWS tit. 25, § 13 (1956).

[106] Such as the 50-year maximum term for which a private corporation may be incorporated as well as the limitation to one main purpose of incorporation.

[107] The Constitution itself uses the terms "acquire, lease, or hold." It seems absurd that a private corporation *may not* lawfully lease more than one thousand twenty-four hectares of public agricultural land under the Constitution but *may* lawfully do so under the Corporation Law on the alleged ground that what the latter prohibits is control combined with ownership. It must be noted that the Corporation Law does not make any distinction between public and private agricultural lands.

[108] Recommendation of the NDC.

the Dole agreement cannot legally be justified, since it is clearly violative of the law and discriminatory to other private corporations engaged in the same undertaking.

At present, where it is advisable to permit a private corporation to engage in large-scale agricultural enterprise in the Philippines, the only possible legal solution to the problem is for the corporation to be organized by special charter as a government-owned or controlled corporation under the authority of article IV, section 7 of the Philippine Constitution.[109]

In the meantime, however, Dole Philippines, Inc., continues to plant and raise pineapples on more than 1,024 hectares of agricultural land. In the opinion of the author the Dole agreement, although an economic advantage, was a legal mistake—a *fait accompli.* Although it was denounced in the newspapers by some as unconstitutional, no one has dared question it in court.[110]

In this connection, the Philippine Corporation Law should be amended to allow private agricultural corporations to hold or use as much area as may reasonably be necessary for its purposes, subject only to existing laws on monopolies and restraint of trade.

The "Ung Siu Si Temple" case. In 1953, a Chinese religious association "Ung Siu Si Temple" accepted a donation of a parcel of land and attempted to have it registered under its name in the Registry of Deeds. The Registry of Deeds refused registration on the ground that article XII, sections 1 and 5 of the Philippine Constitution limit acquisition of lands in the Philippines "to its citizens, or to corporations or associations at least sixty per cent of the capital of which is owned by such citizens."[111] The Court further stated that:

> The fact that the appellant religious organization has no capital stock does not suffice to escape the Constitutional inhibition, since it is admitted that its members are of foreign nationality. The purpose of the sixty per centum requirement is obviously to ensure that corporations or associations allowed to acquire agricultural land or to exploit natural resources shall be controlled by Filipinos; and the spirit of the Constitution demands that in the absence of capital stock, the controlling membership should be composed of Filipino citizens.

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[109] "The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof." PHIL. CONST. art. IV, § 7.

[110] See Guevara, *What About the Dole Pineapple Land Deal?* Weekly Graphic, Nov. 25, 1964, p. 2.

[111] Register of Deeds v. Ung Siu Si Temple, 51 Off. Gaz. 2866 (1955).

> As to the complaint that the disqualification under article XIII is violative of the freedom of religion guaranteed by article III of the Constitution, we are by no means convinced (nor has it been shown) that land tenure is indispensable to the free exercise and enjoyment of religious profession or worship; or that one may not worship the Deity according to the dictates of his own conscience unless upon land held in fee simple.[112]

However, if the religious association, Ung Siu Si Temple, would have been organized as a *corporation sole* under the provisions of the Philippine Corporation Law rather than as a corporation aggregate, it could have lawfully acquired land in the Philippines. The theory allowing an association organized as a corporation sole to acquire land is that, even though the administrator or Head of the corporation sole is an alien, the corporation sole is not the owner of the land sought to be registered but merely the "administrator" thereof,[113] administered for the benefit of the Filipino religious community where land is located.

The Court felt that when the constitutional provision limiting alien ownership was under consideration, the framers did not have in mind the corporation sole form. Distinguishing the association involved in the *Ung Siu Si Temple* case from an association organized as a corporation sole, the court said:

> In that case, respondent-appellant Ung Siu Si Temple was not a corporation sole but a corporation aggregate, i.e., an unregistered organization operating through three trustees, all of Chinese nationality, and that is why this Court laid down the doctrine just quoted. With regard to petitioner, the Roman Catholic Administrator of Davao, Inc., which likewise is a non-stock corporation, the case is different, because it is a registered corporation sole, evidently of no nationality and registered mainly to administer the temporalities and manage the properties belonging to the faithful of said church residing in Davao.[114]

Declaration of dividends. Under some American decisions, dividends may be declared out of surplus profits regardless of whether the surplus profits arose out of the business of the corporation or from other sources, as long as the capital stock is not impaired.[115]

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[112] *Id.* at 2868.

[113] PHIL. CORP. LAW, P.A. No. 1459, §§ 154-55, 157, 159, 163 (1906), PHIL. ANN. LAWS tit. 66, §§ 1-2, 4, 6, 10 (1956).

[114] Roman Catholic v. Land Registration Comm'n, Gen. Reg. No. L-8451 (Dec. 20, 1957).

[115] "No corporation shall make or declare any dividend except from the surplus profits arising from its business." PHIL. CORP. LAW, P.A. No. 1459, § 16 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 16 (1956).

