



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
CENTRAL OFFICE
Manila

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DEPARTMENT MEMORANDUM)

CIRCULAR NO. 55)
Series of 2021 dt 9/21/2021)

FOR / TO : Senior Undersecretary
Undersecretaries
Assistant Secretaries
Bureau Directors
BAC Chairpersons and Members
All of this Department

Regional Directors
Project Directors
Service Directors
District Engineers

For information and guidance, attached is a copy of **GPPB Resolution No. 14-2021 entitled: "Resolution Confirming that the Rule on the Application of a License to Transact Business in the Philippines by a Foreign Corporation is based on existing Securities and Exchange Commission (Sec) Rules and Opinions and that, unless otherwise ruled by the SEC, any of the allowable types of Registration for a Foreign Corporation under Sections 140 and 143 of Republic Act (RA) No. 11232 shall suffice for purposes of awarding a Contract under RA No. 9184, subject to the Specific Requirements of the Procuring Entity as demanded by its Procurement Project, and in the case of Foreign Corporations which will engage in Construction Activities, the Construction Industry Authority of the Philippines Rules and Guidelines require the submission of a valid SEC Certificate of Registration and Appointment of a new Foreign Resident Alien Representative or Authorized Managing Officer of the Philippines prior to the issuance of a Special License, and authorizing the Government Procurement Policy Board-Technical Support Office to respond to related inquiries to this effect "**.

A copy of said Resolution may also be downloaded from the **DPWH website: <http://dpwhweb>**. If an office cannot access the DPWH website, a hard copy may be obtained from the Records Management Division, HRAS, upon request.

MARICHU A. PALAFOX, CESO III
Assistant Secretary for Support Services

Incl: GPPB Resolution No. 14-2021 dated August 12, 2021

Cc: Office of the Secretary

12.1.1 EYAP/RAG/MVSG

RESOLUTION CONFIRMING THAT THE RULE ON THE APPLICATION OF A LICENSE TO TRANSACT BUSINESS IN THE PHILIPPINES BY A FOREIGN CORPORATION IS BASED ON EXISTING SECURITIES AND EXCHANGE COMMISSION (SEC) RULES AND OPINIONS AND THAT, UNLESS OTHERWISE RULED BY THE SEC, ANY OF THE ALLOWABLE TYPES OF REGISTRATION FOR A FOREIGN CORPORATION UNDER SECTIONS 140 AND 143 OF REPUBLIC ACT (RA) NO. 11232 SHALL SUFFICE FOR PURPOSES OF AWARDING A CONTRACT UNDER RA NO. 9184, SUBJECT TO THE SPECIFIC REQUIREMENTS OF THE PROCURING ENTITY AS DEMANDED BY ITS PROCUREMENT PROJECT, AND IN CASE OF FOREIGN CORPORATIONS WHICH WILL ENGAGE IN CONSTRUCTION ACTIVITIES, THE CONSTRUCTION INDUSTRY AUTHORITY OF THE PHILIPPINES RULES AND GUIDELINES REQUIRE THE SUBMISSION OF A VALID SEC CERTIFICATE OF REGISTRATION AND APPOINTMENT OF A NEW FOREIGN RESIDENT ALIEN REPRESENTATIVE OR AUTHORIZED MANAGING OFFICER OF THE PHILIPPINES PRIOR TO THE ISSUANCE OF A SPECIAL LICENSE, AND AUTHORIZING THE GOVERNMENT PROCUREMENT POLICY BOARD-TECHNICAL SUPPORT OFFICE TO RESPOND TO RELATED INQUIRIES TO THIS EFFECT

WHEREAS, Republic Act (RA) No. 9184, otherwise known as the "Government Procurement Reform Act", took effect on 26 January 2003, while its 2016 revised Implementing Rules and Regulations (IRR) took effect on 28 October 2016;

WHEREAS, Section 63 of RA No. 9184 authorizes the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend its IRR, whenever necessary;

WHEREAS, Section 5 of RA No. 7042¹ requires the registration of investments of non-Philippine nationals with the Securities and Exchange Commission (SEC) to do business in the Philippines or invest in a domestic enterprise up to one hundred percent (100%) of its capital;

