



THE JAPANESE CHAMBER OF COMMERCE AND INDUSTRY OF THE PHILIPPINES, INC.

February 7, 2018

Hon. Ramon M. Lopez
Secretary
Department of Trade and Industry
5F Industry & Investment Bldg.
Sen. Gil Puyat Ave., Makati City

BOARD OF INVESTMENTS
Investment Assistant Center
Office of the Executive Director
RECEIVED BY: [Signature]
Date: 7 Feb 18 Time: 11:24

Dear Secretary Lopez:

Sub: Statement regarding Improving Business Environment and Easing Rule and Restrictions on Foreign Equity and Participation

The Japanese Chamber of Commerce and Industry of the Philippines Inc.(JCCIPI) have clear stance of supporting "10 Point Socioeconomic Agenda" and the related actions for the "Comprehensive Tax Reform" and the development plan for Infrastructure enhanced by "Build, Build Build".

JCCIPI has continued the work and effort for improving the Business Environment and Easing Rules and Restrictions in the Philippines as representative of "Private Sector" with the Embassy of Japan in the Philippines through the dialogue with the governmental agencies in the Philippines, called "Meeting of Consultative Group for the Philippines-Japan Economic Partnership Agreement(PJEPA) Sub-Committee on the Improvement of Business Environment(SC-IBE). We would like to express our sincere appreciation to the Department of Trade and industry and the Board of Investment with your invaluable assistance.

In this regards, JCCIPI are herewith emphasizing several key points and providing our position on these restrictions and concerns to be improved. In sum, our position is to remove and liberalize restrictions in order to open the economy more to foreign investors and foreign professionals. JCCIPI is following the strategy of the Duterte Administration, ie, to improve competition and reduce restriction on foreign investment through amendments to administrative issuances, restrictive laws and constitutional provisions.

JCCIPI represent over 650 member companies engaged as of today, about 12% annual growth in membership since 2012, supports business activities of the members in the Philippines in close cooperation with Japanese Chamber of Commerce in Cebu and Mindanao and promotes increased foreign investment and improved conditions for business to benefit both Philippines and Japan.

Thank you, and we look forward to continued partnership with you in the future.

Regards,



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FOR INDUSTRY DEVELOPMENT
& TRADE POLICY GROUP
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Cc: Dr. Ceferino S. Rodolfo, Undersecretary, Department of Trade and Industry
Atty. Raul V. Angeles, Executive Director, Department of Trade and Industry
Koji Haneda, The Japanese Ambassador to the Philippines

1. Liberalization of the Retail Trade

JCCIPI is highly expecting the immediate steps to lift or ease existing following restrictions for Retail Trade Enterprises. According to RA No. 8762, (i) minimum paid-up capital 2.5 Mil USD, (ii) minimum investment per shop 830,000 USD, (iii) minimum 30% share shall be listed in the stock market within eight(8) years if foreign investment ratio will be 80% or above and (iv) minimum Net Worth of its "Parent company" 200Mil USD .

The said conditions are quite tough requirement for Investment and Prequalification, consequently wish for investment has been discouraged and damaged, that is to say, Philippines has lost its opportunity for a long time. JCCIPI propose the repeal of the conditions of (ii), (iii) and (iv) and also to ease the conditions of (i) minimum paid-up capital 200,000 USD instead of 2.5 Mil USD.

Participation of foreign investment will bring the additional value for the industry and create more job for the Philippine Market. Regarding the competition, it will be more healthy and conflict with operation of many "Sari-sari Store" could be managed and controlled through a kind of "Guideline" for Area/Zone scheme if it will be available.

2. Easing Regulatory Restriction for Philippine Contractors Accreditation Board(PCAB)

The implementing Rule and Regulation(IRR) for foreign firms to obtaining license is quite disadvantageous, expensive and less flexible, which has caused the negative effect on potentiality of growth and opportunity of job creation in Construction industry. Participation of foreign firms will generate growth due to the considerable scope for learning-by-doing , knowledge generation, transfer of new technology and engineering methods , expansion of product variety and upgrade of product quality.

