

CHAPTER 7

TOURISM INVESTMENT LAWS AND INCENTIVES

7.1 Incentives Granted Under Executive Order No. 63

This Executive Order grants incentives to foreigners investing at least US\$50,000 in a tourist-related project or in any tourist establishment as determined by the Committee created in the same law.

1. **Special Investor's Resident Visa (SIRV) to investor, wife and unmarried minor children**

A foreign investor may be issued a Special Investor's Resident Visa (SIRV) provided that, he is able to prove the following qualifications:

- a) He has not been convicted of a crime involving moral turpitude
- b) He is not afflicted with AIDS or any loathsome, dangerous or contagious disease
- c) He has not been institutionalized for any mental disorder or disability
- d) He is willing and able to invest at least US\$50,000 in a tourism related project

In the case of foreign corporation which is willing to invest the amount of at least US\$50,000.00 in a tourist-related project, the SIRV may be issued to the corporation's Chief Executive Officer.

The wife and unmarried minor children of the foreign investor may also be issued the same visa, subject to the qualifications under items (a) to (c).

The application for Special Investor's Resident Visa shall be supported by the following documents:

- Certificate of Inward Remittance from a Commercial Bank;
- Sworn Certification from the Recipient Firm;
- Bangko Sentral Registration Document;
- Police Clearance;
 - NBI Clearance
 - BI Clearance
- Medical Health Certificate;

- Mental Health Certificate;
- Photocopy of the applicant's passport;
- Photocopy of the passport of applicant's legal spouse and dependent, if any;
- Photocopy of marriage certificate of applicant and spouse; and
- Photocopy of birth certificate of applicant, his spouse and dependent children joining him/her to the Philippines.

2. Remittance of Earnings

The E. O. also recognizes the right of the investor to remit earnings from his investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance.

3. Repatriation of Capital

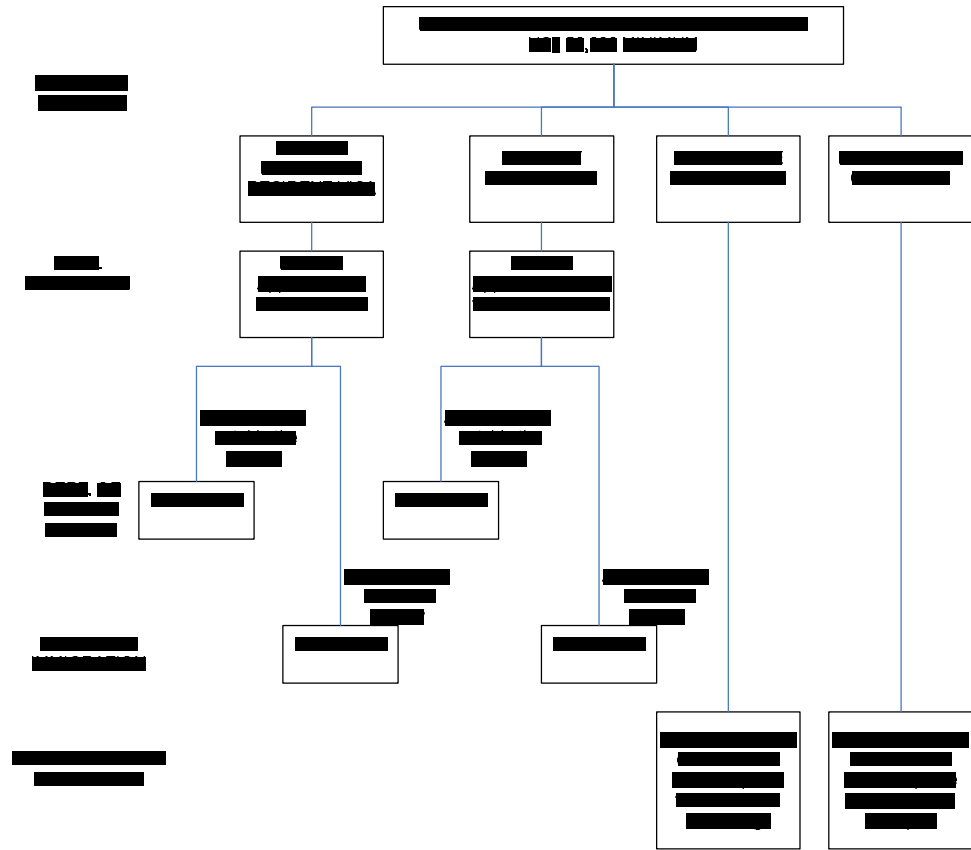
In case of liquidation, the investor is also allowed to repatriate the entire proceeds of the liquidation of the investment in which the investment originally made.