WHEREAS, Section 140 of RA No. 11232² defines a foreign corporation as one formed, organized, or existing under laws other than those of the Philippines' and whose laws allow Filipino citizens and corporations to do business in its own country or State. It shall have the right to transact business in the Philippines after obtaining a license for that purpose and a certificate of authority from the appropriate government agency;

WHEREAS, Section 143 of RA No. 11232 provides that the SEC shall issue a license to transact business in the Philippines to the applicant if the SEC is satisfied that the applicant has complied with all the requirements therein. Upon the issuance of the license, such foreign corporation may commence to transact business in the Philippines and continue to do so for as long as it retains its authority to act as a corporation under the laws of the country or State of its incorporation, unless such license is sooner surrendered, revoked, suspended, or annulled in accordance with RA No. 11232 or other special laws;

¹ An Act to Promote Foreign Investments, Prescribe the Procedures for Registering Enterprises Doing Business in the Philippines, and for Other Purposes, June 13, 1991

² An Act Providing for the Revised Corporation Code of the Philippines, 23 July 2018.

WHEREAS, the Supreme Court held, in the case of *Hutchison Ports Philippines Limited v. Subic Bay Metropolitan Authority, et al.*,³ (*Hutchison case*) that participating in the bidding process constitutes “doing business” because it shows the foreign corporation’s intention to engage in business in the Philippines;

WHEREAS, the SEC issued SEC-OGC Opinion No. 14-21 and SEC Opinion No. 09-18, where it reiterated the Supreme Court ruling in the *Hutchison case* and declared that participating in the bidding process constitutes “doing business” because it shows the foreign corporation’s intention to engage in business in the Philippines;

WHEREAS, under the IRR of RA No. 7042⁴ and RA No. 8756⁵, a foreign supplier, contractor, or consultant can obtain a Certificate of Registration in any of the following forms: branch office of a foreign company; representative or a liaison office; regional operating headquarters; and regional or area headquarters. Relatedly, the 2020 SEC Citizen’s Charter (2nd Edition) provides that the total processing time of licensing of foreign corporations through the Company Registration System is 10 days, 2 hours, and 51 minutes per application;

WHEREAS, the Construction Industry Authority of the Philippines (CIAP) requires the submission of a valid SEC Certificate of Registration and the appointment of a new Foreign Resident Alien Representative or Authorized Managing Officer in the Philippines to act for and on behalf of the company and to be responsible/liable for any or all acts/representation made by the company as a requirement prior to the processing of the application for new special license by a foreign contractor that will engage in the construction of a single undertaking/project;

WHEREAS, pursuant to CIAP Board Resolution No. 11 Series of 2017,⁶ foreign contractors registered under the Quadruple A Gold Category, or foreign-owned domestic corporation with at least Php 1 Billion Equity, may undertake private projects, subject to its corresponding contract cost, provided that it complies with the technical qualifications of the AAA category, which includes the appointment of an Authorized Managing Officer who shall have the authority and capability to commit and answer for the corporation, among others;

WHEREAS, Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184 provides that within ten (10) calendar days from receipt of by the winning bidder of the Notice of Award, the submission of the SEC Certificate of Registration of the foreign corporation, or the SEC Certificate of Registration of the foreign consulting firm, and/or the authority or license from the appropriate government agency or professional regulatory body of the foreign professionals engaging in the practice of regulated professions and allied professions, where applicable, shall be required before the contract may be awarded;

WHEREAS, the GPPB-Technical Support Office (TSO) received queries and requests for clarifications on the SEC certification required under Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184;

WHEREAS, in a letter dated 23 June 2021 addressed to the Department of Budget and Management and the GPPB, through its TSO, the Bangko Sentral ng Pilipinas (BSP) requested guidance and confirmation on the registration of foreign entities with the SEC pursuant to the GPPB Resolution No. 25-2019 since it is silent relative to its implementation

³ GR No. 131367, 31 August 2000

⁴ An Act to Promote Foreign Investments, Prescribe the Procedures for Registering Enterprises Doing Business in the Philippines, and for Other Purposes, 13 June 1991.