Strictly speaking, under Philippine law a corporation may lawfully declare dividends only from the surplus profits which are the results of the operation of the business for which it was incorporated.[116] Any surplus profits obtained from appreciation of its assets, or from sales of its stocks above par, or from sales of its property not needed in the business, are not profits "arising from its business," as required by the Corporation Law.[117]

Surplus may be paid-in surplus as where stock is issued at a price above par; or it may be earned surplus derived from the earnings of the business. While other corporation laws expressly permit the declaration of dividends from both paid-in surplus and earned surplus,[118] the Philippine Corporation Law expressly limits the declaration of dividends only from surplus profits arising from its business, or from earned surplus.

The present practice, however, is for the corporation to declare all its net profits, regardless of the source, as dividends. This practice has not been questioned, and no case has reached the Philippine Supreme Court. Perhaps it would be wise to legalize this practice by amending the Philippine Corporation Law.

Right to merge or consolidate. Merger or consolidation of business corporations in the Philippines is not common. This may be due to the fact that there are no laws in the Philippines expressly providing for merger or consolidation of business corporations, except of railroads.[119] However, no railway merger has ever been attempted for the simple reason that there is only one railroad company in the country, the Manila Railroad Company, now called the Philippine National Railways.

Notwithstanding the silence of Philippine law regarding the proper procedure for corporate merger or consolidation, the Philippine Supreme Court has held that the Philippine Corporation Law contains ample provisions by which merger or consolidation may be effected.[120] The Court stated that this law does not require that there be an express legislative authority, or a unanimous consent of all the stockholders, to effect a merger or consolidation of two corporations.[121]

Since the legal effect of consolidation is the automatic dissolution or

[116] *Ibid.*
[117] See Randall v. Bailey, 23 N.Y. Supp.2d 173, 43 N.E.2d 43 (1942).
[118] *Ibid.*
[119] P.A. No. 2772 (1918), as amended, PHIL. ANN. LAWS tit. 65, §§ 22-28 (1956).
[120] Reyes v. Blouse, Gen. Reg. No. L-4420 (May 19, 1952).
[121] *Ibid.*

extinction of the consolidated corporations and the automatic creation of a new one, and a merger is the automatic dissolution of the corporation which is continued in or absorbed by the other, in the absence of express legal provisions, the legal procedure by which a merger or consolidation is accomplished in the Philippines is not a simple matter.

Using the ample provisions of the Corporation Law, a consolidation of corporations may be accomplished in the following manner: assume that corporations *A* and *B* will be consolidated. Let *A* and *B* sell all their property and assets to *C* under the authority of section 28½. Then let *A* and *B* be dissolved voluntarily by their respective stockholders under the authority of section 62. The consideration for the sale may consist of stocks of *C* which will be issued to the stockholders of *A* and *B* in proportion to their respective interests. Any stockholder who did not consent to the consolidation is entitled to liquidating dividends.

To accomplish a merger, let *A* sell all its property and assets to *B* under the authority of section 28½, in exchange for stocks of *B* which will be distributed among the stockholders of *A* in proportion to their respective interests. Then let corporation *A* be dissolved voluntarily in accordance with section 62. Any stockholder who did not consent to the consolidation is entitled to liquidating dividends.

In either mergers or consolidations, the transactions must not violate the laws regarding monopolies and illegal combinations in restraint of trade.[122]

In order to sell all of the assets and property of a corporation, the approval of the board of directors is needed, confirmed by the vote of the stockholders representing at least two-thirds of the voting power;[123] while for approval of a voluntary dissolution of a corporation, the vote of stockholders representing at least two-thirds of the capital stock is necessary.[124] All voluntary dissolutions require judicial approval, unless the dissolution will not affect the rights of any creditor, in which case the dissolution may be effected by a resolution adopted by the affirmative vote of the stockholders owning at least two-thirds of the outstanding capital stock.

After an affirmative vote by stockholders on voluntary dissolution,

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[122] P.A. No. 3247 (1925), PHIL. ANN. LAWS tit. 21, §§ 82-88 (1956); P.A. No. 3518, § 20 (1929).

[123] PHIL. CORP. LAW, P.A. No. 1459, § 28½ (1906), as amended by P.A. No. 3518, § 13 (1929), PHIL. ANN. LAWS tit. 25, § 30 (1956).

[124] PHIL. CORP. LAW, P.A. No. 1459, § 62 (1906), as amended by P.A. No. 3518, § 18 (1929), PHIL. ANN. LAWS tit. 25, § 63 (1956).

"a copy of the resolution authorizing the dissolution shall be certified by a majority of the board of directors and countersigned by the secretary or clerk of said corporation and filed with the Securities and Exchange Commission."[125]

Right of foreign corporations to transact business in the Philippines. Private corporations incorporated in the United States and other countries may transact business in the Philippines by obtaining a license for that purpose from the Securities & Exchange Commission.[126] If the corporation is a bank, the license may be issued only upon the order of the Monetary Board[127] and no such license will be issued unless the Board is convinced that the public interest and economic conditions, both general and local, justify its action. Further, the foreign bank must be in sound financial condition, and have an appointed agent in the Philippines, authorized to accept summons and legal process.[128] However, notwithstanding the license to do business in the Philippines, the General Banking Act of July 24, 1948, prohibits a foreign bank from accepting or receiving deposits, unless the foreign bank was actually receiving deposits at the time of approval of the act. The General Banking Act also provides that all deposits received by branches or agencies of foreign banks after July 24, 1948, can only be invested within the territorial limits of the Republic of the Philippines.[129]

