

frequently asked questions



make it philippines

Frequently Asked Questions

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What are the various types of business structure options can I choose from in setting up a business?

You may set up your business under a variety of organizational structures known as single proprietorship, partnership, corporation, branch office, representative office, regional headquarters and regional operating headquarters.

2

How do these business structures differ from one another?

Single/Sole Proprietorship is a business structure owned by an individual who has full control / authority of his own and owns all the assets, personally owes and answers all liabilities or suffers all losses and enjoys all the profits to the exclusion of others. Must apply for a Business Name with the Department of Trade and Industry –

- For NCR applicants:

BUSINESS NAME REGISTRATION CENTER
Department of Trade and Industry –
National Capital Region (DTI-NCR)
Trade and Industry Building
361 Sen. Gil Puyat Avenue, Makati City
E-mail : btrcp@dti.dti.gov.ph
Website : www.bnrs.dti.gov.ph

- For applicants outside NCR
Apply to the nearest DTI-regional/provincial offices.

Partnership is treated as a juridical person having a separate legal personality from that of its members. It may either be general or limited, depending on the liability of the partners. It consists of two (2) or more partners. A partnership must register with the Securities Exchange Commission (SEC) with a minimum capitalization of three thousand pesos (Php 3,000.00).

Corporation is a juridical person established under the Corporation Code and is regulated by the SEC with a personality separate and distinct from that of its stockholders. It consists of at least five (5) to fifteen (15) incorporators each of whom must hold at least one share. It must be registered with the Securities Exchange Commission (SEC). The minimum paid-up capital is five thousand pesos (Php5,000.00).

Branch Office is 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. It is required to inwardly remit US\$200,000.00 to the Philippines as its assigned capital.

Representative Office is one which deals directly with the clients of its parent company in the Philippines, but may not derive income from the Philippines. It undertakes activities such as information dissemination, communication center, promotion of the company's products, as well as quality control. It is required to have an initial remittance of at least US\$30,000.00 working capital into the Philippines.

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Can a foreign investor be allowed to own 100% of a business entity?

Yes, one hundred percent (100%) foreign equity may be allowed in all areas of investments under the Foreign Investments Act (FIA) except financial institutions and those included in the Regular Foreign Investment Negative List (FINL).

What are the areas of investments covered by Foreign Investments Act (FIA)?

The FIA covers all investment areas except banking and other financial institutions, which are governed and regulated by the Bangko Sentral ng Pilipinas (BSP).

Foreign Investment Negative List – means a list of areas of economic activity whose foreign ownership is limited to a maximum of forty percent (40%) of the outstanding capital stock in the case of a corporation or capital in the case of partnership.

Below are Negative Lists A & B where:

- **List A:** refers to areas reserved to Filipinos by mandate of the Constitution and Special Laws such as but not limited to:
 - a. Mass Media except recording, practice of licensed profession, retail trade, cooperative and small-scale mining, etc. where foreign ownership is prohibited;
 - b. Advertising, ownership of land, operation and management of public utilities, etc., where only minority foreign ownership is prohibited.
- **List B:** refers to areas that are defense-related, those with adverse effects on public health and morals and domestic market enterprises with paid-up capital of less than US\$200,000, provided they involved advanced technology as determined by the Department of Science and Technology (DOST) or directly employ at least fifty (50) employees, in which case, the paid-up capital shall be lowered to US\$100,000 only to non-Philippine nationals.

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When can foreigners do business or invest in a domestic enterprise up to 100% of its capital?

- a. If the proposed activity he intends to venture in is not among those listed in the FINL.
- b. If the paid-up capital for domestic market enterprise is at least US\$200,000.00, which may be lowered to US\$100,000 if the following conditions are met:
 - i. Introduction of advanced technology; or
 - ii. Employment of at least 50 direct employees.

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Where does one apply for registration of investments?

- a. **For Single/Sole Proprietorship** – Submit an application, together with the required documents, to the Bureau of Trade Regulation and Consumer Protection (DTI-BTRCP), an office under the Department of Trade & Industry.