(1) New Guideline for Licensing Category for Quadruple A:

Licensing Category Quadruple A Contractors (Board Resolution no. 079, Series of 2017) , for Items (1a),(1b) – "Guidelines for Licensing Quadruple A Gold Licensing Financial Qualification" of PhP 1 Billion and for Item (1c) – "Limitation of the License" on the Project contract cost of minimum PhP 5 Billion (for vertical projects) and PhP 3 Billion (for horizontal projects) are considered large amounts. These licensing regulations limit the foreign-owned firms to comply this regulatory rule and hinders its direct participation in private domestic construction bidding exercises. JCCIPI propose to amend these conditions by reducing the amount of the required equity/net worth which is currently set at PhP 1 Billion to 100Mil PhP and also reduce the Projects minimum contract costs to 500Mil PhP(for vertical projects) and 300Mil PhP(for horizontal projects).

(2) Special Licensing Scheme for Foreign Firms:

(a)"Guidelines for Special Licensing of CONSORTIUM"

The arrangement of the Consortium is allowed with a 60%-40% sharing arrangement in favor of the local contracting partner, as the lead partner, over the foreign-owned contractor. The consortium license is limited by nature, that is, the 40% foreign-owned participation is to undertake the financier role or any other supportive role other than the construction role (which is being undertaken by the local contracting partner). Also, PCAB grant consortium applicable to certain private domestic projects only, specifically those Design & Build (D & B) projects.

JCCIP propose for PCAB to relax above guidelines specifically to allow the foreign contractor to undertake such construction role especially if the Project requires special

technologies such as Hard strata pile driving method (water jet cutter, down the hole hammer etc), Under water pipeline laying method (working vessel control, under water work with experienced diver etc), Tunneling method (Shield machine, Tunnel boring machine etc) and others.

In terms of identifying the type of projects/technologies by the Philippine Domestic Construction Board (PDCB), we would like to request that special technology requirement be determined, evaluated, and approved directly by PCAB instead of getting clearance first from the PDCB to simplify the process in the issuance of necessary license.

(b) "Special Licensing Scheme"

Further and in addition to above stated proposal, we also respectfully appeal for your favorable consideration to grant a "Special Licensing Scheme" to qualified foreign-owned companies (with proven track records of its successfully completed domestic projects) for the following options:

- PCAB issuance of a Special License for a sole foreign contractor to participate in the construction of a single large project with at least PhP 1 Billion contract cost;
- PCAB issuance of a Special License for a sole foreign contractor's participation in the construction of a specific project where there is limited local contractor's capability in terms of technology as determined by PCAB alone instead of the Philippine Domestic Construction Board (PDCB).
- PCAB issuance of a Special License to a Consortium consisting of 40% Local Contractor and 60% Foreign Contractor sharing arrangement, authorizing the foreign contractor as the lead partner for certain projects which necessitate the use and application of the Foreign Contractor's expertise.
- PCAB issuance a Special License to a Consortium consisting of 30% Local Contractor and 70% Foreign Contractor sharing arrangement, authorizing the foreign contractor as the main lead partner for certain large/complex projects which require major significant involvement by Foreign Contractor due to its project complexity and its large extensive works scope.

3. Liberalization of Land Ownership

Under Foreign investment Act RA No. 7042, only Philippines nationals can own private Land and its corporation have at least 60% of its capital stock outstanding and entitled to vote and held by citizen of Philippines.

To encourage more Foreign Direct Investment and secure the stability and sustainability of business operation, JCCIPI propose the repeal of the limitation of Foreign Equity for Land Ownership not only from the point of competitiveness in comparison with Vietnam but also from the point of encouraging for the manufacturing sectors to expand business and attracting potential SMEs to invest to the Philippines market.

4. Clear Guideline on Contracting and Sub-Contracting in implementation

JCCIPI would like to draw your attention to the issues of contractualization. The Department of Labor and Employment (DOLE) recently strengthen its inspections on companies to determine their compliance the prohibition against labor-only contracting (LOC), but some Japanese companies are at a loss saying that there are no clear guidelines. Several industries,

such as electronics, are exposed to unexpected and seasonal demands, which require flexible labor forces. This means they will be unable to take on all their employees permanently.