If any foreign corporation should transact business in the Philippines without first obtaining a license from the Securities & Exchange Commission, it will have no juridical personality in the Philippines for purposes of instigating litigation, although it may be sued for its transactions by those with whom the corporation has dealt. A foreign corporation actually doing business in the Philippines, with or without a license, is amenable to both service of process and the jurisdiction of the Philippine courts.[130] However, a foreign corporation which had conducted only an isolated business transaction in the Philippines was allowed to sue in a case arising out of the transaction, even though it had not obtained a license.[131] In addition, a corporation may bring an action for infringement or violation of its trade-mark or trade-name

[125] *Ibid.*
[126] PHIL. CORP. LAW, P.A. No. 1459, § 68 (1906), as amended, PHIL. ANN. LAWS tit. 25, § 69 (1956).
[127] R.A. No. 337, § 14 (1948), PHIL. ANN. LAWS tit. 10, § 14 (1956).
[128] *Ibid.*
[129] R.A. No. 337, § 11 (1948), PHIL. ANN. LAWS tit. 10, § 11 (1956).
[130] General Corp. v. Union Ins. Soc'y, 87 Phil. 313 (1950).
[131] Foo Hang & Co. v. Araneta, 52 Off. Gaz. 7294 (1956); Marshall-Wells Co. v. Elser & Co., 46 Phil. 70 (1924).

without having been licensed to do business in the Philippines, provided that the country in which the foreign corporation is domiciled, by treaty, convention, or law, grants a similar privilege to juristic persons of the Philippines, and the trade-mark or trade-name has been registered or assigned under the Philippine Trade-marks and Trade-names Law.[132]

One unanswered question is whether a corporation transacting business in the Philippines can bring an action in the Philippine courts, after compliance with the law regarding the obtaining of a license, on a transaction consummated prior to the obtaining of such a license. In a Philippine case involving the violation of a trade-mark and trade-name, the Supreme Court was of the opinion that such a suit could be maintained.[133] However, this doctrine should be limited to trade-mark or trade-name litigation, since such a violation is a continuing one. If the case involves a specific, consummated business transaction, the offending foreign corporation should be denied juridical personality in the Philippine courts. It is submitted that subsequent compliance with the statute can have no legal efficacy to change the status of a contract considered wholly void at the time it was entered into. Article 5 of the *Philippine Civil Code* provides that: "Acts executed against the provisions of mandatory or prohibitory laws, shall be *void,* except when the law itself authorized their validity."[134] As one American court said: "If a contract, or any business that gives rise to a claim is unlawful, it cannot well be made lawful by anything that is done subsequently."[135] Another American court has stated:

> It is too clear to admit of cavil that if foreign corporations are allowed to come into the state and do business with its people, derive all the profits of such business, and fail to comply with the requirements of the statute unless they need the aid of the courts to enforce the contracts against the citizens of the state, the door will be left wide open for them to do such business and never any of the burdens that domestic corporations have to bear. . . .
>
> The statute prohibits foreign corporations from doing business in this state without first having complied with the law. Such prohibition is as effective to make a contract entered into by such foreign corporations in this state void as if the statute had in terms declared such contracts to be void. The general rule of law is that where an act is prohibited

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[132] See R.A. No. 638 (1951), PHIL. ANN. LAWS tit. 76 (1956).
[133] Mentholatum Co. v. Mangaliman, 72 Phil. 524 (1941).
[134] PHIL. CIVIL CODE art. 5.
[135] Perkins Mfg. Co. v. Clinton, 211 Cal. App. 228, 295 Pac. 1 (1930), Annot., 75 A.L.R. 439 (1930).

or declared unlawful it is not necessary for the law to declare the act or contract void. An unlawful act is itself void.[136]

Commercial Banks

The organization of commercial banks is governed by the General Banking Act.[137] Domestic banking institutions (except building and loan associations) must be organized in the form of stock corporations; they must not issue no-par value shares; at least sixty per cent of their capital stock must be owned by Filipino citizens, and at least two-thirds of the directors must be Filipinos. The Securities and Exchange Commissioner will not register the articles of incorporation or amendments to the articles of incorporation of any commercial bank unless accompanied by a certificate of authority issued by the Monetary Board of the Central Bank, and no such certificate will be issued unless there is evidence:

> (a) that all requirements of existing laws and regulations [regarding banks] ... have been complied with; (b) that the public interest and economic conditions ... justify the authorization; and (c) that the amount of capital, the financing, organization, direction, and administration, as well as the integrity and responsibility of the organizers and administrators reasonably assure the safety of the interests which the public may entrust to them.[138]

As discussed above, foreign banks (except those actually receiving deposits on or before July 24, 1948) cannot receive deposits in the Philippines, and residents and citizens of the Philippines who are creditors or depositors of any branch of foreign banks have preferential rights to the assets of such branch.[139] No foreign bank is permitted to transact business in the Philippines, or maintain by itself or as an assignee a suit to recover any debt or claim, until it has obtained, upon order of the Monetary Board of the Central Bank, a license for that purpose from the Securities & Exchange Commissioner. No order for a license will be issued by the Central Bank unless it is convinced that the public interest and economic conditions, both general and local, justify the issuance of such order. Further, the foreign bank must be in sound financial condition, and have appointed an agent in the Philippines authorized to accept summons and legal processes.[140]