Where to file application:

1. **DTI-BTRCP**

2nd Floor, Trade and Industry Bldg.
361 Sen. Gil J. Puyat Avenue, Makati City
E-mail: btrcp@dti.dti.gov.ph

DTI-National Capital Region, Makati City
if within Metro Manila; or
12F Trafalgar Plaza, 105 H.V. Dela Costa St.
Salcedo Village, Makati City
<http://www.bnrs.dti.gov.ph>

2. Any of the DTI Provincial offices if outside Metro Manila.

- b. **For Corporations/Partnerships, Branch and Representative Offices** - Submit application forms together with required documents at the Securities and Exchange Commission (SEC).

Where to file application:

1. **Securities and Exchange Commission**

SEC Building
EDSA near cor. Ortigas Avenue, Greenhills
Mandaluyong City
if within Metro Manila;
<http://www.sec.gov.ph>

2. SEC Extension Offices if outside Metro Manila

- c. **For Regional Headquarters and Regional Operating Headquarters** - Submit application form together with required documents at the Board of Investments.



Where to file application:

Board of Investments

Industry and Investments Building
385 Sen. Gil Puyat Avenue
Makati City Metro Manila
E-mail: perd@boi.gov.ph
<http://www.boi.gov.ph>

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What requirements must be complied with before an enterprise can enjoy tax benefits?

For a proposed activity of a domestically-incorporated enterprise to qualify for incentives, the firm may file its application with the appropriate investment promotion agencies depending on the project location, as follows:

- Located outside of Economic or Freeport Zones
 - Board of Investments (BOI)
- Located in Economic or Freeport Zones
 - Cagayan Economic Zone Authority (CEZA)
 - Clark Development Authority (CDC)
 - Phividec Industrial Authority (PIA)
 - Philippine Economic Zone Authority (PEZA)
 - Subic Bay Metropolitan Authority (SBMA)
 - Zamboanga Economic Zone Authority (ZEZA)

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I would like to know more about Board of Investments (BOI) and Philippine Economic Zone Authority (PEZA) Registrations?

Board of Investments (BOI)

To qualify for registration with the BOI, an enterprise may register its activity with the BOI if the proposed activity is listed in the current Investment Priorities Plan (IPP). If not listed, the enterprise may also be entitled to BOI incentives if the following conditions are met:

- At least 50% of the production is for export (for enterprises with 60% Filipino/40% foreign ownership); or

- At least 70% of production is for export (for enterprises more than 40% of which is foreign-owned)

Foreign-owned firms, whose ownership exceeds 40% of the outstanding capital stock and which proposes to engage in domestic-oriented activities, may be entitled to incentives if the proposed activity is listed in the current IPP and qualifies as Pioneer.

Philippine Economic Zone Authority (PEZA)

The Special Economic Zone Act of 1995 as amended, mandates the PEZA to operate, administer, manage and develop Special Economic Zones or Ecozones.

Enterprises that may qualify for registration with PEZA are those that will manufacture and export 100% of their production. Permission has to be sought if the enterprise located within the zone will export below 100% and in most cases, PEZA has allowed 30% of production in the domestic market.

There are 98 operating proclaimed Special Economic Zones in the country.

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What is classified Pioneer?

A preferred area of investments may be declared pioneer if the activity:

1. Involves the manufacturing or processing (not merely assembly or packaging) of goods or raw materials that have not been produced in the Philippines on a commercial scale; or
2. Uses a design, formula, scheme, method, process or system of production or transformation of any element or raw material or finished good which is new and untried; or
3. Engages in agricultural activities/services essential to the achievement of the country's self-sufficiency program; or

4. Produces non-conventional fuels or manufactures equipment which utilize non-conventional sources of energy; or
5. Other specific criteria as provided for in the current IPP.

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What incentives are available to registered enterprises?

