

THE PHILIPPINES¹

I. Overview of Country

The Philippines is a democratic and republican state² with a unique legal system, due to the country's blend of civil, common, customary, and Islamic law.³ The Philippines has a unitary, centralised government with a presidential form of government and power is divided among three independent branches namely, the Executive branch, the Legislative branch and the Judiciary.⁴ The Philippines Constitution contains a Bill of Rights, which provides that the right to form unions, associations, or societies for purposes not contrary to law, shall not be abridged.⁵

The country recognises a variety of business structures, including single proprietorships, partnerships, corporations, branch offices, representative offices, regional headquarters, and regional operating headquarters.⁶ However, branch offices, representative offices, regional headquarters and regional operating headquarters are structures that are organized under foreign laws and considered to be foreign entities. As foreign entities, they are not subject to all the same laws as domestic entities.⁷

The Philippines also recognises four basic forms of non-profits: non-stock, non-profit corporations or associations, cooperatives, homeowners' associations, and labour unions. As not-for profit organizations (NPOs) are typically organized as non-stock corporations and registered under the Corporation Code,⁸ the other forms of NPOs will not be discussed.⁹ Non stock non-profit corporations can also be set up as a foundation¹⁰ or can take additional steps to be accredited as a non-governmental organization (NGO) by the Philippine Council for NGO Certification.¹¹ The Philippines Constitution provides that the state shall

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² The Philippines Constitution, Article II, Section 1, *available at* <http://www.gov.ph/constitutions/1987-constitution/>

³ ASEAN Law Association, paper "Chapter 1- Historical Overview" page 1, *available at* http://www.aseanlawassociation.org/papers/phil_chp1.pdf, CIA "The World Factbook –Philippines," *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html>, "Legal System in Philippines," *available at* <http://www.tradechakra.com/economy/philippines/legal-system-in-philippines-235.php>.

⁴ ASEAN Law Association, paper "Chapter 3- Government and the State" page 2, *available at* http://www.aseanlawassociation.org/papers/phil_chp3.pdf.

⁵ The Philippines Constitution, Article III, section 8, *available at* <http://www.gov.ph/constitutions/1987-constitution/>

⁶ <http://www.cpaai.com/asiapacific/Doing%20Business%20Guide%20Philippines%202010%20FINAL.pdf>

⁷ Kittelson and Carpo Consulting, "Philippines - Selecting the Appropriate Business Enterprise," *available at* <http://www.kittelsoncarpo.com/open-office-philippines>.

⁸ The Corporation Code of the Philippines - Batas Pambansa Bilang 68, *available at* <http://www.sec.gov.ph/laws/pdf/Corporation%20Code%20of%20the%20Philippines.pdf> ("Corporation Code")

⁹ "Philippines," *available at* <http://www.cof.org/content/philippines>.

¹⁰ "How to Register a Foundation in the Philippines," *available at* <http://businesstips.ph/how-to-register-a-foundation-in-the-philippines/>.

¹¹ Caucus of Development NGO Networks (2008), Report "NPO Sector Assessment: Philippine Report," *available at* [http://code-ngo.org/home/images/stories/pdf/Philippine NGO Sector Assessment Full Report.pdf](http://code-ngo.org/home/images/stories/pdf/Philippine%20NGO%20Sector%20Assessment%20Full%20Report.pdf),

encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.¹²

II. Registration Procedures

Except those that are organized under foreign laws (i.e. branch offices, representative offices, regional headquarters and regional operating headquarters), all organizations regardless of whether they are for-profit or not-for profit organizations are required to complete a number of steps to register and operate in the Philippines including the following steps (General Registration Procedure):

- Obtain a clearance from the local Barangay Office, which is a local government clearance that indicates that a business is a community-friendly establishment and conforms to the standards of the Baranga (fees to secure a clearance is minimal but may vary according to the size of a business or the district where the Barangay is located) (Barangay Clearance);¹³
- Register with the Social Security System (SSS) to ensure that hired employees or labourers are covered by viable tax-exempt social security services and are protected against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income;¹⁴
- Register with the Philippines Health Insurance Company (Phil Health), which manages and administers the government health care system;¹⁵
- Register with the Home Development Mutual Fund, as employers are required to remit their share of contribution for employees to this agency;¹⁶
- Register and obtain a permit with the Municipality or City Mayor's Office, which affirms that the business is in compliance with the municipality or City's ordinances and standards (fees for new applications may depend on the initial capital of the organization, while fees for renewals depend on the applicant's prior year's gross revenues or sales);
- Register with the Bureau of Internal Revenue (BIR) to secure a BIR Certificate of Registration (the BIR registration fee is 500 pesos annually) and obtain a Tax Identification Number; and
- Register with Department of Labour and Employment (DOLE); this is required for organizations with 50 or more employees, but organizations with five or more employees are encouraged to register with DOLE for the purpose of monitoring the organization's compliance with labour regulations.

Certain types of organizations may also be required by the government to take additional steps to secure special or secondary licenses prior to operating.¹⁷

Each of the agencies above has its own processing times of usually one to two days, and many charge a registration fee. As registrations are required to be sequential, registration with all the various

¹² The Philippines Constitution, Section 23 of Article II, *available at* <http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-ii/>

¹³ "How to Register Your Business in the Philippines," *available at* <http://businesstips.ph/how-to-register-your-business-in-the-philippines/>;"Barangay Business Clearance," *available at* <http://www.trc.dost.gov.ph/trcfile/barangay.pdf>.

¹⁴ Republic Act No. 8282, Social Security Act of 1997, Section 2 (Philippines), "How to Register Your Business with the SSS," *available at* <http://businesstips.ph/how-to-register-your-business-with-the-sss/>.

¹⁵ The New National Health Insurance Act (RA 7875) as amended by RA 9241 (Philippines), "Sole Proprietorship," *available at* <http://www.trc.dost.gov.ph/index.php/business-guide/business-registration-guide/sole-proprietorship>

¹⁶ Republic Act 7742 (Philippines).

¹⁷ "How to Register Your Business in the Philippines," *available at* <http://businesstips.ph/how-to-register-your-business-in-the-philippines/>.

offices can take on average of 34 days and the total fees may be upwards of PHP5,540.¹⁸ Additional fees and time may also be required depending on the form of the entity.

Organizations that are organized under foreign laws (i.e. branch offices, representative offices, regional headquarters and regional operating headquarters) will also be required to complete the step outlined above in the General Registration Procedure; this is to secure a license that will enable them to carry out business in the Philippines. Furthermore, registering with SSS, Phil Health, the Home Development Mutual Fund, and DOLE is contingent on the employment of Filipino residents.

For dissolution, the organization will need to notify all the government agencies/offices that it registered with and inform them of its dissolution. The organization will need to comply with their requirements and ensure any outstanding obligations have been resolved to obtain any clearances or certificates of termination (cancellation of registration), if required.¹⁹

Each of the agencies listed above will need to be notified in the dissolution process (General Dissolution Procedure).

A. For-Profit Organizations

a. Laws

1. Registration Process for Single/Sole Proprietorships

Single/sole proprietorship is a type of business that is owned and controlled by a single individual. A sole proprietor is personally liable for all losses but also enjoys all the profits to the exclusion of all others. In order to register a sole proprietorship business, a person is required to be at least 18 years old and a Filipino citizen.²⁰

Sole proprietorships must register with both the Department of Trade and Industry and the Bureau of Trade Regulation and Consumer Protection, and registration fees vary from approximately PHP500, to be registered for a city/municipality, to approximately PHP2,000, for national registration. Registration of a sole proprietorship may also include unique fees, such as garbage collection fees of PHP2,500, and can total approximately PHP9,915.