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[136] Tri-State Amusement Co. v. Forest Parks, 192 Mo. 404, 90 S.W. 1020 (1905).
[137] R.A. No. 337, §§ 7, 8, 9, 12 (1948), Phil. Ann. Laws tit. 10, §§ 7, 8, 9, 12, 13 (1956).
[138] R.A. No. 337, § 9 (1948), Phil. Ann. Laws tit. 10, § 9 (1956).
[139] R.A. No. 337, § 11 (1948), Phil. Ann. Laws tit. 10, § 11 (1956).
[140] R.A. No. 337, § 14 (1948), Phil. Ann. Laws tit. 10, § 14 (1956).

Foreign building & loan associations are not permitted to transact business in the Philippines.[141]

RURAL BANKS

The organization of rural banks is governed by Republic Act No. 720 as amended, as well as by regulations issued by the Central Bank. These banks are especially encouraged by the Government.

Rural banks are organized in the form of stock corporations and must have a certificate of authority from the Central Bank before they will be granted a certificate of incorporation by the Securities & Exchange Commission. At least sixty per cent of the capital stock of rural banks must be owned and held by, and all the members of the Board of Directors must be, citizens of the Philippines.

All rural banks created and organized under the Rural Banks Act, with net assets not exceeding ₱700,000, are exempt from payment of all taxes, charges and fees.[142]

INSURANCE BUSINESS

Any person, corporation or association granted a certificate of authority by the Insurance Commissioner may act as insurer. Certificates of authority expire on the last day of June of each year and can be renewed annually, provided the insurer continues to comply with the Insurance Law and all the circulars or rulings of the Insurance Commissioner.

Foreign insurance corporations, before engaging in business in the Philippines, must file with the Insurance Commissioner the following:

1. a certified copy of the last annual statement or a verified statement showing the condition and affairs of the company;

2. a certificate from the Securities & Exchange Commissioner showing that it is duly registered in that office, pursuant to the provisions of the Philippine Corporation Law;

3. a written power of attorney designating some person who is a resident of the Philippines as its general agent, on whom a notice (required by law or by the insurance policy), proof of loss, summons and other process may be served in all actions or proceedings against the insurer.[143]

No foreign insurance company can engage in business in the Philip-

[141] R.A. No. 337, § 15 (1948), PHIL. ANN. LAWS tit. 10, § 15 (1956).
[142] R.A. No. 720, § 14 (1948), PHIL. ANN. LAWS tit. 10, § 14 (1956).
[143] P.A. No. 2427, §§ 176-78 (1915), PHIL. ANN. LAWS tit. 39, §§ 200-01 (1956).

pines unless possessed of paid-up unimpaired capital or assets and reserve in an amount not less than that required of domestic insurance companies.[144] Further, the foreign insurer must deposit with the Insurance Commissioner for the benefit and security of its policy-holders and creditors in the Philippines, securities satisfactory to the Insurance Commissioner consisting of bonds of the Philippines or of any of its political subdivisions authorized by law to issue bonds, or other good securities with an actual market value of ₱250,000; provided, that at least fifty per cent of the securities or bonds are securities of the Philippines. The deposit may be made with the New York Agency of the Philippine National Bank in the United States of America, embassies, legations or consular offices of the Philippines.[145]

Every foreign insurance company must set aside and invest in the Philippines at least thirty per cent of the legal reserves of the policies written there. However, in determining the amount to be invested and kept in the Philippines, a company will be given credit for the amount of securities of the Philippines deposited by the company as required by law.[146]

The Insurance Commissioner must hold the deposited securities for the benefit and security of all the policy holders of the company, but will, so long as the company is solvent, permit the company to collect interest or dividends on the deposited securities. Also, with the consent of the Commissioner, an insurer may withdraw any of the deposited securities, provided they are replaced with similar securities having a market value equal to those withdrawn.

When a foreign insurer abandons business in the Philippines it must, prior to withdrawal, discharge its liabilities to policyholders and creditors in the Philippines. With regard to policy holders, the company must arrange to have the primary liabilities under the policies reinsured and assumed by another insurance company authorized to transact the insurance business in the Philippines.[147]

PUBLIC UTILITIES

The Philippine Constitution provides:

[144] Every domestic insurance company shall, if a stock corporation, have a subscribed capital stock equal to at least 500,000, fifty (50%) *per centum* of which must be paid in cash previous to the issuance of any policy, and the residue within 12 months from date of filing its articles. P.A. No. 2427, § 195 (1915), PHIL. ANN. LAWS tit. 39, § 220 (1956).

[145] P.A. No. 2427, § 178 (1914), PHIL. ANN. LAWS tit. 39, § 202 (1956).

[146] R.A. No. 488 (1950), PHIL. ANN. LAWS tit. 39 (1956).