Board of Investments (BOI)

An enterprise registered with the Board of Investments (BOI) pursuant to the 1987 Omnibus Investments Code (Executive Order No. 226) is entitled to, among others, the following incentives subject to certain terms and conditions:

Fiscal Incentives

- A) Income Tax Holiday (ITH)

BOI-registered enterprise shall be exempt from the payment of income taxes reckoned from the scheduled start of commercial operations, as follows:

 - New projects with a pioneer status for six (6) years;
 - New projects with a non-pioneer status for four (4) years;
 - Expansion projects for three (3) years. As a general rule, exemption is limited to incremental sales revenue/volume;
 - New or expansion projects in less developed areas (LDAs) for six (6) years, regardless of status;
 - Modernization projects for three (3) years, as a general rule, exemption is limited to incremental sales revenue/volume.

B) Tax credit on raw materials, supplies and semi-manufactured products;

C) Additional deduction from taxable income for labor expense (cannot be simultaneously enjoyed with the ITH incentive);

- D) Additional deduction from taxable income for necessary and major infrastructure works (cannot be simultaneously enjoyed with the ITH incentive);
- E) Exemption from wharfage dues and export tax, duty, impost and fees.
- F) Modified Duty Rate for Capital Equipment by virtue of E.O. No. 313

Effective June 6, 2004, BOI registered enterprises of good standing with project registered as new or expanding under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, may import machinery, equipment, spare parts and accessories subject to zero percent (0%) duty for export-oriented enterprises and one percent (1%) duty for domestic-oriented enterprises, classified under AHTN Chapters 40, 59, 68, 69, 70, 73, 76, 82, 83, 84, 85, 87, 89, 90,91 and 96 of the Tariff and Customs code of the Philippines.

The capital equipment incentive provided under the E.O. No. 313 shall be availed of by the registered enterprise for a period of two (2) years from its effectivity or until 06 June 2006.

Non-fiscal Incentives

Certain non-fiscal incentives are also available to the registered enterprise, among which are: employment of foreign nationals; guaranteed repatriation of foreign investments and earnings thereon; and importation of consigned equipment for an unlimited period subject to the posting of re-export bond.

Philippine Economic Zone Authority (PEZA)

Investment Incentives for Ecozone Developers/Operators

A) Income Tax Holiday (ITH)

- 4 years for IT Parks/Buildings located outside of Metro Manila;
- 6 years for manufacturing located in less developed area;

B) Incentives under the Build-Operate-Transfer Law, which includes government support for accessing Official Development Assistance and other sources of financing;

- C) Provision of vital off-site infrastructure facilities;
- D) Option to pay a special 5% Gross Income Tax, in lieu of all national and local taxes;
- E) Permanent resident status for foreign investors and immediate family members;
- F) Employment of foreign nationals;
- G) Assistance in the promotion of economic zones to local and foreign locator enterprises;

- H) Other incentives under Executive Order 226 (Omnibus Investments Code of 1987), as may be determined by the PEZA Board.

Other Incentives Programs

Enterprises allowed to operate within the **Subic Bay Freeport (SBF)** shall, in lieu of paying all other taxes, pay a final tax of 5% of gross income provided their income from local (non-export) sales shall not exceed 30% of their income from all sources.

Enterprises locating within the **Clark Special Economic Zone** (former American Airbase at Clark Field) and **Poro Point Special Economic and Freeport Zone** (formerly Wallace Air Station and its adjoining areas) are granted incentives similar to those given SBF enterprises.

Two other special economic zones were created under two separate special laws. These are the **Cagayan Special Economic Zone Authority (CEZA)** and the **Zamboanga Economic Zone Authority (ZEZA)**. The incentives granted to those that will locate in these ecozones are similar to the incentives granted to PEZA ecozone enterprises.

Incentives for Ecozone and IT Locators

- A) Income Tax Holiday (ITH)
 - New registered pioneer firms
 - six (6) years from commercial operations;
 - New registered non-pioneer firms
 - four (4) years from commercial operation;
 - Expanding firms
 - three (3) years from commercial operation of the expansion;
 - After the ITH period, the option to pay a special 5% Tax on Gross Income, in lieu of all national and local taxes;
- B) Exemption from duties and taxes on imported capital equipment, spare parts, supplies, raw materials;
- C) Tax Credit on Domestic Breeding Stock and Genetic Materials – an ecozone export enterprise which purchases breeding stocks and genetic materials from a domestic producer shall be entitled to a tax credit equivalent to 100% of the value of national internal revenue taxes and customs duties that would have been waived on the breeding stocks and genetic materials had these items been imported;
- D) Domestic sales allowance equivalent to 30% of total sales;
- E) Exemption from wharfage dues and export taxes, imposts and fees;
- F) Employment of foreign nationals;
- G) Simplified import and export procedures;

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What are the activities that an RHQ/ROHQ can engage in?