In addition to the processing times for the General Registration Procedure, registration of a sole proprietorship can be upward of five working days, due to the different offices the application needs to be filed at.²¹

i. Dissolution Process and Redress Mechanisms

In addition to the General Dissolution Procedures, the sole proprietorship needs to cancel its business name registration with the Department of Trade and Industry and any other offices where the business is registered. The sole proprietorship also needs to ensure all outstanding obligations are cleared. For example,

¹⁸ "Starting a Business in Philippines," available at <http://www.doingbusiness.org/data/exploreeconomies/philippines/starting-a-business>, "Doing Business 2015 Going Beyond Efficiency," available at: <http://www.doingbusiness.org/~media/giawb/doing%20business/documents/profiles/country/PHL.pdf>.

¹⁹ "How to Close a Business in the Philippines," available at <http://businesstips.ph/how-to-close-a-business-in-the-philippines/>.

²⁰ "Registering a Business," available at <http://investphilippines.gov.ph/setting-up/registering-a-business/>.

²¹ "Registering a Business," available at <http://investphilippines.gov.ph/setting-up/registering-a-business/>.

the City Office has to confirm that the business has paid all the local business taxes or licensing fees which are due to the city.²²

2. Registration Process for Partnerships

Partnerships are governed by the Civil Code of the Philippines. The Civil Code governs all aspects of partnerships, from their creation, formation, existence, operation, and management, to their dissolution and liquidation, including obligations of the partners to one another, to the public, to third persons, and to the government.²³

A partnership is treated as a juridical person, having a separate legal personality from that of its members.²⁴ It consists of two or more partners and may either be general or limited, depending on the liability of the partners. In the Philippines, partnerships operate under the concept of unlimited liability, unless otherwise agreed upon by the partners. If it is a limited partnership, the word "Limited" or "Ltd" should be added to the partnership name.²⁵

In addition to the General Registration Procedure, the requirements to register a partnership include registering with Securities and Exchange Commission (SEC) with a minimum capitalization of PHP3,000, and submitting the articles of Partnership, stating the purpose of the partnership, registration of data sheet, a joint affidavit of two partners undertaking to change partnership name if requested by the SEC, and a Certificate of Bank Deposit.²⁶ The name, citizenship, address, birthday and Tax Identification Number of the partners and details of their capital contributions are also required.²⁷

If a partnership has foreign partners, SEC Form No. F-105²⁸ must be filed with proof of remittance if the foreign partners want to register their investments with the Central Bank of the Philippines, known as the Bangko Sentral ng Pilipinas²⁹ (BSP). Any other endorsements/clearances from other government agencies must be obtained if applicable.

Furthermore, when partnerships register with BIR, they are also given authorisation to print official receipts, register books of accounts and obtain a separate Tax Identification Number.

Processing time for the SEC registration is within 24 hours from filing, in addition to the General Registration Procedure.

i. Dissolution Process and Redress Mechanisms

²² "Closing a Sole Proprietorship Business in the Philippines," *available at* <http://businesstips.ph/closing-a-sole-proprietorship-business-in-the-philippines/>.

²³ Republic Act No. 386, as amended, Articles 1767 – 1867, *available at* <http://www.gov.ph/downloads/1949/06jun/19490618-RA-0386-JPL.pdf>.

²⁴ Civil Code of the Philippines, Article 1768.

²⁵ "Registration of Partnerships in Philippines," *available at* <http://www.tradechakra.com/economy/philippines/registration-of-partnerships-in-269.php>.

²⁶ Nicolas & De Vega Law Offices "How to Form a Partnership," *available at* <http://ndvlaw.com/how-to-form-a-partnership/>.

²⁷ Nicolas & De Vega Law Offices "How to Form a Partnership," *available at* <http://ndvlaw.com/how-to-form-a-partnership/>.

²⁸ "Application to do business under the Foreing Investments Act of 1991," *available at* <http://demo.sec.gov.ph/Forms/FIA%20Form%20105%20-%20sep08.pdf>.

²⁹ Bangko Sentral ng Pilipinas, *available at* <http://www.bsp.gov.ph/>.

As a partnership is created by mere agreement of the parties, partnerships can be dissolved at any time by the will of any or all of the partners provided any dissolution does not amount to a breach of contract or is prejudicial to third parties.

The Civil Code deals with the dissolution and winding up of a partnership and provides a number of circumstance within which a partnership may be dissolved.³⁰ One such circumstance is the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners, by any event, which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership or by the insolvency of any partner or of the partnership.³¹

Additionally, any change in the composition of the partnership, whether it is by the death of a partner or the unauthorised transfer of ownership of a share in the partnership, will result in the dissolution of the partnership.³²

Dissolution can also be caused by decree of the court on application by or for a partner. Situations in which this will occur include, but are not limited to, when a partner has been declared insane in any judicial proceedings, a partner wilfully or persistently commits a breach of the partnership agreement, or when the business of the partnership can only be carried on at a loss.³³

Partnerships cannot process closure of their business with the SEC if they have not yet secured tax clearance from the BIR and, if applicable, endorsements or certificates of registration cancellation from other government offices. Thus, even though the business may already be non-operating, it will still remain as a registered business.³⁴

3. Registration Process for Corporations

A corporation is a juridical person established under the Corporation code, having separate personality from its stockholders. A corporation can either be stock or non-stock. A stock corporation has capital stock divided into shares and is authorised to distribute dividends or allotments of surplus profits to the holders of these shares according to the number of shares that is held.³⁵ It requires at least five founding incorporators, each of whom must hold at least one share and the majority of whom must be residents of the Philippines.³⁶ The corporation must be registered with the SEC and is regulated by the SEC. The minimum paid-up capital required is PHP5,000. A non-stock corporation is an entity organized principally for public purposes, such as charitable, educational, cultural purposes. It also does not issue shares of stock to its members.³⁷

³⁰ Civil Code, Title IX, Chapter 3 (Philippines).

³¹ Civil Code, Article 1830, available at <http://mabuhaylaw.blogspot.com.au/2010/08/civil-code-title-ix-partnership.html>.

³² Civil Code, Article 1830(5), available at <http://mabuhaylaw.blogspot.com.au/2010/08/civil-code-title-ix-partnership.html> <http://www.chanrobles.com/legal5cc1c.htm>.

³³ Civil Code, Article 1831 (Philippines).

³⁴ "How to Close a Business in the Philippines," available at <http://businesstips.ph/how-to-close-a-business-in-the-philippines/>.

³⁵ Corporation Code, Section 3 (Philippines).

³⁶ Corporation Code, Section 10 (Philippines), available at <http://www.sec.gov.ph/laws/pdf/Corporation%20Code%20of%20the%20Philippines.pdf>

³⁷ "A Guide To Choosing The Right Business Structure" available at <http://fitzvillafuerte.com/a-guide-to-choosing-the-right-business-structure.html>;

In addition to the General Registration Procedure, the requirements to register a corporation include registering with the SEC and submitting the Articles of Incorporation³⁸ and vy-laws, an affidavit of an incorporator or director undertaking to change the corporation's name if required by the SEC, a list of contributors and the amounts contributed certified by the treasurer and any other endorsements/clearances from other government agencies, if applicable.

A corporation with foreign equity must also provide proof of inward remittance or a bank certificate by non-residents and foreign corporate subscribers who want to register their investment with the BSP. Additionally, corporations with more than 40 percent foreign equity must also submit SEC Form No. F- 100.