[147] R.A. No. 447 (1950), PHIL. ANN. LAWS tit. 39, § 229 (1956).

> No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty *per centum* of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires.[148]

As already stated, the sixty per cent ownership requirement does not necessarily have to be complied with at the time of incorporation, but rather only at the time of operation.[149] Also, as previously mentioned, the Philippine citizenship limitation does not apply to citizens of the United States of America who, under the Parity Treaty, enjoy the same rights and privileges as Filipino citizens in the exploitation, development, and utilization of natural resources and operation of public utilities for a period extending to July 3, 1974.[150]

With respect to coastwise shipping, however, the percentage of ownership requirement by Filipinos is higher than sixty per cent. The law governing the business of coastwise shipping limits its operation to vessels of Philippine registry, owned by Filipinos (or Americans) or by corporations with seventy-five per cent of the subscribed capital stock owned by Filipinos (or Americans), and the president or manager of which is a Filipino (or American) citizen.[151] Where the required stock ownership is held by Americans or the president or manager is an American, these ownership rights will be permitted only until July 3, 1974, unless the Laurel-Langley Agreement is renegotiated by July 1, 1971, so as to provide for their extension. The question of whether rights already acquired by American citizens under the Parity Agreement will also be terminated in 1974 is one that should be threshed out in such renegotiations. In this connection, attention should be directed to the specific provision of the P.I.-U.S. Trade Agreement of 1946, as revised, which says: "This Agreement shall have no effect after July 3, 1974."[152]

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[148] PHIL. CONST. art. XIV, § 8.
[149] See text accompanying note 60 *supra*.
[150] Ordinance appended to the Constitution of the Philippines.
[151] R.A. No. 1937, § 806 (1962), PHIL. ANN. LAWS tit. 71, § 806 (1956). 61 Stat. 2611, T.I.A.S. No. 1588.
[152] Revised Trade Agreement with the Philippines, Oct. 22, 1946 [1947], art. XI, 61 Stat. 2611, T.I.A.S. No. 1588.

RETAIL TRADE BUSINESS

The retail trade business in the Philippines has been nationalized.[153] Under the law, no person who is not a citizen of the Philippines (or of the United States under the P.I.-U.S. Trade Agreement of 1946 as amended), and no association, partnership, or corporation the capital of which is not wholly owned by citizens of the Philippines (or of the United States) can engage, directly or indirectly, in the retail business.

The Laurel-Langley Agreement (which revised the P.I.-U.S. Trade Agreement of 1946) was signed on December 15, 1954, and took effect on January 1, 1956. The agreement (now article VII of the Revised P.I.-U.S. Trade Agreement of 1946) reads as follows:

> The Republic of the Philippines and the U.S.A. each agrees not to discriminate in any manner, with respect to their engaging in business activities, against the citizens or any form of business enterprises owned or controlled by citizens of the other and that *new limitations* imposed by either Party upon the extent to which aliens are accorded national treatment with respect to carrying on business activities within its territories, shall not be applied as against enterprises owned or controlled by citizens of the other Party which are engaged in such activities therein at the time such new limitations are adopted, nor shall such new limitations be applied to American citizens or corporations or associations owned or controlled by American citizens whose states do not impose like limitations on citizens or corporations or associations owned or controlled by citizens of the Republic of the Philippines.[154]

The Philippine Nationalization Retail Trade Law[155] took effect on June 19, 1954, or before the Laurel-Langley Agreement was signed. The limitations imposed by the Retail Trade Law cannot therefore be considered as "new limitations" and would apply equally to both Americans and Filipinos, without discrimination. Inasmuch as, under the Retail Trade Law, only *wholly owned* Filipino enterprises may lawfully engage in retail business in the Philippines, it follows that only wholly owned American enterprises may equally so engage; otherwise, to allow American-controlled enterprises, not wholly owned by American citizens, to engage in retail business in the Philippines, would place the Americans in a better situation than the Filipinos themselves under their own laws. However, had the Retail Trade Law been enacted *after* the Laurel-Langley Agreement, the limitations imposed in the Retail

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[153] R.A. No. 1180 (1954), PHIL. ANN. LAWS tit. 18, § 44 (1956).

[154] Revised Trade Agreement with the Philippines, Oct. 22, 1946 [1947], art. XI, 61 Stat. 2611, T.I.A.S. No. 1588.

[155] R.A. No. 1180 (1954), PHIL. ANN. LAWS tit. 18, § 44 (1956).

Trade Law would be "new limitations" within the meaning of the Laurel-Langley Agreement and would not apply to American-controlled enterprises already engaged in retail business at the time the new limitations were imposed, nor to such enterprises owned or controlled by Americans whose states do not impose like limitations on Filipino citizens or Filipino-owned or controlled enterprises.