Regional Headquarters (RHQ)

The activities of the RHQ are limited to acting as a supervisory, communications and coordinating center for its subsidiaries affiliates and branches in the region.

It is neither allowed to derive any income from sources in the Philippines and to participate in any manner in the management of any subsidiary or branch office it might have in the Philippines nor to solicit or market goods and services whether on behalf of its mother company or its branches, affiliates, subsidiaries or any other company.

Regional Headquarters (RHQ) Incentives

1. Exemption from income tax;
2. Exemption from branch profits remittance tax;
3. Exemption from value-added tax;
4. Sale or lease of goods and property, and services to the RHQ are zero-rated;

5. Exemption from all kinds of local taxes, fees or charges imposed by a local government unit, except real property tax on land improvements and equipment;
6. Tax and duty free importation of equipment and materials for training and conferences needed and solely used for the RHQ functions, and which are not locally available, subject to prior BOI approval;
7. Importation of brand new motor vehicle but subject to payment of taxes and duties.

Regional Operating Headquarters (ROHQ)

The Regional Operating Headquarters may engage in any of the following qualifying services:

- a. General administration and planning
- b. Business planning and coordination
- c. Sourcing/procurement of raw materials components
- d. Corporate finance advisory services
- e. Marketing control and sales promotion
- f. Training and personnel management
- g. Logistics services
- h. Research and development services and product development
- i. Technical support and maintenance
- j. Data processing and communications
- k. Business development

Regional Operating Headquarters (ROHQ) Incentives

1. Subject to preferential income tax rate of 10% on taxable income;
2. Exemption from all kinds of local taxes, fees or charges imposed by a local government unit, except real property tax on land improvements and equipment;
3. Tax and duty free importation of equipment and materials for training and conferences needed and solely used for the ROHQ functions, and which are not locally available, subject to prior Board of Investments (BOI) approval;
4. Importation of brand new motor vehicle but subject to payment of taxes and duties.

ROHQ is allowed to offer qualifying services only to its affiliates, branches or subsidiaries as declared in its registration with the Securities and Exchange Commission

(SEC). It is not allowed to directly and indirectly solicit or market goods and services whether on behalf of their mother company, branches, affiliates, subsidiaries or any other company.

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What are the incentives given to expats working for RHQ/ROHQ?

a. Multiple Entry Visa:

- Expatriates, including spouse and unmarried children below 21 years old will be issued this type of visa;
- Non-immigrant visa will be processed within 72 hours from submission of documents to the Bureau of Immigration;
- Validity period of 3 years extendible for another 3 years;
- Exemption from payment of fees except reasonable administrative costs;
- Exemption from securing Alien Certificate of Registration;

b. Withholding tax of 15% on compensation income applicable to both alien and Filipino executives holding managerial and technical positions;

c. Tax and duty free importation of used household goods and personal effects;

d. Travel tax exemption

- Personnel and their dependents.

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How does a company remit its profits and dividends and repatriate capital abroad?

Enterprises seeking to remit its profits and dividends or repatriate its capital abroad may register their inward remittance with the Bangko Sentral ng Pilipinas (BSP) after registration with the SEC or BTRCP. For this purpose, BSP rules and regulations covering procedures for registration of foreign investments are observed.

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What are the investment rights of a former natural born Filipino?

The Foreign Investments Act (FIA) recognizes the rights of former natural born Filipinos. They are granted same investment rights as Filipino citizens in activities such as cooperatives, thrifts banks and private development banks, rural banks and financing companies. In addition, under Section 1 of the FIA as amended by RA 8179, "Any natural born citizen who has lost his citizenship, and who has legal capacity to enter into a contract under Philippine laws may be a transferee of a private land to be used by him for business or other purposes **up to a maximum area of five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land.**"

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What are the basic rights and guarantees given for the safety of foreign investments?