Furthermore, corporations with Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), or other economic zones application, must also provide their Certificate of Authority or endorsement to the SEC.

When a corporation is incorporated, it will exist for a period not exceeding 50 years from the date of incorporation unless sooner dissolved or the period is extended. The corporate term can only be extended for periods not exceeding 50 years, in a single instance, and cannot be made earlier than five years before the relevant expiry date, unless the SEC determines there are justifiable reasons for an earlier extension.³⁹

i. Dissolution Process and Redress Mechanisms

Title XIV of the Corporate Code provides that a corporation formed or organized under the provisions of the Code may be dissolved voluntarily or involuntarily.⁴⁰ The dissolution of a corporation can be voluntary, for example by shortening the corporate term, or may be involuntary, where the SEC dissolves the corporation upon a verified complaint being filed and after proper notice and hearing on grounds provided by existing laws, rules, and regulations.⁴¹

In addition to the General Dissolution Procedure, a corporation can only be dissolved with the approval of the SEC. This will only occur when when the corporation has secured tax clearance from the BIR and, if applicable, endorsements or certificates of registration cancellation from other government offices. Therefore, even though the business may already be non-operating, it will still remain as a registered business.⁴²

4. Registration Process for Branch Offices

A branch office is considered an extension of a foreign enterprise and has no separate and independent legal personality. It can carry out the business activities of its head office and may derive income from the Philippines. The minimum paid-up capital requirement is US\$200,000.00, which is required

"Types of Business Entities in Philippines," *available at* <http://www.trdechakra.com/economy/philippines/types-of-business-entities-in-240.php>.

³⁸ Corporation Code, Section 14 (Philippines), *available at* <http://www.sec.gov.ph/laws/pdf/Corporation%20Code%20of%20the%20Philippines.pdf>.

³⁹ Corporation Code, Section 11 (Philippines), *available at* <http://www.sec.gov.ph/laws/pdf/Corporation%20Code%20of%20the%20Philippines.pdf>.

⁴⁰ Corporation Code, Section 117 (Philippines), *available at* http://www.wipo.int/wipolex/en/text.jsp?file_id=225733#LinkTarget_177.

⁴¹ Corporation Code, Section 21 (Philippines).

⁴² "How to Close a Business in the Philippines," *available at* <http://businesstips.ph/how-to-close-a-business-in-the-philippines/>.

to be remitted inward, but this can be reduced to US\$100,000 if the organization is engaged in activities involving advanced technology or if it has at least 50 direct employees in the Philippines.⁴³

Registration with the SEC is mandatory and the requirements to register as a branch office include submitting SEC Form F103,⁴⁴ authenticated copies of the Board Resolution authorizing establishment of the office in the Philippines, Financial Statements (not older than one year), the Articles of Incorporation (with an English translation if required), and proof of inward remittance (for a minimum of US\$200,000). This is in addition to any steps in the General Registration Procedure, which are applicable to the branch office and therefore must be completed in order to obtain a license from the SEC to operate in the Philippines.

Processing time is within three to five days from filing. This is in addition to the time taken to complete the applicable steps in the General Registration Procedure.⁴⁵

i. Dissolution Process and Redress Mechanisms

As branch offices, representative offices, regional headquarters, and regional operating headquarters are types of business forms which are organized under foreign laws, the law governing their creation, formation, dissolution and liquidation is the law of the country where such foreign corporations were organized or established. This is a principle of international law that is fully recognized in Philippine jurisdiction.⁴⁶

Philippine law does also allow for one or more foreign corporations to merge or consolidate with one or more domestic corporations in the Philippines. In the event that the absorbed corporation is the foreign corporation, the latter should file a petition for withdrawal of its license with the SEC.⁴⁷

5. Registration Process for Representative Offices

A representative office is one that deals directly with the clients of its parent company in the Philippines. It is essentially a foreign corporation that is governed by the laws of the country where its parent company is located.⁴⁸ It undertakes activities such as information dissemination, promotion of the parent company's products, and providing quality control. A representative office may not derive income from the Philippines and therefore is fully subsidised by its head office and is required to have an initial remittance of at least US\$30,000 into the Philippines. It is also required to remit US\$30,000 every year thereafter.⁴⁹

⁴³"Which Business Structure is the Best for a Philippine BPO? (A Guide to Company Structures in the Philippines)," available at <http://filepino.com/business-advice/which-business-structure-is-the-best-for-a-philippine-bpo-a-guide-to-company-structures-in-the-philippines/>.

"Registration of Philippine Branch Office," available at <http://www.philregistration.com/Registration%20of%20Philippine%20Branch%20office.html>.

⁴⁴ "Application of a Foreign Corporation to Establish a Branch office in the Philippines," available at <http://www.sec.gov.ph/download/Forms/foreign/updates%20102212/form%20f-103.pdf>.

⁴⁵ "Registering a Business" available at <http://investphilippines.gov.ph/setting-up/registering-a-business/>.

⁴⁶ Chan Robles & Associates Law Firm "Foreign Corporation," available at <http://www.chanrobles.com/legal5cc1b.htm>.

⁴⁷ Chan Robles & Associates Law Firm "Foreign Corporation," available at <http://www.chanrobles.com/legal5cc1b.htm>.

⁴⁸ "Which Business Structure is the Best for a Philippine BPO? (A Guide to Company Structures in the Philippines)," available at <http://filepino.com/business-advice/which-business-structure-is-the-best-for-a-philippine-bpo-a-guide-to-company-structures-in-the-philippines/>.

⁴⁹ "Representative Office," available at <http://companyincorporation.com.ph/index.php?dis=representative>.

Registration with the SEC is mandatory. The requirements to register and to obtain a license to operate in the Philippines include submitting SEC Form F-104, authenticated copies of the Board Resolution authorizing the establishment of the representative office in the Philippines, Financial Statements (not older than one year), the Articles of Incorporation (with an English translation if required) and proof of inward remittance (minimum of US\$30,000).⁵⁰ Additionally any steps in the General Registration Procedure that are applicable to the representative office must be completed.

The processing time is approximately two days from filing, in addition to the time taken to complete the applicable steps in the General Registration Procedure.⁵¹

i. Dissolution Process and Redress Mechanisms

Please refer to the dissolution process for a branch office above as they apply equally to the dissolution of a representative office.

6. Registration Process for Regional Headquarters (RHQs) and Regional Operating Headquarters (ROHQs)

Regional headquarters (RHQs) and regional operating headquarters (ROHQs) are used by major multinational companies that engage in international trade. RHQs refers to an office whose purpose is to act as an administrative branch of a multinational company and principally serve as a supervision, communications and coordination center for its subsidiaries, branches, or affiliates in the Asia-Pacific Region and other foreign markets.⁵² RHQs are not allowed to derive income from Philippine sources and are required to remit annual capital of at least US\$50,000 into the Philippines for operating expenses, for which proof of remittance is required to be submitted to the SEC within 30 days from the receipt of the licence.⁵³

ROHQs refers to a foreign business entity that is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region, and in other foreign markets.⁵⁴ ROHQs are allowed to derive income from the Philippines but must initially remit capital of US\$200,000 into the Philippines, for which proof of remittance is required to be submitted to the SEC within 30 days from the receipt of the licence.⁵⁵

The requirements to register as a RHQ or ROHQ include providing authenticated certification from a principal officer of the foreign entity that it was authorised to establish the RHQ or ROHQ in the Philippines, including that the foreign firm is engaged in international trade in the Asia Pacific region and other foreign markets, and obtaining endorsement from the Philippine Board of Investments (BOI) indicating its approval of the RHQ/ROHQ. Additionally, any steps in the General Registration Procedure which are applicable to the RHQ or ROHQs must be completed in order to obtain a license from the SEC to operate in the Philippines.