4. Right of succession

In case of death, the surviving immediate family shall be entitled to the same privileges.

An investor may apply for SIRV at the Philippine Embassy or Consulate in his home country or place of residence. If already in the Philippines, the investor may file the application at the Department of Tourism for endorsement to the Bureau of Immigration.

7.1.1 Tourism Investors' Guide for Incentives under E.O. 63



7.2 **Incentives Granted Under Omnibus Investments Code (Executive Order No. 226)**

This Executive Order authorizes the Board of Investments (BOI) to grant fiscal incentives and non-fiscal incentives for local and foreign investors engaged in tourism activities listed under the current Investments Priorities Plan (IPP).

Qualification

A local enterprise can register its activity with the BOI if its project is listed as a preferred project in the current IPP. Such enterprise may engage in domestic-oriented activities listed in the IPP whether classified as pioneer or non-pioneer.

However, an activity which is not listed, may also be entitled to incentives if the following conditions are met:

- At least 50% of the production is for export (for 60% Filipino-40% Foreign-owned enterprises); or
- At least 70% of production is for export (for more than 40% foreign – owned enterprises)

For foreign-owned firms or those whose foreign participation exceeds 40% of the outstanding capital stock who plan to engage in domestic oriented activities, they can only be registered with BOI if they intend to engage in an activity listed or classified in the IPP as pioneer. However, if it fails to meet the pioneer classification, it can likewise opt to be an export-oriented firm to qualify for BOI registration. However, this time, the export requirement is at least 70% of actual production.

Incentives granted by the BOI include:

1. Income Tax Holiday (ITH)

BOI registered enterprises shall be exempt from the payment of income taxes reckoned from the approved target of commercial operations or actual date of commercial operations, whichever comes first, but in no case earlier than the date of registration, as follows:

- Six (6) years for new projects granted pioneer status;
- Six (6) years for projects in Less Developed Areas (LDAs), regardless of status and regardless of whether new or expansion;
- Four (4) years for new projects granted non-pioneer status; and
- Three (3) years for expansion and modernization projects.

2. Duty free-importation of capital equipment, by virtue of Executive Order No. 528 entitled Reducing the Rates of Duty on Capital Equipment, Spare Parts and Accessories Imported by (BOI) registered New and Expanding Enterprises.

- 0% duty on any importation of capital equipment, spare parts and accessories under Chapter 40, 59, 68, 69, 70, 73, 76, 82-85, 87, 90, 91 and 96 of the Tariff and Customs Code of the Philippines, as amended, provided the items to be imported are not manufactured domestically in sufficient quantity, of comparable quality and at a reasonable price
- Validity is 5 years from 17 June 2006 to 16 June 2011
- BOI registered firms during the effectivity of EO 313 shall only be entitled to the zero duty importation for a period of 3 years to be reckoned from the lapse of EO 313 or from 7 June 2006 to 6 June 2009.

3. Employment of foreign nationals

- Special non-immigrant multiple entry visa given to foreign nationals under supervisory, technical or advisory position but not to exceed five (5) years from date of registration of the firm. Positions of president, treasurer and general manager may be retained by foreign national beyond 5 years for 40% foreign-owned firms
- Extendible to spouse and unmarried children under 21 years of age
- As an option, investors may avail of the Special Investor's Resident Visa (SIRV)

4. Unrestricted use of consigned equipment

Machinery, equipment and spare parts consigned to any BOI-registered firm shall not be subject to restriction as to period of use.