THE "FLAG LAW"

Government offices, bureaus and agencies, in making purchases for their use, are obliged to give preference to materials and supplies produced or manufactured in the Philippines or in the United States, and to "domestic entities." The term "domestic entity" is defined as any citizen of the Philippines or the United States habitually established in business and engaged in the manufacture or sale of the merchandise covered by his bid, or any association or corporation duly organized and registered under the laws of the Philippines with seventy-five per cent of its capital owned by citizens of the Philippines or of the United States, or both.[156] Whenever several bidders participate in the bidding to supply articles, materials, and equipment for any of the offices, bureaus or agencies of the Government, the award will be made to the domestic entity submitting the lowest bid, provided that it is not more than fifteen per cent in excess of the lowest bid submitted by a bidder who does not qualify as a domestic entity. This preference for domestic entities is known as the "Flag Law."[157] However, for the construction of land, air, and seacoast defenses, arsenals, barracks, depots, hangars, landing fields, and other structures required for Philippine national defense, no foreign bidder is allowed to participate.[158]

TAX EXEMPTIONS OF BASIC INDUSTRIES

It is the policy of the Republic of the Philippines to encourage the establishment of basic industries by granting tax exemptions in order to accelerate the pace of economic and social development of the country.[159]

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[156] C.A. No. 138 (1936), PHIL. ANN. LAWS tit. 36, §§ 12-15 (1956).

[157] *Ibid.* See also C.A. No. 541 (1940), PHIL. ANN. LAWS tit. 36, §§ 325-26 (1956); R.A. No. 912 (1953), PHIL. ANN. LAWS tit. 36, §§ 16-20 (1956).

[158] C.A. No. 541 (1940), PHIL. ANN. LAWS tit. 36, §§ 325-76 (1956).

[159] P.A. No. 3127 (1924), as amended by P.A. No. 4095 (1934).

For purposes of the Basic Industries Act, the following are basic industries:

1. Basic iron, nickel, aluminum and steel industries.
2. Basic chemical industries, antibiotics and fungicides, including cement manufacture and its allied industries and fertilizers.
3. Copper and alumina smelting and refining.

Any person, partnership or corporation lawfully engaged in a basic industry is exempted from payment of the special import tax, and tariff duties on the importation of machinery, spare parts, and equipment as follows:[160]

(a) 100 per cent of the taxes due during the period from June 17, 1961 to December 31, 1966;

(b) 75 per cent of the taxes due during the period from January 1 to December 31, 1967;

(c) 50 per cent of the taxes due during the period from January 1 to December 31, 1968; after which the person, partnership, or corporation will be liable in full for all taxes.

MINIMUM WAGE LAW

Another law which every alien investor in the Philippines should know of is the Minimum Wage Law.[161] This law fixes a minimum wage of ₱6.00 a day for eight hours work.[162] Wages higher than the legal minimum may be required in certain industries, if recommended by the

4. Pulping and/or including the integrated manufacture of paper products.
5. Deep-sea fishing and the canning of sea foods and manufacture of fish meals, the manufacture of nets and other fishing gear.
6. Refining of gold, silver and other noble metals.
7. Mining and exploration of base or noble minerals or metals, and crude oil or petroleum.
8. Production of agricultural crops.
9. Shipbuilding and dry-docking, including the manufacture of component parts related to the industry.
10. Coal and dead burnt dolomite.
11. Cattle industry, including the manufacture and processing of meat and dairy products.
12. Logging and the manufacture of veneer and plywood.
13. Vegetable oil manufacturing, processing, and refining.
14. Manufacture of irrigation equipment, farm machineries; spare parts and tools for such farm machineries, trucks, and automobiles, including the manufacture of batteries and bent-laminated safety-glass.
15. Production and manufacture of textiles, cotton, ramie, synthetic fibers, and coconut coir.
16. Manufacture of cigars from both native and Virginia tobacco.
17. Manufacture of gasoline and diesel engines.
18. Manufacture of ceramics, furnaces, refractories, and glass.
19. Manufacture of food products out of cereals, forest and/or agricultural products.

A Board of Industries, composed of seven members (namely, the Chairman of the National Economic Council, the Secretary of Commerce and Industry, the Secretary of Agriculture and Natural Resources, the Chairman of the Joint Legislative-Executive Tax Commission, and three private citizens representing both the consumers and producers and labor sectors) has been created by the Basic Industries Act to carry out the objectives of the law.

[160] *Ibid.*
[161] R.A. No. 602 (1951), PHIL. ANN. LAWS tit. 42, §§ 63-86 (1956).
[162] R.A. No. 4180 (1965).

Wage Board and approved by the Secretary of Labor, in order to maintain the employees' health, efficiency, and general well-being. Apprentices may be employed under special certificates issued by the Secretary of Labor at wages which can be no lower than seventy-five per cent of the applicable minimum and are limited to one year's duration. Similarly, handicapped workers may also be employed at wages which are limited to fifty per cent of the applicable minimum and for the period which is fixed in the special certificates.

The Minimum Wage Law is applicable to all employees, except:

(a) workers on farm tenancy;

(b) domestic servants;

(c) retail or service establishments that regularly employ not more than five employees;

(d) mining enterprises.[163]

WORKMEN'S COMPENSATION LAW

The Workmen's Compensation Act[164] obliges all industrial employers to compensate their employees in amounts specified in the law for any injury or death arising out of and in the course of employment. However, compensation is not given for injuries caused by: (a) the voluntary intent of the employee to inflict such injury upon himself or another person; (b) drunkenness on the part of the employee who suffered the injury; (c) notorious negligence of the employee.