⁵⁰ "Types of Business in the Philippines," available at <http://businesstips.ph/types-of-business-in-the-philippines/>.

⁵¹ "Registering a Business," available at <http://investphilippines.gov.ph/setting-up/registering-a-business/>.

⁵² Republic Act No. 8756, section 2 (Philippines).

⁵³ "Documentary Requirements for Registration," available at <http://www.sec.gov.ph/gsr/primary/pdf/requirements%20for%20registration%20as%20jun%202013.pdf>.

⁵⁴ Republic Act No. 8756, section 2 (Philippines).

⁵⁵ "Regional Operating Headquarters (ROHQ)," available at <http://companyincorporation.com.ph/index.php?dis=rohq>, "Documentary Requirements for Registration," available at <http://www.sec.gov.ph/gsr/primary/pdf/requirements%20for%20registration%20as%20jun%202013.pdf>, "Which Business Structure is the Best for a Philippine BPO? (A Guide to Company Structures in the Philippines)," available at <http://filepino.com/business-advice/which-business-structure-is-the-best-for-a-philippine-bpo-a-guide-to-company-structures-in-the-philippines/>.

The processing time is within one day from filing,⁵⁶ in addition to the time taken to complete the applicable steps in the General Registration Procedure.

i. Dissolution Process and Redress Mechanisms

Please refer to the dissolution process for a branch office above as it applies equally for the dissolution of an RHQ or a ROHQ.

b. Case Law

We were unable to find relevant case law.

B. Not-For Profit Organizations

The Corporation Code, the Cooperative Code, and the Labour Code govern the operation of different types of non-profit organizations.

a. Laws

1. Registration Process for Non-stock, Non-profit Corporations

Non-stock, non-profit corporations are organizations where the income is not distributable as dividends to its members, trustees, or officers and any profit derived is used for the furtherance of the purpose or purposes for which the corporation was organized.⁵⁷

Non-stock corporations can be formed for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar such purposes.⁵⁸

Non-stock non-profit corporations are registered with the SEC and the requirements of registration include submitting the Articles of Incorporation and by-laws,⁵⁹ a joint Affidavit of two incorporators or directors undertaking to change the corporate name if required by the SEC and a list of members and list of contributors and amounts contributed or donated as certified by the treasurer.⁶⁰

Other requirements include:

1. For a non-stock foreign corporation to establish a branch/representative office in the Philippines, SEC Form F-108 and an affidavit signed by the resident agent stating that the applicant is solvent and in sound financial condition;
2. For religious corporations, an affidavit of affirmation or verification by the chief priest, rabbi, minister or presiding elder;
3. For federations, a certified list of member-associations by the corporate secretary or president; and
4. For condominium corporations/associations, a Master Deed with primary entry of the Register of Deeds and certification that there is no other similar condominium association existing within the condominium project.⁶¹

⁵⁶ "Registering a Business," available at <http://investphilippines.gov.ph/setting-up/registering-a-business/>

⁵⁷ Corporation Code, section 87 (Philippines), Report "NPO Sector Assessment: Philippine Report," available at [http://code-ngo.org/home/images/stories/pdf/Philippine NGO Sector Assessment Full Report.pdf](http://code-ngo.org/home/images/stories/pdf/Philippine%20NGO%20Sector%20Assessment%20Full%20Report.pdf).

⁵⁸ Corporation Code, section 88 (Philippines).

⁵⁹ Template for articles of incorporation and by-laws, available at http://www.sec.gov.ph/download/Forms/otherforms/NS_template.pdf.

⁶⁰ SEC "SEC Registration Requirements," available at <http://www.sec.gov.ph/gsr/primary/nonstockcorp.html>.

⁶¹ SEC "SEC Registration Requirements," available at <http://www.sec.gov.ph/gsr/primary/nonstockcorp.html>.

i. Dissolution Process and Redress Mechanisms

Chapter III of the Corporations Code provides the rules for the distribution of assets in the case of dissolution of a non-stock corporation, including the order that assets are to be distributed, which may also depend upon the conditions under which the assets were received on.⁶² The Corporations Code also allows for a plan providing for the distribution of assets to be adopted if voted upon by a majority of the board of trustees.⁶³

2. Registration Process for Foundations

Foundations are a form of non-stock corporations which are "established for the purpose of extending grants or endowments to support its goals or raising funds to accomplish charitable, religious, educational, athletic, cultural, literary, scientific, social welfare or other similar objectives."⁶⁴

In addition to the requirements set out above with respect to registering a NPO, the following requirements must be met in order to register a foundation:

- A notarized certificate of bank deposit for a contribution of at least PHP1,000,000;
- A statement of willingness to allow the SEC to conduct an audit;
- A plan of operations executed under oath by the president of the foundation, that specifies the mode of operations and how it will source funds; and
- The word "Foundation" included in the company name.⁶⁵

Foundations may also be required to obtain additional endorsements from government agencies. For example, a charitable institution may require endorsement from the Department of Social Welfare and Development.⁶⁶

i. Dissolution Process and Redress Mechanisms

As foundations are a form of non-stock corporations, the dissolution of a foundation occurs by following the same process set out above for a non-stock corporation. Please refer to the dissolution process of a non-stock corporation above and the General Dissolution Procedures.

3. Registration Process for Non-Governmental Organizations (NGOs)

Non-governmental organizations (NGOs) are another type of organization that can be not-for profit. While NGOs with SEC registration can operate without being accredited, it is highly recommended to be accredited. The Philippine Council for NGO Certification (PCNC) is the body that gives accreditation to NGOs and having accreditation from the PCNC indicates to the public that the NGO is legitimate and boosts the credibility of the NGO.⁶⁷

⁶² Corporation Code, section 94 (Philippines).

⁶³ Corporation Code, Title XI (Philippines), *available at* <http://www.chanrobles.com/legal5title11.htm>.

⁶⁴ Sec. 1 of SEC Memorandum Circular No. 8 Series of 2006 (Philippines), *available at* <http://www.sec.gov.ph/laws/memorandumcircular/CY%202006/sec-memo-8,s2006.pdf>.

⁶⁵ Section 3, SEC Memorandum Circular No. 8-2006 (Philippines), *available at* <http://www.sec.gov.ph/laws/memorandumcircular/CY%202006/sec-memo-8,s2006.pdf>.

⁶⁶ "How to Register a Foundation in the Philippines," *available at* <http://businesstips.ph/how-to-register-a-foundation-in-the-philippines/>.

⁶⁷ NGO: PH "Start your own NGO," *available at* <http://ngoph.com/start-your-own-ngo-short-ver/>.