All investors and enterprises are entitled to the basic rights and guarantees provided in the Philippine Constitution, such as:

Right to REPATRIATION OF INVESTMENTS

In the case of foreign investments, the right to repatriate the entire proceeds of the liquidation of the investment in the currency in which the investment was originally made at the exchange rate prevailing at the time of repatriation.

Right to REMITTANCE OF EARNINGS

In the case of foreign investments, the right to remit earnings from the investments in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance.

Right to FOREIGN LOANS AND CONTRACTS

The right to remit, at the exchange rate prevailing at the time of remittance, such as may be necessary to meet the payment of interest and the principal on foreign loans and foreign obligations arising from technological assistance contracts.

Right to FREEDOM FROM EXPROPRIATION

There shall be no expropriation by the government of the property represented by the investments or of the property of enterprises except for public use or in the interest of national welfare and defense and upon payment of just compensation. In such cases, foreign investors of enterprises shall have the right to remit sums received as compensation for the expropriated property in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance.

Right to NON-REQUISITION OF INVESTMENT

There shall be no requisition of the property presented by the investment or of the property of enterprises, except in the event of war or national emergency and only for the duration of such. Just compensation for the requisitioned property may be remitted in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance.

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As an investor, what visa can be issued to me?

The Special Investor Resident Visa (SIRV) entitles the holder to reside in the Philippines for an indefinite period as long as his investment subsists. Any alien, except restricted nationals under the Foreign Service Code, may apply for an SIRV provided he meets the following requirements:

- He has not been convicted of a crime involving moral turpitude.
- He is not afflicted with any loathsome, dangerous or contagious disease.
- He has not been institutionalized for mental disorder or disability.
- He is willing and able to invest the amount of at least US\$75,000.00 in the Philippines.

ALLOWABLE FORMS OF INVESTMENT

For purposes of securing an SIRV, only ownership of shares of stocks in the following shall be accepted as eligible forms of investment, to wit:

- (a) In existing corporations:
 - Publicly-listed companies,
 - Companies engaged in Investment Priorities Plan (IPP) Projects, or
 - Companies engaged in the manufacturing and service sectors.

- (b) In new corporations:
 - Companies to be engaged in the manufacturing and service sectors, or
 - Companies to be engaged in IPP Projects.

The government has liberalized visa requirements for foreign entrants to encourage foreign participation in the economic development of the Philippines. Among the liberalized rules are the following provisions:

1. Foreign stockholders, investors, representatives of investment houses, land developers and tourism developers are among the categories entitled to the special visa incentive, which grants privileges to certain foreign nationals.

2. Aliens entitled to enter the country under the provision of a treaty of amity, commerce and navigation may be admitted as non-immigrants. They are given treaty-trader visas for the sole purpose of carrying on substantial trade between the Philippines and the state of which they are nationals.

3. Foreign technicians may be admitted to the Philippines with a pre-arranged employment visa if their employers can prove that the skills they possess are not available in the country.