In light of the said concern, JCCIPI propose the preparation and announcement of Clear guidelines on the available Contracting and Sub-contracting arrangements for companies with seasonal labor requirement.

5. Acceleration of Proclamation Process

JCCIPI would like to raise the issue of the approval process for Presidential Proclamation in the economic zones. There are number of Japanese companies that are interested in investing in the Philippines but the delay on approval on re-grading of site has negative impact on their actual investment. JCCIPI propose the transfer of responsibility for approval from the office of the President to a related, relevant government office to accelerate the procedure.

6. Simple and Efficient Process for Tax Investigation

JCCIPI would like to raise issue of "long and inefficient tax investigation" , especially for Corporate Income Tax Investigation. There are some cases that the relevant tax Investigation have continued over three(3) years and it has taken more than five(5) years after its declaration with several times "Waiver of prescription". Prolongation of tax investigation cause the burden and cost for both agency and company physically and mentally. Detailed example of the case and our proposal is as per attachment ①.

7. Easing Taxation on Non-Life Insurance Premium and Enhancing Monitoring system

JCCIPI would like to raise issue of "Complicated Taxation" against Non-Life insurance premium, which consists of DST, VAT, LGT and FST, totally over 25% applied. For promoting Non-Life insurance in the Philippines, it will be appreciated that current taxation issue will be reviewed and improved. In addition to taxation on premium, non-compliance issue of " minimum tariff of NATCAT(Natural Catastrophe)" by some intermediaries such as brokers and agents is observed. Strict control and monitoring system also will be required for promotion and implementation. Detailed example of the case and our proposal is as per attachment ②.

8. Easing Regulation of Agri-Agra and Single Borrower's Limit

Under current mandatory credit allocation for Agriculture and Agrarian Reform Credit(Agri-Agra) ,still twenty five (25) % of "Total loanable funds" have to be allocated separately and the relevant penalties are applied to Banks based on shortfall between Loanable funds and the reported amount of compliance. Also there is credit risk in agriculture and agrarian reform beneficiaries, which makes situation more difficult.

In addition to Agri-Agra, JCCIPI would like to raise issue of " Single Borrower Limit(SBL)" which make a constrain for lending the enough money to one group. For promoting and supporting Infrastructure projects in the Philippines, it will be highly expected "SBL" to be eased at soonest possible. JCCIPI propose easing regulation of Agri-Agra and SBL and detailed explanation and proposal is as per attachment③.

9. Strengthening of Science and Engineering Education

It is quite obvious that Japanese manufacturing and service sectors in the Philippines, they are majority of PEZA locators, are serious to increase the Value Added Products, Service and

Jobs to sustain and expand business from the point of international competitiveness. In this sense, for both of Philippines and Japan , strengthening of the science and engineering education and retaining these resource is quite significant for the development of Industry and create more jobs and employment. JCCIPI emphasize the importance of strengthening of Science and Engineering education with its issue and background and also propose the idea from the viewpoint of Manufacturing sector as per attachment ④.

10. Consistency of Investment Framework

Through the past SC-IBE meeting, we have discussed and conveyed our concerns regarding the Sublease Share and Common Use Service Area (CUSA) fee issue imposed by Subic bay Metropolitan Authority (SBMA) to related government. JCCIPI would like to hear the productive solution from SBMA Chairman and Administrator.

JCCIPI also have strong concern about the changes of Tax Incentives Scheme, in " Comprehensive Tax Reform Proposed package 2" , announced through Consultation presentation by Department of Finance (DOF) for Special Economic Zone(PEZA). It is highly expected to maintain "Status Quo" for the existing investors and also to make more attractive and competitive conditions for promoting Investment from Japan to the Philippines..

End of statement

<Request for improving a prolonged tax investigation>

1. Issues / Problems

While there is a statute of limitation for tax assessment, that is, “Final Assessment Notice” shall be issued within three years after the date of submission of a tax return, it still is taking longer time than three years.

2. Company's tax investigation situation

We are currently under tax investigation for two fiscal years.