To be eligible to be accredited, an NGO must be a non-stock non-profit domestic corporation⁶⁸ organized and operating exclusively for one or more purposes, such as for scientific, religious, educational, youth and sports development, social welfare, or charitable purposes, and must have been formally operating for at least one year.⁶⁹ The application process involves submitting a letter of Intent and the latest Audited Financial Statement together with an application and the associated fee, which is based on the total assets of the organization. Organizations with total assets of PHP5M and below must pay a fee of PHP10,000 and organizations with total assets above PHP5M must pay fee of PHP15,000. For NGOs that are successful, the PCNC Secretariat submits certification results to the BIR, which issues Certificate of Donee Institution Status to the NGO.⁷⁰

Organizations applying for NGO accreditation are given 1 year to complete the application process, which includes submitting all the required documents and payment of the balance of the application fees. PCNC accreditation currently costs PHP10,000.⁷¹ Registration are valid for three years for newly-organized non stock non profit corporations/NGOs.⁷²

If an organization does not meet the criteria for accreditation, the PCNC will notify the organization of the reasons for the denial of the application and provide recommendations on how to meet the criteria for accreditation. The organization will then have one year within which to implement the evaluator's recommendations. After the one-year implementation period, the NPO/NGO may re-apply for accreditation.⁷³

i. Dissolution Process and Redress Mechanisms

Dissolution of an NGO can be voluntary or involuntary. NGOs must have a dissolution clause in their constitution outlining the manner in which the organization is voluntarily dissolved. Despite this, it is general practice for voluntary dissolution to be carried out by a resolution at the annual general meeting through a 75 percent majority vote by the members of the organization. The members must be given written notice 30 days in advance specifying the proposal to dissolve.⁷⁴

Involuntary dissolution is when the organization's certificate is revoked by the PCNC Board. This may occur if there are compelling public interest reasons to do so or the NGO is bankrupt or has not been active for an extensive period over several years. This may also occur if there have been two failures to file annual reports, or the NGO has engaged in serious misconduct in the sense of willfully engaging in activities that are inconsistent with the objectives for which it was founded.⁷⁵

More restrictive rules apply to the dissolution of an accredited NGO. Assets remaining upon dissolution must be distributed to another accredited NGO, which is organized and operating for similar

⁶⁸ BIR Revenue Regulations No. 13-98 (Philippines).

⁶⁹ Revenue Regulation No. 13-98 Section 1(b)) (Philippines).

⁷⁰ NGO: PH "PCNC Certification why it's important," available at <http://ngoph.com/pcnc-certification-why-its-important/>.

⁷¹ NGO: PH "PCNC Certification why it's important," available at <http://ngoph.com/pcnc-certification-why-its-important/>.

⁷² Council on foundations, "Philippines," available at <http://www.cof.org/sites/default/files/documents/files/Philippines/Philippines%20Revenue%20Regulations.pdf>.

⁷³ Council on foundations, "Philippines," available at <http://www.cof.org/sites/default/files/documents/files/Philippines/Philippines%20Revenue%20Regulations.pdf>.

⁷⁴ NGO: PH "Frequently Asked Questions: Current NGOs," available at <http://ngoph.com/faq-currentngos/>.

⁷⁵ NGO: PH "Frequently Asked Questions: Current NGOs," available at <http://ngoph.com/faq-currentngos/>.

purposes, or distributed by a competent court to another accredited NGO to be used in a manner which, in the court's opinion, will best accomplish the general purpose for which the dissolved NGO was organized.⁷⁶

b. Case Law

We were unable to find relevant case law.

C. Analytical Comparison of the Legal Process of Registration

The system of registration in the Philippines is administratively burdensome when compared with other jurisdictions.⁷⁷ However, this level of administration is common to all forms of organizations and not-for profits do not appear to be treated unfavorably in the Philippines, especially when the registration process for a non-stock corporation is similar to that for a stock corporation. Some organizations require longer registration periods than others, but these longer timeframes appear to arise from the necessity of having to obtain additional approvals from various offices and government departments rather than from any prejudice against certain forms of organization. Foundations do have a particularly higher capital contribution requirement, but this appears to be imposed to ensure they are legitimate and are known to be so by the public.⁷⁸ On an overall analysis, there does not appear to be evidence of disparate treatment between for-profit and not-for profit organizations.

III. Tax Laws

Any person doing business in the Philippines is required to register with the appropriate revenue district office (RDO) of the BIR, which has jurisdiction over the principal place of business of the entity, on or before the commencement of its operations. The person or entity must register each type of internal revenue tax applicable to it, report and file appropriate tax returns, and pay the appropriate taxes to the BIR for all of its taxable transactions in accordance with the Philippine taxation system and its implementing rules.⁷⁹

A. For-Profit Organizations

a. Laws

Sole proprietors are required to file BIR Form 1701⁸⁰ and are taxed according to the individual tax rates in the Philippines.⁸¹

A general professional partnership is not to be subject to the income tax and persons in a general professional partnership are only liable for income tax in their separate and individual capacities according to their individual tax.⁸²

⁷⁶ Revenue Regulation No. 13-98 Section 1(b)(iii), available at <http://www.cof.org/content/philippines#Dissolution>.

⁷⁷ World Bank Group, Doing Business "Starting a Business in Philippines," available at <http://www.doingbusiness.org/data/exploreeconomies/philippines/starting-a-business>.

⁷⁸ Kittelson and Carpo Consulting, "Register Non-Profit or Non-Stock Company in the Philippines," available at <http://www.kittelsoncarpo.com/business-registration/non-profit-stock/>.

⁷⁹ National Internal Revenue Code of 1997, as amended by Tax Reform Act 1997, "Corporate Tax in the Philippines," available at <http://www.tradechakra.com/economy/philippines/corporate-tax-in-philippines-283.php>.

⁸⁰ "Guidelines and Instructions for BIR Form No. 1701 June 2013 (ENCS)," available at http://www.bir.gov.ph/images/bir_files/Guidelines%201701%20June%202013%20ENCS.pdf.

⁸¹ "Philippines Income Tax Rates and Deductions", available at <http://www.aaptaxlaw.com/World-Taxes/Philippines-Income-Tax-Rates-2014-15-Philippines-Corporation-Tax-Rate-Capital-Gain-Tax-Rates.html>.

Entities that are incorporated in the Philippines or are foreign resident corporations that are licensed to do business in the Philippines are organizations regarded as residents of the Philippines. These resident corporations are subject to the regular corporate income tax rate of 30 percent based on net income, or to a 2 percent minimum corporate income tax rate based on gross income, whichever is higher. Non-resident companies are subject to a 30 percent corporate income tax rate based on gross income, except for certain items of passive income, which may be taxable at a different rate.⁸³

Representative offices are only required to pay withholding taxes.

RHQs and ROHQs are also entitled to numerous incentive including tax incentives. RHQs and ROHQs are exempt from paying various kinds of local taxes and fees due to limitations in their ability to earn income in the Philippines. In addition to this, RHQs are entitled to exemptions on the payment of corporate income tax and value-added tax. Furthermore, income derived by ROHQs from performing qualifying activities is only subject to a preferential tax rate of 10 percent instead of the usual corporate income tax rates.⁸⁴

The Philippines government has created a network of Investment Promotion Agencies that provide incentives to organizations that are located within a certain area or zone, or involved in a certain industry. This is as a means to promote and nurture investments within the Philippines.⁸⁵

These agencies include, but are not limited to:

- Board of Investments (BOI)
- Philippine Economic Zone Authority (PEZA)
- Category Economic Zone Authority (CEZA)
- Clark Development Authority (CDA)
- Phividec Industrial Authority (PIA)
- Subic Bay Metropolitan Authority (SBMA)
- Zamboanga Economic Zone Authority (ZEZA).⁸⁶

BOI and PEZA are two main agencies that are attached to the Department of Trade and Industry (DTI). The BOI is the lead government agency responsible for the promotion of investments in the Philippines and the PEZA is tasked with promoting investments and facilitating the business operations of investors in export-oriented manufacturing and service facilities inside selected areas that have been proclaimed by the President of the Philippines as PEZA Special Economic Zones.⁸⁷ By qualifying for the relevant eligibility criteria and registering with the BOI or PEZA, a business can enjoy fiscal incentives such

⁸² Tax Code Section 26, available at <http://www.chanrobles.com/legal6nircsections.htm#.VRlQXOmJlIU>.