SOCIAL SECURITY ACT

It is the policy of the Republic of the Philippines to maintain a social security system which provides protection to all industrial employees against hazards of disability, sickness, old age, and death. At present, the Social Security Act of 1954[165] establishes for all employees sickness, disability, and retirement benefits. All employees and employers who are covered are obliged to contribute to a common fund under the administration of the Social Security System. The employee's and the employer's contributions must be in accordance with the following schedule:

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[163] *Ibid.*

[164] P.A. No. 3428 (1928), PHIL. ANN. LAWS tit. 83½ (1956), C.A. No. 210 (1937), PHIL. ANN. LAWS tit. 83, §§ 3-40 (1956), R.A. No. 772 (1952), PHIL. ANN. LAWS tit. 83, §§ 2-45 (1956), and R.A. No. 889 (1953), PHIL. ANN. LAWS tit. 83, §§ 55-58 (1956).

[165] R.A. No. 1161 (1954), PHIL. ANN. LAWS tit. 63, §§ 1-31 (1956).

Monthly salary wage	*Employer's Contribution*	*Employee's Contribution*
Below ₱ 10.00	₱ 0.50	₱ 0.10
₱ 10 - ₱ 49.99	1.50	0.30
₱ 50 - ₱ 99.99	3.00	1.50
₱100 - ₱149.99	4.40	3.10
₱150 - ₱199.99	6.20	4.30
₱200 - ₱249.99	7.90	5.60
₱250 - ₱349.99	10.50	7.50
₱350 - ₱499.99	14.90	10.60
₱500 - over	17.50	12.50

Coverage in the system is compulsory for all employees between the ages of sixteen and sixty. Compulsory coverage of any employer takes effect on the first day of operation, and that of the employee on the date of employment.

Foreign Investment Opportunities in the Philippines

A rich field of investment opportunities in the Philippines is open to foreign investors. Cacao, arabica coffee, rubber and citrus have a large domestic market and good export possibilities exist for all of them. Livestock production, chemical fertilizer, plywood plants, food processing, the steel industry, cement factories, pulp and paper production, textile manufacturing, copper, chrome, coal mining, road transport—especially the trucking fleet, air transport, and inter-island shipping—are still open either for greater participation or improvement. In the words of the Economic Mission of the International Bank for Reconstruction and Development (IBRD),

> Natural resources are rich and diversified. With suitable climate and wide variations in topography, the soil can produce, at low cost, an unusual range of food and agricultural raw materials for both domestic consumption and exports. A significant exception is wheat. Though diminishing, open spaces are still available for cultivation in Mindanao and other outlying islands. The mineral wealth includes sizeable known deposits of iron ore and non-ferrous metals; during the 1950's, mining output more than doubled. Petroleum exploration is under way, although with still uncertain prospects. The Philippine forests, even after ruthless exploitation in the postwar period, still provide the basis for fast growth of wood-processing industries.[166]

[166] Preliminary Report prepared by the Staff of the IBRD, attached as Appendix II to Macapagal, Five-Year Integrated Socio-Economic Program for the Philippines (1962).

As stated earlier, it is the policy of the Republic of the Philippines to invite foreign capital and investments to the country. Several foreign investment bills have been filed in Congress, and their failure of passage up to now has not been due to local opposition to foreign investment, but rather to differences of opinion as to the areas of investment that should be open to alien capitalists. However, all of the bills on foreign investments agree to give the foreign investor the right of transfer of profits and repatriation of capital, and such other rights the non-granting of which are considered by most alien entrepreneurs as deterrents to the flow of foreign capital.

In 1964 bills were introduced in the House and Senate designed to encourage foreign investment. The House Bill declares in section 2 that:

> It shall be the policy of the State to invite and encourage investments, both domestic and foreign and in the latter case for the ten years immediately following the approval of this Act, in order to accelerate the development of the national economy.[167]

The Senate Bill eliminates the ten-year limit, and substantially provides the same declaration of national policy on foreign investments, in the following words:

> It shall be the policy of the State to invite and encourage investments, both foreign and domestic, in order to increase opportunities for employment, raise the standards of the people, and promote the stability and accelerate the development of the national economy.[168]

Both bills specifically state that all investors, whether or not Philippine nationals, foreign nationals or joint ventures, shall be entitled to the basic rights and guarantees provided in the Constitution of the Philippines. The approved or preferred areas of investment are: plantation crops cultivation (rubber, cotton, soybean, newly opened sugar cane); livestock (dairy, beef cattle breeding); deep-sea fishing; mining (base metal, crude petroleum and natural gas); public utilities (storage, electric power, hydro-electric power); and industrial development (food processing, pulp, paper, and wood products, rubber products, chemical products, non-metallic products, basic metals and metal products, non-electrical machinery, electrical machinery, transport equipment). Special incentive benefits to investment in preferred

[167] H.B. No. 9477, 5th Cong., 3d Sess. (Phil.) (1964).
[168] S.B. No. 665, 5th Cong., 3d Sess. (Phil.) (1964).

areas are given, and additional incentive benefits are given to Filipinos and joint ventures. A "joint-venture" under the proposed bills means one organized under Philippine law, undertaken jointly by Philippine nationals and foreign nationals, with at least thirty-four per cent of the capital owned by Philippine nationals. (The House Bill requires at least forty per cent of the stated or subscribed capital to be owned by Philippine nationals.)