Entry Visa

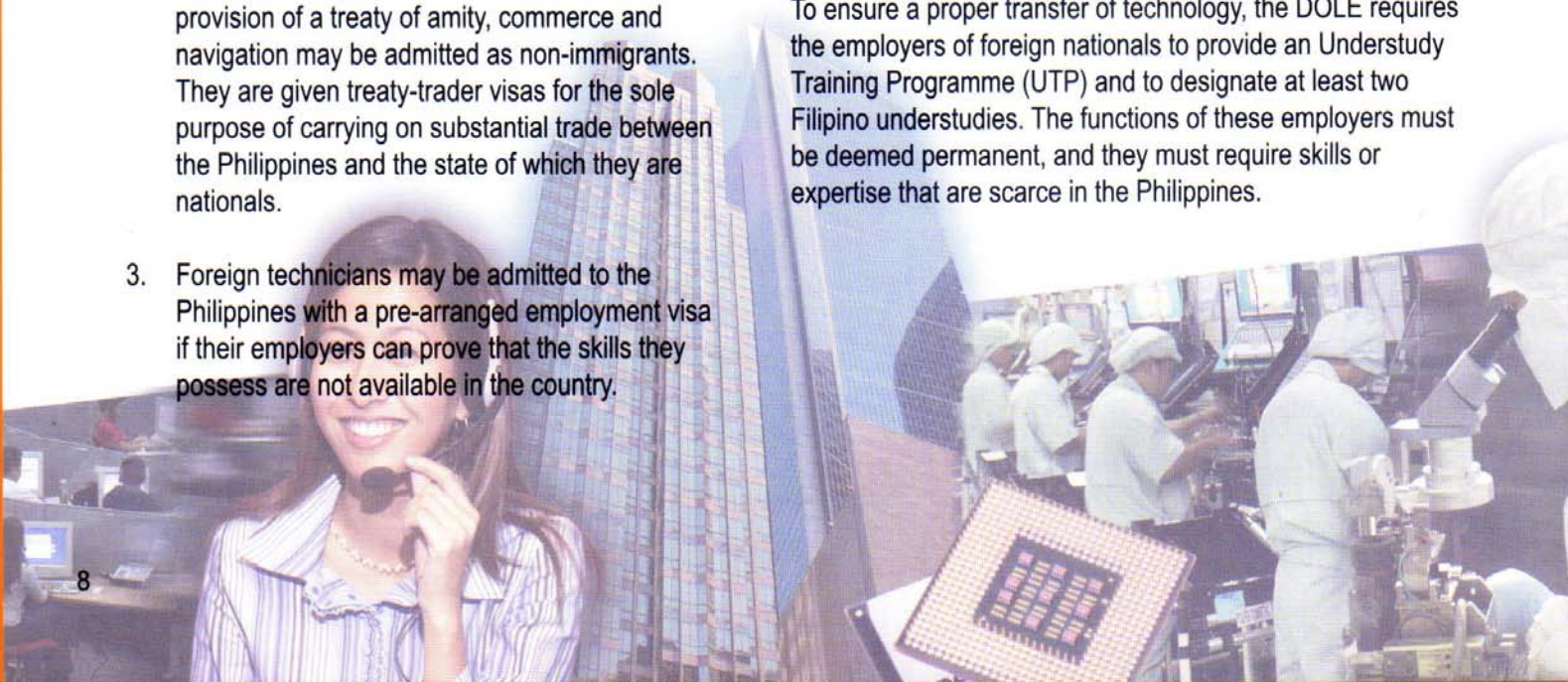
Foreign nationals may come to the Philippines for reasons of business, pleasure or health with a temporary visitor's visa. This visa allows stays for periods of 59 days, extendable for a maximum of one year. To extend their stay, visitors must register with the Bureau of Immigration or with the office of the municipal or city treasurer in areas outside Manila. Executive Order No. 408 allows foreign nationals, except those of specifically restricted nationalities, to stay in the Philippines for up to 21 days without a visa.

Work Permits

In general, a foreign national seeking employment in the Philippines, whether resident or non-resident, must secure an Alien Employment Permit (AEP) from the Department of Labor and Employment (DOLE). An AEP is valid for one year from the date of issue and may be renewed subject to the approval of the DOLE. Executives of area or regional headquarters and Offshore Banking Units (OBUs), as well as treaty trader visa holders, are exempt from the requirement to obtain alien employment certificates.

A local employer who wishes to employ a foreign national must apply on the foreign national's behalf with the DOLE for the permit. The petitioning company must prove that the foreign national possesses the required skills for the position and that no Filipino is available who is competent, able and willing to do the specific job for which the foreign national is desired.

To ensure a proper transfer of technology, the DOLE requires the employers of foreign nationals to provide an Understudy Training Programme (UTP) and to designate at least two Filipino understudies. The functions of these employers must be deemed permanent, and they must require skills or expertise that are scarce in the Philippines.





BOARD OF INVESTMENTS

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