⁸³ KPMG Asia Pacific Tax Centre "Philippines Tax Profile," available at <https://www.kpmg.com/Global/en/services/Tax/regional-tax-centers/asia-pacific-tax-centre/Documents/CountryProfiles/Philippines.pdf>.

⁸⁴ Banaria Banaria and Company, "Doing Business in the Philippines," available at [http://www.taglaw.com/files/Doing%20Business%20Guides/Doing%20Business%20in%20the%20Philippines%20\(TIAG\).pdf](http://www.taglaw.com/files/Doing%20Business%20Guides/Doing%20Business%20in%20the%20Philippines%20(TIAG).pdf).

⁸⁵ Economic Zones and Incentives, available at <http://investphilippines.gov.ph/incentives/>.

⁸⁶ Economic Zones and Incentives, available at <http://investphilippines.gov.ph/incentives/>.

⁸⁷ Philippine Economic Zone Authority (PEZA), available at <http://investphilippines.gov.ph/incentives/philippine-economic-zone-authority/>.

as tax holidays, tax credits, and exemptions, as well non-fiscal incentives such as employment of foreign nationals.⁸⁸

Investment priority areas for the BOI are:

- Business Process Outsourcing
- Electronics Industry
- Renewable Energy
- Shipbuilding.⁸⁹

Investment Priority Areas for the PEZA are:

- Export Manufacturing
- Information Technology (IT) Service Export
- Tourism
- Agro-industrial Export Manufacturing
- Agro-industrial Bio-Fuel Manufacturing
- Logistics and Warehousing Services
- Economic Zone Development and Operation:
 - Manufacturing Economic Zone Development / Operation
 - IT Park Development / Operation
 - Tourism Economic Zone Development / Operation
 - Medical Tourism Economic Zone Development / Operation
 - Agro-Industrial Economic Zone Development / Operation
 - Retirement Economic Zone Development / Operation
- Facilities Providers:
 - Facilities for Manufacturing Enterprises
 - Facilities for IT Enterprises
 - Retirement Facilities
- Utilities.⁹⁰

b. Case law

We were unable to find relevant case law.

B. Not-For Profit Organizations

a. Laws

The 1997 National Internal Revenue Code (Tax Code) of the Philippines exempts non-stock, non-profit corporations from income taxation,⁹¹ and registration with the BIR confers on it tax-exempt status.⁹² Accredited NGOs are also eligible for exemptions under Philippines' tax laws.⁹³

⁸⁸ Philippine Board of Investments, *available at* <http://investphilippines.gov.ph/incentives/board-of-investments/>. Kittelson and Carpo Consulting, "BOI Registration in the Philippines," *available at* <http://www.kittelsoncarpo.com/tax-incentives/boi/>.

⁸⁹ Philippine Board of Investments, *available at* <http://investphilippines.gov.ph/incentives/board-of-investments/>.

⁹⁰ Philippine Economic Zone Authority (PEZA), *available at* <http://investphilippines.gov.ph/incentives/philippine-economic-zone-authority/>.

⁹¹The 1997 National Internal Revenue Code, section 30 (Philippines) ("*Tax Code*").

⁹² Under Section 30 of the National Internal Revenue Code of 1997, as amended Tax Alert No. 20 (Revenue Memorandum Order No. 20-20 13 dated 22 July 2013) (Philippines).

To be eligible for tax exemptions, the NPO or NGO must qualify under Section 30 of the Tax Code and meet the organizational test and operational test.⁹⁴ The NPO or NGO then has to file an application with their local Revenue District Office and any other secondary registrations with appropriate government agencies, as required.

Foundations are generally exempt from income tax.⁹⁵ However, income derived from its properties, real or personal, or from any of its activities conducted for profit regardless of the disposition made of such income, is subject to tax.

Accredited NGOs are defined in the Tax Code as non-profit domestic corporations that are organized and operate exclusively for scientific, research, educational, character-building and youth and sports development, health, social welfare, cultural, or charitable purposes, or a combination thereof, in which no part of the net income benefits a private individual.⁹⁶ Once an NGO is accredited and receives donee status, additional tax benefits accrue to the NGO, including that donations made to the accredited NGO are deductible in full.⁹⁷

b. Case law

We were unable to find relevant case law.

C. Analytical Comparison

All domestic organizations are subject to income tax. However, businesses that meet certain eligibility criteria, such as having an enterprise located in a PEZA area, are eligible for tax incentives.⁹⁸ The various Economic Zones provide numerous fiscal and non-fiscal benefits to businesses in order to attract investors. While NPOs are not excluded from these economics-based incentives, the eligibility criteria makes it difficult for NPOs to be eligible to obtain any such incentives. Instead, NPOs may exempt from income tax, and donations made to accredited NGOs are deductible in full.

IV. Financial Transaction Laws

⁹³ Caucus of Development NGO Networks (2008), Report "NPO Sector Assessment: Philippine Report," *available at* http://code-ngo.org/home/images/stories/pdf/Philippine_NGO_Sector_Assessment_Full_Report.pdf page 43.

⁹⁴ Revenue Memorandum Order No. 20-2013 dated 22 July 2012 (Philippines).

PwC, "Prescribing the policies and guidelines in the issuance of Tax Exemption to Qualified Non-Stock, Non-Profit Corporations and Associations under section 30 of the National Internal Revenue Code of 1997, as amended," *available at* <http://www.pwc.com/ph/en/tax-alerts/2013/tax-alert-20.jhtml>.

"Tax Update" Atty. Jules E. Riego JD. LLM, *available at* <http://www.picpammr.com/technical/materials/EMMC-TS4.pdf>.

⁹⁵ Tax Reform Act of 1997 (R.A. 8424) Section 30 (Philippines)

⁹⁶ Tax Code, Chapter VII Section 34(H)(2)(c)(1), *available at* <http://www.chanrobles.com/legal6nationalinternalrevenuecodeof1997.html>.

⁹⁷ Tax Code, Chapter VII Section 34(H)(2), Caucus of Development NGO Networks, "Assessing the Philippine NGO Environment: Regulation, Risks and Renewal," *available at* http://code-ngo.org/home/images/stories/pdf/Philippine_NPO_Sector_Report_FINAL2.pdf.

"Deductibility of donations" Elbert S. Cruz, *available at* http://www.punongbayan-araullo.com/pnawebsite/pnahome.nsf/section_docs/CS909U_13-6-12.

⁹⁸ PwC, "Prescribing the policies and guidelines in the issuance of Tax Exemption to Qualified Non-Stock, Non-Profit Corporations and Associations under section 30 of the National Internal Revenue Code of 1997, as amended," *available at* <http://www.pwc.com/ph/en/tax-alerts/2013/tax-alert-20.jhtml>.

The Constitution for the Philippines provides that the state should regulate and exercise authority over foreign investments within its jurisdiction. Laws that have been passed to regulate and govern foreign investment include:

- The Foreign Investments Act of 1991, which sets out restrictions on the extent of foreign ownership in domestic market enterprises;
- The Omnibus Investments Code 1987, which defines the basic rights and guarantees of foreign investors (such as in relation to the repatriation of investments and remittance of earnings) and grants various incentives to enterprises registered with the BOI;
- The Bases Conversion and Development Act and Special Economic Zone Act, which grants incentives to industries and enterprises which operate within certain locations; and
- Anti-Money Laundering Act of 2001,⁹⁹ which criminalizes money laundering, aims to ensure that the Philippines is not used as a money laundering site, and aims to protect and preserve the integrity and confidentiality of bank accounts.¹⁰⁰

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

Under the Foreign Investments Act 1991, foreign investors are allowed to make investments in domestic business activities of up to 100 percent foreign equity, except in activities listed in the Foreign Investment Negative List (FINL).