⁵ An Act Providing for the Terms, Conditions, and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, Amending for the Purpose Certain Provisions of Executive Order No. 226, Otherwise Known as the Omnibus Investments Code of 1987, 23 November 1999.

⁶ Which issued the Guidelines for the Licensing of Category Quadruple A Contractors, foreign contractors registered under the Quadruple A Gold Category.

on the different types of foreign entities (e.g., branch office, representative or liaison office, regional operating headquarters, or regional or area headquarters; foreign entities with subsidiary/ies or affiliate/s in the Philippine; foreign entities falling under the category of foreign government, foreign or international government financing institution, government-owned and/or-controlled corporation, or government-owned crown corporation) granted with various types of SEC registration. Further, the BSP raised that its foreign suppliers, contractors, and consultants cited several reasons for the difficulty and operational constraints of registration in the Philippines;

WHEREAS, in the same letter, the BSP presented the different issues and challenges raised by foreign bidders participating in its procurement projects, namely: the inability of the foreign entity to open a local office since it is a government-owned crown corporation; domestic legal registration in home country; lack of technical capability of the branch, representative office, subsidiary or affiliate of a foreign entity to comply with the BSP requirement; situs of business operations is outside the Philippines; practical considerations/trade practice such as limited business opportunities and expenses in opening and maintaining a branch in the Philippines; reciprocity/diplomatic repercussions; and time constraints in securing the SEC Certificate of Registration;

WHEREAS, prior to receiving the letter of the BSP, the GPPB-TSO already sought clarification from the SEC on 22 June 2021, as to which specific type of SEC registration should foreign bidders secure in the following cases and how the SEC can help Procuring Entities in their projects concerning the types of registration or license required from foreign corporations:

1. Government-owned crown corporations or state-owned enterprises that engaged in bidding activities of the government or are being engaged or contracted by the procuring entities to deliver critical equipment or supplies, perform consultancy services, or carry out vital development or infrastructure projects;
2. Foreign bidders, who are still required to engage a resident agent that would engage in one-time transactions or performance of short-term services;
3. Non-Philippine nationals under the Negative List of RA No. 7042 which allows only a maximum of 40% foreign equity on a juridical entity engaged in defense-related business; and
4. Foreign bidders concerned with issues on double taxation;

WHEREAS, during the 2nd Joint GPPB and Inter-Agency Technical Working Group Continuation Meeting on 12 August 2021,⁷ the GPPB-TSO recommended for the GPPB to confirm that the rule on the application of a license to transact business in the Philippines by a foreign corporation is based on existing SEC rules and opinions and that, unless otherwise ruled by the SEC, any of the allowable types of registration for a foreign corporation under Sections 140⁸ and 143⁹ of RA No. 11232 shall suffice for purposes of awarding a contract

⁷ Continuation of the Joint GPPB and IATWG Meeting held last 28 July 2021.

⁸ SEC. 140. Definition and Rights of Foreign Corporations. – For purposes of this Code, a foreign corporation is one formed, organized or existing under laws other than those of the Philippines' and whose laws allow Filipino citizens and corporations to do business in its own country or State. It shall have the right to transact business in the Philippines after obtaining a license for that purpose in accordance with this Code and a certificate of authority from the appropriate government agency.

⁹ SEC. 143. Issuance of a License. – If the Commission is satisfied that the applicant has complied with all the requirements of this Code and other special laws, rules and regulations, the Commission shall issue a license to transact business in the Philippines to the applicant for the purpose or purposes specified in such license. Upon issuance of the license, such foreign corporation may commence to transact business in the Philippines and continue to do so for as long as it retains its authority to act as a corporation under the laws of the country or State of its incorporation, unless such license is sooner surrendered, revoked, suspended, or annulled in accordance with this Code or other special laws. Within sixty (60) days after the issuance of the license to transact business in the Philippines, the licensee, except foreign banking or insurance corporations, shall deposit with the Commission for the benefit of present and future creditors of the licensee in the Philippines, securities satisfactory to the Commission, consisting of bonds or other evidence of indebtedness of the Government of the Philippines, its political subdivisions and instrumentalities, or of government-owned or -controlled corporations and entities, shares of stock or debt securities that are