(1) FY2012 (ending March 2013)

Date of receipt of LOA(Letter Of Authority) : Aug 18, 2014

Current status: We haven't received the Preliminary Assessment Notice

(2) FY2013 (ending March 2014)

Date of receipt of LOA :Oct 18, 2014

Current status: We are still on the first stage, submission of materials requested by BIR and tax auditor has not given any information about items to be reconciled.

As a reference, our last time's tax investigation that was completed is:

(1) FY2009 (ending March 2010)

Date of receipt of LOA: Dec 14, 2012

Receipt of Final decision on disputed assessment: Jun 25, 2015

<Suggestion>

1. Share more concrete timeline and breakdown of work among BIR and tax payers

BIR shall explain tax payer about the expected timing of completion when investigation starts. BIR shall also share the breakdown of investigation activities with tax payers so that tax payer can contribute smooth and timely response to BIR.

2. Effort on increasing efficiency of investigation

Putting internal KPIs related to length of investigation in the BIR and those are monitored by government. This will promote an awareness of importance of speed and lead BIR to pay more attention to speedup.

1. Premium Taxation

Currently in Japan, there are no taxes charged against Insurance premiums unlike in the Philippines where over 25% of taxes is applied in the form of DST, VAT, LGT and FST. Fire insurance policies in particular are charged with over 26.5% which is one of the highest tax rate in the world.

Example:

Net Premium	Php 250,000.00
12.5% Doc. Stamps (DST)	31,250.00
12.0% Value Added Tax (VAT)	30,000.00
0.75% Local Government Tax (LGT)	1,875.00
2.0% Fire Service Tax (FST)	5,000.00
Gross Premium	<u>Php 318,125.00</u>

Note: LGT tax varies from the range of 0% to 0.75% depending on the municipality

While on the other hand, Life Insurance Industry in the Philippines enjoys a much lower taxation following a fixed table of taxes based on sum insured.

Current DST tax rates on life, accident and health insurance policies:

- Life premium under Php 100,000 : exempt
- Life premium between Php 100,000 and Php 299,999 : Php 10.00
- Life premium between Php 300,000 and Php 499,999 : Php 25.00
- Life premium between Php 500,000 and Php 749,999 : Php 50.00
- Life premium between Php 750,000 and Php 1,000,000 : Php 100

This taxation issue remains as one of the obstacles in promoting non-life insurance in the Philippines which has to be seriously considered.

Another issue is on policy cancellation. Non-life premium cancellation refund of taxes is quite difficult and most often generally not allowed. Ultimately it is the client who is burdened with the cost of the amount of taxes not refunded despite the cancellation.

In view of issues raised above, we asked the proper authority to look in to this matter with a favorable remedy in sight.

2. Tariff

In Philippines there is minimum tariff imposed to NATURAL CATASTROPHE (NATCAT) cover. However, many local insurers do not comply with the said tariff regulation. Since NATCAT risk in the Philippines is significantly high compared to other ASEAN countries, local insurers are taking huge risk in terms of their financial funding against possible NATCAT losses/exposure.

Ultimately it is the insured who is at risk of not being properly secured and covered should a NATCAT event happens where in an insufficient funded insurance company may encounter problems in settling their claim.

We do recognize the Insurance Commission (IC) has strict control on this issue and monitor insurance companies regularly. However, Intermediaries such as broker and agents are not subjected to the same scrutiny wherein they sometime lead insurance companies to compete "cut-throat" with each other making the situation of the tariff market significantly not improving.

We suggest imposing the same monitoring and regulations to intermediaries who plays a significant role in the industry.

『Easing of regulation for Banks for Agri Agra and Single Borrower's Limit(SBL)』
【Attachment③】

<Mandatory Credit Allocation for Agriculture and Agrarian Reform Credit(Agri-Agra)>

Back ground

The Agri-Agra requests 25 percent of banks' total loanable funds are to be set aside for agriculture and fisheries in general, of which at least 10 percent should be made available for agrarian reform beneficiaries. Banks that fail to comply face a penalty of 0.5 percent of the amount of involved.