5. Simplified customs procedures

Customs procedures for the importation of equipment, spare parts, raw materials and supplies, exports of processed products by registered enterprises shall be simplified by the Bureau of Customs.

7.2.1 Tourism Activities identified in the 2008 Investment Priorities Plan (IPP)

Tourism activities identified in the **2008 IPP** cover the establishment of tourist accommodation facilities, resorts, retirement villages, and medical tourism (healthcare and wellness products and services).

Revenues from golf courses and casinos are not entitled to ITH.

Tourist accommodation facilities cover the following:

a. Hotels, apartelles/serviced residences, tourist inns, condotels and pension houses. Following are the qualifications for registration of a hotel project:

- Project cost must be at least the Philippine Peso equivalent of US\$20,000/room to exclude cost of land; and,
- Must have the facilities that would entitle it to a standard class hotel in accordance with DOT classification.
- For condotel and serviced residences, 100% of total number of units must cater to tourists and must be equipped with services, facilities and amenities similar to a hotel.

The following may qualify for pioneer status:

- Projects costing at least the Philippine Peso equivalent of US\$100,000/room;
- Projects locating in Less Developed Areas; or
- Hotel modernization projects (that are considered as expansion projects) with a project cost of at least the Philippine Peso equivalent of US\$10,000/room.

b. Resorts that include special interest activities (that may or may not have accommodation facilities) such as but not limited to eco-tourism, agri-tourism, theme parks, conventions and exhibition/trade.

- Eco-tourism projects or those involving environmentally sound tourism activities, which blend with the natural and cultural environment in a given eco-system/specific locality.
- Agri-tourism projects or those involving working farms where the working environment forms part of the tourism project and promotes an appreciation of local culture, heritage and traditions through personal contact with people and maximize the potentials of income generation of existing farms through tourism-related activities.

The following may qualify for pioneer status:

- Projects locating outside Metro Manila must have project cost of at least the Philippine Peso equivalent of US\$ 10.0 million;
- Projects located in Metro Manila must have project cost of at least the Philippine Peso equivalent of US\$20 million;
- Projects locating in LDA must have project cost of at least the Philippine Peso equivalent of US\$ 5.0 million/project; or
- Agricultural and ecological tourism projects with a minimum lot area of fifty (50) hectares.

Application for registration shall be endorsed by the Department of Tourism.

c. Retirement Village. This refers to areas suitable for development that will ensure healthful, safe and environmentally-sound community life

with prescribed carrying capacities of village facilities and activities such as but not limited to accommodation, food, recreation, medical/health care needs, security and other amenities/facilities, and provided with roads, power and water supply systems, drainage and sewerage systems and other infrastructures. The village should be under a unified and continuous management.

The following are the qualifications for registration:

- A retirement village must have a minimum of four (4) hectares of contiguous land; and,
- Project cost must be at least the Philippine Peso equivalent of US\$10 million.

Locators inside the retirement villages/parks such as retirement centers/condominiums or those engaged in the activities listed in the IPP that are related to retirement business may be registered as separate activity.

Retirement villages with a minimum area of twenty (20) hectares may qualify for pioneer status.

d. Healthcare and Wellness Products and Services

i. Hospital/Medical Services. These cover tertiary care hospitals and specialized services as endorsed by the Department of Tourism (DOT).

- “Tertiary care hospital” is a teaching and training hospital that provides clinical care and management on the prevalent diseases in the locality as well as specialized and sub-specialized forms of treatment, surgical procedure and intensive care.
- “Specialized services” refers to focused expertise on certain types of services mostly with low patient numbers, and need critical mass of patients to make treatment centers cost effective. Services generally include training of specialist staff, high quality research programs and use of scarce resources like expertise, high technology equipment and donated organs.