under RA No. 9184, subject to the specific requirements of the Procuring Entity as demanded by its Procurement Project, and in case of foreign corporations which will engage in construction activities, the CIAP rules and guidelines require the submission of a valid SEC Certificate of Registration and appointment of a new Foreign Resident Alien Representative or Authorized Managing Officer of the Philippines prior to the issuance of a special license, and authorize the GPPB-TSO to respond to related inquiries to this effect.

WHEREAS, after careful review and deliberations, the GPPB resolved to approve the recommendations of the GPPB-TSO;

NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US**, by law and other executive issuances, hereby **RESOLVE**, to confirm, adopt, and approve, as **WE**, hereby confirm, adopt, and approve the following:

1. **CONFIRM** that the rule on the application of a license to transact business in the Philippines by a foreign corporation is based on existing SEC rules and opinions and that, unless otherwise ruled by the SEC, any of the allowable types of registration for a foreign corporation under Sections 140 and 143 of RA No. 11232 shall suffice for purposes of awarding a contract under RA No. 9184, subject to the specific requirements of the Procuring Entity as demanded by its Procurement Project.

In case of foreign corporations which will engage in construction activities, the CIAP rules and guidelines require the submission of a valid SEC Certificate of Registration and appointment of a new Foreign Resident Alien Representative or Authorized Managing Officer of the Philippines prior to the issuance of a special license; and

2. **AUTHORIZE** the GPPB-TSO to respond to related inquiries to this effect.

This Resolution shall take effect immediately.

APPROVED this 12th day of August 2021 at Pasig City, Philippines.

registered under Republic Act No. 8799, otherwise known as "The Securities Regulation Code", shares of stock in domestic corporations listed in the stock exchange, shares of stock in domestic insurance companies and banks, any financial instrument determined suitable by the Commission, or any combination thereof with an actual market value of at least Five hundred thousand pesos (P500,000.00) or such other amount that may be set by the Commission: Provided, however, That within six (6) months after each fiscal year of the licensee, the Commission shall require the licensee to deposit additional securities or financial instruments equivalent in actual market value to two percent (2%) of the amount by which the licensee's gross income for that fiscal year exceeds Ten million pesos (P10,000,000.00). The Commission shall also require the deposit of additional securities or financial instruments if the actual market value of the deposited securities or financial instruments has decreased by at least ten percent (10%) of their actual market value at the time they were deposited. The Commission may, at its discretion, release part of the additional deposit if the gross income of the licensee has decreased, or if the actual market value of the total deposit has increased, by more than ten percent (10%) of their actual market value at the time they were deposited. The Commission may, from time to time, allow the licensee to make substitute deposits for those already on deposit as long as the licensee is solvent. Such licensee shall be entitled to collect the interest or dividends on such deposits. In the event the licensee ceases to do business in the Philippines, its deposits shall be returned, upon the licensee's application and upon proof to the satisfaction of the Commission that the licensee has no liability to Philippine residents, including the Government of the Republic of the Philippines. For purposes of computing the securities deposit, the composition of gross income and allowable deductions therefrom shall be in accordance with the rules of the Commission.

Sgd.

TINA ROSE MARIE L. CANDA
GPPB, Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

Sgd.

ROLANDO U. TOLEDO
Alternate to the Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

DEPARTMENT OF FINANCE

Sgd.

DEPARTMENT OF HEALTH

Sgd.

**DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT**

Sgd.

**DEPARTMENT OF NATIONAL
DEFENSE**

Sgd.

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

Sgd.

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

Sgd.

DEPARTMENT OF TRADE AND INDUSTRY

DEPARTMENT OF TRANSPORTATION

**DEPARTMENT OF INFORMATION AND
COMMUNICATIONS TECHNOLOGY**

Sgd.

PHILIPPINE SPACE AGENCY

Sgd.

PRIVATE SECTOR REPRESENTATIVE