This law was passed in the mid 70s and we believe the portion of the agriculture in the GDP (gross domestic product) was much higher at that time. Currently, most banks do not allocate the loanable funds for agriculture and agrarian reform beneficiaries because of perceived risk to qualified borrowers and instead pay the penalties under the said law.

Request

We would like to request BSP to reduce the threshold (e.g. 25% to 10%) and/or to extend the qualification of Agri Agra beneficiaries (e.g. a loan to a large corporate which sells machines to farmers/fishers). We also would like to request to simplify the application processes and documentation requirements for Agri Agra qualification.

<Single Borrower's Limit(SBL)>

Background:

Manual of Regulations for Banks (Sec. X303 Credit Exposure Limits to a Single Borrower)requires that the total amount of loans, credit accommodations and guarantees that may be extended by a bank to any person, partnership, association, corporation or other entity shall at no time exceed twenty five percent (25%) of the net worth of such bank.

Request

Due to this single borrower's limit, we cannot lend the enough money to one group.

That's why we can not support the demand for a large scale funding needs in the Philippines such like infrastructure financing.

We would like to request BSP to abolish the SBL rule.

1. Issues and Background

① Both of design engineer and manufacturing engineer can perform and be trained better when they work under situation where they can collaborate and communicate closely and frequently. Design engineers need feedback from manufacturing engineers thru trial manufacturing of newly designed products to improve its design to achieve both of high productivity and good quality.

Also, manufacturing ability to achieve both of higher productivity and quality can be enhanced thru tackling challenges from design engineers to manufacture new products. Considering such interaction between them, it's desirable that design engineer and manufacturing engineer work in physically same or at least near location to have close and frequent communication between them.

In fact, not small number of Japanese manufacturing companies which have factory in Philippines have similar role distribution in their operation across Philippines and Japan that manufacturing is being operated in Philippines while designing activities are done in Japan. It is basically because they cannot hire design and manufacturing engineers in Philippines stably enough in terms of headcount and quality of knowledge and skills level. Therefore, when they launch new products, they have to dispatch manufacturing engineers from Japan to their Philippine factories to identify concerns and problems in trial production and then to collaborate with design engineers in Japan to find solutions.

Even in case they have manufacturing factories both in Philippines and Japan, the ones in Philippines are focusing more on manufacturing of existing products while the ones in Japan are focusing more on manufacturing of newly designed products. This is also because of same reason as above.

② Lower labor cost and flexibility for elasticity of labor demand constitute a part of major reasons why Japanese manufacturing companies set up factories in Philippines. Recently these advantages are being faded due to rising labor cost and ban on Labor-only contracting. Especially for the factories in PEZA Economic Zone, which export most of their products to overseas market, the said situation is only disadvantage of labor cost increase because they cannot enjoy demand

increase in Philippine market thru individual income increase. Responding to this situation, the Japanese manufacturing companies are required to increase higher value-added jobs and products in their Philippine factories, which are less affected by fluctuation of demand and supply in global market. Otherwise, these factories' international competitiveness would drop and eventually it might lead to transferring of factories to other countries. Also from this viewpoint, strengthening of science and engineering education will be greatly helpful for Japanese manufacturing companies to save and expand employment and business in Philippines.

2. Idea for Strengthening of Science and Engineering Education from Manufacturing Industry's viewpoint

- ① Desired strengthening points for elementary and secondary level education of arithmetic/mathematics
 - Basic skills enhancement of four rules in arithmetic (addition, subtraction, multiplication, division) thru repeated exercise
 - Math as language
(Logical consideration and precise explanation by using mathematical way of thinking and tools such as number, formula, chart, table, graph and so on, and then the review of them for further consideration)
 - Ability to have prospect for solution by setting condition and assumption, and then logically consider in order to verify appropriateness of the prospect for solution based on firm ground
- ② Desired strengthening points for Science and Engineering Education at higher education level
 - Focus more on acquisition of specialized knowledge in the field of specialty and also basic knowledge in related fields
 - Avoid easy industry-academia collaboration that is actually similar to job outsourced by companies
 - Learn how the specialized knowledge is used in actual business, especially for R&D and designing of new products in Japan and other industrially advanced countries