Prior to availment of ITH, hospitals classified for ‘medical tourism’ must be accredited by the Department of Tourism (DOT).

The following may qualify for pioneer status:

- Tertiary hospitals with a minimum capacity of 100 beds or with investment cost of at least the Philippine Peso equivalent of US\$10 million.
- Specialized services with project cost of at least the Philippine Peso equivalent of US\$10 million.

ii. Ambulatory Surgical Services. These cover services such as elective (non-emergency) surgical procedures ranging from minor to major operations, where patients are discharged within the day for continuing post-operative care. This includes comprehensive ophthalmologic, dermatologic, cosmetic, and reconstructive surgeries, etc. Applications for registration must be endorsed by the DOT. Projects that cost at least the Philippine Peso equivalent of US\$2.0 million may qualify for pioneer status.

iii. Dental Services. These cover the establishment of a dental services facility offering both regular and specialized dental services such as orthodontic procedures, dental implants and cosmetic dentistry.

Projects that cost at the least the Philippine Peso equivalent of US\$1.0 million may qualify for pioneer status.

iv. Other Human Health and Wellness Services including Rehabilitation and Recuperation Services

These cover the following:

→ Health spa

The following are the qualifications for registration:

- The activity must be either a ‘destination spa’ or a ‘resort/hotel spa’ category based on DOT accreditation and classification
- Must be endorsed by the DOT

“Destination spa” or “resort/hotel spa” projects that will apply “hilot” or any indigenous Filipino healing modality as endorsed by the DOT may qualify for pioneer status.

→ Rehabilitation and Recuperation Services

To qualify for registration, it must have a minimum investment of US\$1 Million, excluding the cost of land.

v. Healthcare and Wellness Products. These cover the manufacture of drugs and medicines in accordance with the Philippine National Drug Formulary (PNDF), food supplements limited to Vitamin A, iron and iodine compounds either mixed, coated or incorporated in appropriate medium added to flour, rice, sugar, oil as required by Food Fortification Law (RA 8976) and salt as required by ASIN Law (R.A. 8172), herbal medicines, and active substances of these drugs. Prior to availment of ITH, the firm shall submit a License to Operate (LTO) issued by BFAD. Projects that cost at least the Philippine Peso equivalent of US\$20 million may qualify for pioneer status.

7.3 Incentives Granted Under Foreign Investments Act Of 1991 (Republic Act No. 7042, as Amended by Republic Act No. 8179)

With the passage of the Foreign Investments Act, foreign nationals are now allowed to invest up to 100% equity participation in new or existing economic activities including restaurant operations that are incidental to the hotel business. Foreign equity participation of up to 40% is allowed in the operation and management of utilities (i.e. land, air, and water transport). Domestic market is open to foreign investors as long as the activity is not restricted in the Foreign Investment Negative List.

- Ownership of private lands (up to 40% foreign equity)
- Tourist Transport Operation (up to 40% foreign equity)
- Minimum paid-in equity capital of US \$200,000.00 for domestic market enterprises with more than 40% foreign equity participation (not applicable if applying for fiscal incentives with BOI whereby pioneer status criteria under EO 226 must be complied with).

7.4 Incentives Granted Under Build-Operate-Transfer (BOT) Law (Republic Act No. 6957, As Amended By Republic Act No. 7718)

The BOT Law authorizes the financing, construction, operation and maintenance of infrastructure projects by the private sector. It allows national implementing agencies and local government units to enter into BOT arrangement as a means of encouraging the participation of foreign and local companies in the country's infrastructure development program.

Tourism estates including related infrastructure facilities and utilities are among the priority projects eligible for BOT implementation.

Backed up by a wide range of credit enhancements and investment incentives, the BOT Law opened to the private sector a new window of investment opportunity.