JOINT BUSINESS VENTURE

Foreign investment in the Philippines by means of a "joint-venture" is especially encouraged. This is quite evident upon reading the explanatory note to the Senate Bill. It says:

> While the inventives extended apply with equal force to foreign as well as Philippine enterprises, the national policy is to encourage the maximum possible participation of Filipinos in enterprises engaged in basic industries. Consequently, the bill provides additional benefits designed to enhance the competitive position of Philippine nationals and joint-ventures which engage in the priority economic areas. These are: exemptions from capital gains on transfers of capital assets to Philippine nationals and joint-ventures; tax exemption for dividend payments or profit distributions on investments in Philippine enterprises or joint-ventures; and a 50% reduction on the withholding tax on interest payments for loans from non-resident foreign nationals. These supplemental benefits provide foreign investors with an incentive to seek Philippine equity participation in their projects.[169]

The "joint-venture" policy is advocated by the Philippine Government, not to exclude or restrict alien entrepreneurs from doing business in the Philippines, but to encourage participation of local capital in foreign-financed enterprises, with the intent of developing local skill and entrepreneurship. This policy should not be considered as a deterrent to alien investment. On the contrary, a joint-venture enjoys the following advantages:

1. It will assure the alien investor of knowledge of local conditions—economic, social, and political.
2. It will promote good will and friendship among peoples of different races, thereby promoting the concept of the UN.
3. It will help in promoting the business of the joint-venture, as it will make possible the use of "connections," both locally and in the country of the alien investor.

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[169] *Ibid.*

4. It will solve some statutory and constitutional limitations regarding citizenship ownership or control of certain business enterprises.

5. And of course, a joint-venture will be of distinct advantage to the local economy as it "tends to facilitate the integration of such enterprises in the economic system of the country and promote the development of domestic capital and skills.[170]

An excellent opportunity to engage in a joint venture between Filipino and alien investors is in the development of nickel deposits on Nonoc Island, Surigao. Development of these rich nickel deposits will require about a ₱150 million investment. As now provided by law,[171] two or more corporations with sixty per cent of their capital owned by Filipinos may bid to exploit and develop the nickel mines. The latest amendment to the law allows repatriation of capital investments, remittances of profits, and employment of foreign personnel.

A joint venture may be formed by organizing a corporation composed of alien capitalists and Filipino entrepreneurs, provided that sixty per cent of the capital is owned by Filipinos. However, under the parity appended to the Constitution, sixty per cent Filipino participation is not necessary, if at least sixty per cent of the capital is owned by Americans. This privilege, however, is good only until July 4, 1974.

SUMMARY

The Republic of the Philippines has established and is pursuing a declared national economic development program.[172] It has enacted several incentive laws, such as the tax exemption laws and the Basic Industries Act. It has extended an invitation to foreign investors and is willing to grant favorable terms for the transfer of profits and repatriation of capital. Except in the case of retail trade, which for centuries past has been in the hands of the Chinese, and except in the exploitation and development of natural resources and coastwise shipping—all of which are admittedly vital to the protection and preservation of its national interest—the Philippines has no laws discriminating against foreign ownership and capital. Its laws generally guarantee equal treatment of foreign and domestic enterprises. There is comparative freedom from burdensome or oppressive regulations on organization, ownership and management. It has an adequate supply of labor and a fair number of American-educated economists and entrepreneurs.

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[170] FATOUROS, GOVERNMENT GUARANTEES TO FOREIGN INVESTORS 41 (1962).

[171] R.A. No. 4167 (1964).

[172] See MACAPAGAL, FIVE-YEAR INTEGRATED SOCIO-ECONOMIC PROGRAM FOR THE PHILIPPINES (1962).

The Philippines is the trade center in Asia. To the north are Japan, Korea, and Taiwan. To the west is the great Asia continent embracing India, Pakistan, Thailand, Burma, Ceylon, Malaya, Singapore, Cambodia, North and South Vietnam, and Laos. To the south are the Republic of Indonesia, Borneo, Australia, and New Zealand. With export bases at Manila, Cebu, Iloilo, Zamboanga, or Davao, manufactured products can be sent easily to Tokyo and Yokohama, Hongkong, Singapore, Bombay, Colombo, Rangoon, Bangkok, Taipeh, Jakarta, Melbourne, Wellington, and the principal cities and capitals of Asia with their teeming population of more than half the people of the world.

The economic progress of any highly developed country is closely related and dependent on the economic progress of all the countries of the world.

> World peace and security are closely tied to world economic well-being and progress. Such economic well-being and progress are closely related to expanded international trade, and expanded international trade is related to the increased flow of investment capital across national boundaries.[178]

The Philippines is cognizant of its role in world peace and economic progress. Its present business laws may not be sufficiently attractive to foreign investors, but honest efforts are being made by responsible citizens to help create a favorable investment climate for all aliens.

[178] Stassen, *Private Investment Abroad*, 32 FOREIGN AFFAIRS 402, 406 (1954).