The activities or areas listed under the FINL include, among other things:

- Investment houses regulated by the SEC: up to 60 percent foreign equity;
- The ownership of private land: up to 40 percent foreign equity;
- Operation and management of public utilities: up to 40 percent foreign equity;
- Gambling (with exceptions): up to 40 percent foreign equity;
- Advertising: up to 30 percent foreign equity;
- Mass media, except recording: no foreign equity; and
- Retail trade enterprises with paid-up capital of less than US\$2.5 million: no foreign equity.

ii. Political Contribution Laws

It is unlawful for any foreigner, whether a judicial or natural person, to aid any candidate or political party, to take part in or influence any election, or to contribute to or make any expenditure in connection with any election campaign or partisan political activity.¹⁰¹ It is also unlawful for any person, including a political party or public or private entity, to solicit or receive any aid or contribution from any foreign national, government, or entity for the purposes of influencing the results of an election.¹⁰²

b. Case Law

We were unable to find relevant case law.

⁹⁹ State Policies Republic Act No. 9160, as amended by Republic Act No. 9194, otherwise known as the Anti-Money Laundering Act of 2001.

¹⁰⁰ A M C Labador, "Corporate Crime and Criminal Liability of Corporate Entities," *available at* http://www.unafei.or.jp/english/pdf/RS_No76/No76_09PA_Labador.pdf.

¹⁰¹ Election Code, section 81 (Philippines).

¹⁰² Philippine Omnibus Election Code, Sections 81 and 96. Council on foundations, "Philippines," *available at* <http://www.cof.org/content/philippines#sthash.xyuc5X5Q.dpuf>.

B. Not-For Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

There are no provisions under Philippine law restricting the ability of foreign entities or individuals to control NPOs. It is therefore possible for a Philippine NPO to be controlled by a for-profit entity or by an American grantor charity, provided that the correct disclosures are made.¹⁰³

ii. Political Contribution Laws

NPOs may engage in lobbying activities, but such activities must conform to the norms for acceptable advocacy.¹⁰⁴ NPOs may not directly expend funds on political parties or candidates or for the purposes of partisan political activity.¹⁰⁵ Additionally, NPOs receiving government funding and receiving tax benefits are prohibited from making indirect or direct contributions for purposes of partisan political activity.¹⁰⁶

b. Case Law

We were unable to find relevant case law.

C. Analytical Comparison

The financial transaction laws are focused on a distinction between foreign entities and domestic entities, as opposed to for-profit organizations and not-for profit organizations.

Likewise, in relation to political contribution laws, foreigners and foreign entities are treated differently to residents and domestic entities. The Philippines has strict rules governing the ability of foreigner persons or foreign entities to be associated with political activity, with foreigners explicitly excluded from contributing money to political parties or attempting to influence elections. While NPOs are limited in their political participation, they are not limited to the same extent as a foreign person or foreign entity. The exception is NPOs, which receive government funding and receive tax benefits. These NGOs are prohibited from making contributions for purposes of partisan political activity.¹⁰⁷ This prohibition is indicative of the disparate treatment of NPOs supported by the government¹⁰⁸

V. Auditing/Reporting Requirements

A. For-Profit Organizations

a. Laws

¹⁰³ Council on foundations, “Philippines,” available at <http://www.cof.org/content/philippines#sthash.xyuc5X5Q.dpuf>.

¹⁰⁴ Civil Code, Article 19 (Philippines).

¹⁰⁵ Corporation Code, Section 36(9) (Philippines).

¹⁰⁶ Philippine Omnibus Election Code Section 95(b to f) and (h)).

¹⁰⁷ Philippine Omnibus Election Code Section 95(b to f) and (h).

¹⁰⁸ Philippine Omnibus Election Code Sections 81 and 96. Council on foundations, “Philippines,” available at <http://www.cof.org/content/philippines>.

A company must regularly submit a general information sheet and audited financial statements to the SEC. The general information sheet contains information on the company's directors, officers, shareholdings and capital structure. There are no filing fees to submit this.

A corporation is required to keep a record of all business transactions and minutes of all meetings of stockholders or members, or of the board of directors or trustees, including and not limited to the notice given, whether the meeting was regular or special.¹⁰⁹

Every corporation, domestic or foreign, lawfully doing business in the Philippines must submit to the SEC an annual report of its operations, together with a financial statement of its assets and liabilities, certified by any independent certified public accountant in appropriate cases, covering the preceding fiscal year and such other requirements as the SEC may require. The report must be submitted to the SEC within the applicable prescribed period.¹¹⁰ The SEC requires the yearly submission of the financial statements of a company.

Domestic corporations must submit their financial statements within 120 days of the last day of the fiscal year of the corporation. For stock corporations with paid-up capital of PHP50,000 or more, the financial statements must be audited by an independent certified public accountant accredited with the Philippine Board of Accountancy (BA). For stock corporations with paid-up capital of less than PHP50,000, the financial statements only need to be certified by the treasurer of the corporation under oath.

Foreign organizations (i.e. branch offices, representative offices, RHs and ROHQs) must submit a General Information Sheet (GIS) within 30 days of the anniversary date of the issuance of the SEC license and their financial statements within 120 days of the last day of their fiscal year. For offices with assigned capital of PHP50,000 or more, the financial statements must be audited by an independent certified public accountant registered with the BA. For offices with assigned capital of less than PHP50,000, the financial statements only need to be certified under oath by the treasurer of the corporation. Fines are imposed for the failure to submit the GIS and financial statements within the prescribed period. For delays that exceed 30 days, the reports are considered to be non-compliant and the 4th violation of such reportorial requirements will result on the revocation of the certificate of registration or license of the foreign organization.¹¹¹

b. Case Law

We were unable to find relevant case law.

B. Not-For Profit Organizations

a. Laws

A non-stock corporation with annual gross receipts of PHP100,000 or more, or total assets of PHP500,000 or more, must submit their financial statements within 120 days of the last day of their fiscal year. The financial statements must be audited by an independent certified public accountant accredited with the BA. Additionally, non-stock and non-profit organizations should file a schedule showing the nature and amount of each item comprising the total receipts and disbursements according to their source. NPOs are also obliged to regularly report and disclose information in relation to their operations; for example, a certificate of donation for each donation received should be submitted to the donor and the BIR.

The SEC also requires that NPOs undertake the following:

¹⁰⁹ Corporation Code, TITLE VIII (Philippines), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=225733#LinkTarget_323.

¹¹⁰ Corporation code, section 141 (Philippines).

¹¹¹ SEC Memorandum Circular No. 15, Series of 2006 (Philippines), available at <http://www.sec.gov.ph/laws/memorandumcircular/CY%202006/sec-memo-15.s2006.pdf>; SRC RULE 68, As Amended (Philippines), available at <http://www.sec.gov.ph/accountantsinfo/irr/SRCRULE68-Revisedversion2011.pdf>.

- registration or stamping of membership book (within 30 days from date of receipt of certification of incorporation);
- submission of general information sheet (within 30 days from date of actual meeting);
- notice of postponement or non-holding of annual meetings (within 30 days from the day of the annual meeting as specified in corporate by-laws); and
- report on death, resignation, cessation to hold office of any director, trustee, or officer (immediately after the incident).¹¹²

Foundations should similarly file a sworn statement of the foundation's president and treasurer conveying its specific sources of funds and application of funds including the name, address and contact number for officers in-charge of projects and the address and contact number of project offices for all activities that are accomplished, on-going and planned.