Salient points of the amended BOT Law include the following:

1. Provides flexibility to both the government and private sector by allowing the use of a variety of arrangements under the BOT scheme to suit specific conditions;
 - Financial assistance from direct government appropriation and/or from Official Development Assistance (ODA) of foreign governments or institutions not exceeding 50% of the project cost
 - Minimum government regulations and procedures
2. Broadens the type and variety of projects that can be implemented under the BOT process;

3. Recognizes the need for private investors to realize rates of return reflective of market conditions;
4. Institutionalizes government support for BOT projects; and
5. Allows government agencies and local government units (LGUs) to accept unsolicited proposals.

The BOT Law mandates the BOT Center to coordinate and monitor all projects undertaken under RA 7718. The BOT Center is empowered to actively promote all modes of private sector participation in the implementation of development projects in the country.

Under A. O. 67, the BOT Center expands the coverage of the program to include the BOT scheme, joint venture agreement, concession agreement, lease and contractual management, among others.

The BOT Center is specifically involved in:

- Project development
- Policy advocacy
- Institution-building
- Marketing and promotions
- Monitoring

7.5

Incentives Granted Under Special Economic Zone Act of 1995 (Republic Act No. 7916)

This Republic Act provides for the legal framework and mechanism for the creation, operation, administration and coordination of Special Economic Zones in the Philippines, creating for this purpose, the Philippine Economic Zone Authority (PEZA) and for other purposes.

On October 7, 2002, the DOT entered into a Memorandum of Agreement (MOA) with PEZA that will grant Special Economic Zone status to tourism development zones and tourism estates upon registration with PEZA subject to the issuance of the required Presidential Proclamation.

The PEZA shall consider for registration tourist-oriented enterprises to be located in PEZA-registered tourism development zones/tourism estates which are enclosed by the DOT as enterprises that will be established and operated with foreign tourists as primary clientele.

Incentives available to Tourism Ecozone Developers & Locators are:

1. Fiscal Incentives

The following enterprises, activities and facilities, established with foreign tourists as primary clientele, as may be determined through compliance with appropriate DOT standards, may, upon endorsement of the DOT, be considered for PEZA-registration for availment of fiscal and non-fiscal incentives provided under R.A. No. 7916, as amended:

- a. Tourism Ecozone Developers / Operators shall be entitled to six (6) years of Income Tax Holiday (ITH) for pioneer firms and four (4) years of ITH for non-pioneer firms, subject to the provisions of the Investment Priorities Plan (IPP), provided that Tourism Ecozones located in Less Developed Areas shall be granted six (6) years ITH. Upon expiry of the ITH period, Tourism Ecozone Developers/ Operators shall have the option to pay a special 5% tax on gross income earned, in lieu of all national and local taxes, except real property taxes on land owned by developers (5% GIT incentive), provided, however, that PEZA-registered Tourism Ecozone Developers / Operators shall have the option to forego its ITH incentive entitlement and immediately avail of the 5% GIT incentive upon start of their commercial operations.
- b. Enterprises establishing and operating sports and recreation centers, accommodation, convention and cultural facilities, theme parks, and other special interest or attraction activities / establishments shall be entitled to four (4) years ITH, as may be provided in and in accordance with the provisions of the IPP, and tax and duty-free importation of capital equipment required for the technical viability and operation of the registered activities of the enterprises. Upon expiry of the ITH period, PEZA-registered Tourism Ecozone locators shall be entitled to the 5% GIT incentive, provided, however, that they shall have the option to forego their ITH incentive entitlement and immediately avail of the 5% tax GIT incentive upon start of their commercial operations.
- c. Enterprises establishing and operating airports, seaports and / or marinas shall be entitled to the ITH incentive, as may be provided in and in accordance with provisions of the IPP, and tax and duty-free importation of capital equipment. Upon expiry of the ITH period, PEZA-registered Tourism Ecozone locators establishing and operating airports, seaports and / or marinas shall be entitled to avail of the 5 % GIT incentive, provided, however, that they shall have the option to forego their ITH incentive entitlement and immediately avail of the 5% GIT incentive upon start of their commercial operations. All PEZA-registered Tourism Developers/Operators and Locator Enterprises shall conform with the development guidelines and operating standards of the DOT, land use and zoning regulations, as well as the policies and guidelines of other concerned government agencies, provided that in the case of Ecotourism

Projects, endorsement from the National Ecotourism Steering Committee shall also be secured prior to PEZA registration.

All PEZA-registered Tourism Developers / Operators and Locator Enterprises shall conform with the development guidelines and operating standards of the DOT, land use and zoning regulations, as well as the policies and guidelines of other concerned government agencies, provided that in the case of Ecotourism Projects, endorsement from the National Ecotourism Steering Committee shall also be secured prior to PEZA registration.

2. Non-Fiscal Incentives

PEZA-registered Tourism Ecozone Developers / Operators and Locators shall be entitled to the following non-fiscal incentives:

- a. Employment of foreign national, as provided under R.A. No. 7916;
- b. Special Investor's Resident Visa, as provided under Executive Order No. 63; and
- c. Incentives under the Build-Operate-Transfer Law, as may be applicable, subject to prescribed guidelines.

7.6 Incentives Granted Under Retail Trade Liberalization Act of 2000 (Republic Act No. 8762)

This is an act liberalizing the retail trade business, repealing for the purpose Republic Act No. 1180, as amended, and for other purposes.

With the enactment and implementation of the Trade Liberalization Act of 2000, up to 100% foreign equity participation in restaurants is now allowed for enterprises with a paid-up capital of US\$2.5 million or more.

Extent of foreign equity in Restaurants

→ Below US \$ 2.5M capital - no foreign equity

→ US \$ 2.5M capital or more - up to 100% foreign equity

7.7 Incentives Granted Under Investors Lease Act (Republic Act No. 7652)

This law encourages foreign investments by means of granting a long-term lease of 50 years (renewable for another 25 years) on private lands to foreign investors for the establishment of industrial estates, factories, assembly of processing plants, agro-industrial enterprises, land development for industrial or commercial use, tourism, and other similar priority productive endeavors.

In the case of tourism projects, lease of private lands by foreign investors qualified herein shall be limited to projects with an investment of not less than US\$5 million, seventy percent (70%) of which shall be infused in said project within three years from the signing of the lease contract.

1. Ownership Of Private Lands

General Rule

- Nationality Requirement under the Philippine Constitution
- up to 40% foreign equity

2. Leasing Of Private Lands

General Rule per PD 471

- 25 years - original
- 25 years - renewable

Exception per RA 7652 or Investor's Lease Act

- Minimum investment of US \$5 million for tourism projects
- 50 years - original
- 25 years - renewable

7.8 Incentives Granted Under Executive Order 528

This Executive Order aims to promote more investments in the Philippines by extending to another five years the duty-free privileges on the importation of capital equipment by businesses registered as new and expanding enterprises by the Board of Investments (BOI).

E.O. 528 extends to five more years the two year duty-free privileges in importing capital equipment granted through E.O. 313 issued on May 1, 2004.

Like E.O. 313, E.O. 528 prohibits the sale, transfer or disposal of capital equipment, machinery, spare parts and accessories within five years from date of importation, unless permitted by the BOI.

- 0% duty on any importation of capital equipment, spare parts and accessories under Chapter 40, 59, 68, 69, 70, 73, 76, 82-85, 87, 90, 91 and 96 of the Tariff and Customs Code of the Philippines, as amended, provided the items to be imported are not manufactured domestically in sufficient quantity, of comparable quality and at a reasonable price.

Tourism Investment Portfolio

- Validity is 5 years from 17 June 2006 to 16 June 2011
- BOI registered firms during the effectivity of EO 313 shall only be entitled to the zero duty importation for a period of 3 years to be reckoned from the lapse of EO 313 or from 7 June 2006 to 6 June 2009.