Accreditation is valid for three years for newly-organized NPOs and NGOs and five years for existing NPOs and NGOs. At the end of this period, an organization must apply to renew their accreditation. Upon the determination that the accredited NGO meets the criteria for accreditation, the PCNC will reissue the certificate of accreditation, which will be valid for a maximum period of five years.¹¹³

For steps that can be taken if an organization does not meet the criteria for accreditation, please refer to the accreditation process for a NGO above.¹¹⁴

b. Case Law

We were unable to find relevant case law.

C. Analytical Comparison

NPOs are subject to more stringent reporting requirements, especially in regards to the use of their funds. Foundations are subject to further requirements, such as specifying the activities planned with their source of funds, and are even required to provide the contact details for the officers incharge of projects.

Compared to stock corporations, a higher threshold applies to NPOs prior to them being required to submit financial statements to the SEC. This provides a leeway for smaller NPOs, a flexibility not given to smaller stock corporations.

VI. Penalties for Non-Compliance

a. Laws

The following penalties do not distinguish between for-profit and not-for profit organizations.

Violations of any of the provisions of the Corporation Code or its amendments are punishable by fine and/or imprisonment. If the violation is committed by a corporation that is to be dissolved, that dissolution does not preclude the taking of action against directors, trustees or officers of the corporation responsible for any violations.¹¹⁵

¹¹² Caucus of Development NGO Networks (2008), Report "NPO Sector Assessment: Philippine Report," *available at* http://code-ngo.org/home/images/stories/pdf/Philippine_NGO_Sector_Assessment_Full_Report.pdf.

¹¹³ Revenue Regulations No. 13-98 (Philippines), *available at* <http://www.cof.org/sites/default/files/documents/files/Philippines/Philippines%20Revenue%20Regulations.pdf>.

¹¹⁴ Revenue Regulations No. 13-98 (Philippines), *available at* <http://www.cof.org/sites/default/files/documents/files/Philippines/Philippines%20Revenue%20Regulations.pdf>.

¹¹⁵ Corporation code, section 144 (Philippines).

The Tax Code outlines statutory offences and penalties for corporations.¹¹⁶ Civil penalties for breaching the Tax Code are quite broad. Any person convicted of a crime penalized by the Tax Code shall, in addition to being liable for the payment of the tax, be subject to penalties imposed such as a fine PHP30,000.¹¹⁷

Additionally, if the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence, without further proceedings for deportation.¹¹⁸

Any person who fails to, or willfully fails to file a tax return, supply correct and accurate information, keep records, pay tax, withhold and remit tax or refund excess taxes withheld on compensation, in addition to other penalties provided by law, upon conviction will be punished by a fine and imprisonment.¹¹⁹

Any appeals to the decisions of the Commissioner of Internal Revenue and the Commissioner of Customs for decisions involving local taxes and real property taxes and criminal offences of tax laws can be made to the Court of Tax Appeals, which has special appellate jurisdiction over these matters.¹²⁰

If an organization is not reporting and not remitting contributions to the SSS for its employees, the employee is still entitled to these SSS benefits. As it is the employer who is violating the law and is liable to their employees, they must still pay all unpaid contributions plus a penalty of 3 percent per month. They must also pay the benefits of those who die, become disabled, get sick, or reach retirement age, and may be held liable for a criminal offense punishable by fine and/or imprisonment.

If a self-employed person fails to register with the SSS, they would also be fined and/or imprisoned. However, payments of SSS contributions are not required for the months in which a self-employed person does not realize earnings.¹²¹

b. Case Law

We were unable to find relevant case law.

C. Analytical Comparison

Stock corporations, branches offices, and regional offices of foreign corporations have a similar scale of fines for a material deficiency in the financial statements or for non-compliance with the requirement of the Rules. For example, for a deficiency within PHP0 - PHP100,000, there is a fine of PHP500 for a first offence, PHP1,000 for a second offence and PHP2,000 for a third offence.¹²² On the other hand, for a non stock corporation, the scale of fines is slightly lower, with a fine of PHP300 for a deficiency

¹¹⁶ Tax Code, Title X (Philippines), available at <http://www.bir.gov.ph/index.php/tax-code.html#titleX>.

¹¹⁷ Tax code, section 254 (Philippines), available at <http://www.bir.gov.ph/index.php/tax-code.html#titleX>.

¹¹⁸ Tax code, section 253(c) (Philippines), available at <http://www.bir.gov.ph/index.php/tax-code.html#titleX>.

¹¹⁹ Tax Code, section 255 (Philippines), available at <http://www.bir.gov.ph/index.php/tax-code.html#titleX>.

¹²⁰ ASEAN Law Association, paper "Chapter 3- Government and the State" (Philippines), available at http://www.aseanlawassociation.org/papers/phil_chp3.pdf page 16.

¹²¹ BusinessTips.ph, "How to Register Your Business with the SSS," available at <http://businesstips.ph/how-to-register-your-business-with-the-sss/>.

¹²² Corporation Code, section 141 (Philippines), available at <http://www.sec.gov.ph/laws/memorandumcircular/CY%202009/sec-memo-08,s2009.pdf>.

in the fund balance/equity of up to PHP100,000 for a first offence, a fine of PHP600 for a second offence, and a fine of PHP1,200 for a third offence.¹²³

OVERVIEW CHART

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	Sole Proprietors have longer processing times for registration. Additional steps are required for foreign involvement such as foreign equity or foreign partners or owners. Branch offices, representative offices, RHQ and ROHQs are considered foreign entities.	NPOs have similar registration requirements to for-profit corporations. The dissolution of an NPO is restricted. NGOs have additional steps to take for accreditation. Foundations need at least PHP1,000,000 to register as a foundation.	All organizations need to obtain Barangay Clearance, register with the Social Security System, Phil Health, Home Development Mutual Fund, with the Municipality or City Mayor's Office, BIR, DOLE (if the organization has over 50 employees) It is a complex system that can take weeks.
Tax Laws	Tax incentives, fiscal and non fiscal incentives are available through economic zones if registered with BOI or PEZA. RHQs and ROHQs are also entitled to special incentives.	NPOs and NGOs are provided with many tax exemptions such as exemptions from paying income tax.	Incentives are provided based on the type of business and meeting government imposed eligibility criteria.
Financial Transaction Laws	There are limits on the proportion of foreign ownership of for profit entities.	No provisions restricting the ability of foreign entities or individuals to control NPOs.	The laws appear to be non-discriminatory and applicable to both for profit or non-profit but are more relevant to for profit organizations.
Auditing / Reporting Requirements	The threshold at which financial reports are required to be filed with government agencies is lower for for-profit organizations than those applicable to NPOs.	NGOs are required to report financial statements at a higher monetary level (gross up receipts) compared to for-profit organizations, but they are they are required to report with a greater level of detail.	All organizations are required to submit audited financial statements.
Penalties	Corporations face harsher penalties for noncompliance with financial reporting requirements than NPOs.	The penalties for noncompliance with financial reporting requirements are less harsh than those applicable to for-profit corporations.	Violations of the Corporation Code, Tax Code and SSS employer obligations appear to be applied non discriminatorily.

¹²³ Securities and Exchange Commission, memorandum circular, No. 8 of 2009 (Philippines), *available at* <http://www.sec.gov.ph/laws/memorandumcircular/CY%202009/sec-memo-08,s2009.pdf>.