

PwC International Business Reorganisations Network – Monthly Legal Update

Edition 1, January 2019

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Welcome

Welcome to the first edition of the PwC International Business Reorganisations (**IBR**) Network Monthly Legal Update for 2019.

The PwC IBR Network provides legal services to assist multinational organisations with their cross-border reorganisations. We focus on post-deal integration, pre-transaction separation and carve outs, single entity projects, and legal entity rationalisation and simplification as well as general business and corporate and commercial structuring.

Each month our global legal network brings you insights and updates on key legal issues multinational organisations.

We hope that you will find this publication helpful, and we look forward to hearing from you.

In this issue

In our January 2019 issue:

- PwC Legal S.R.L. (Argentina) reports on the introduction of a provisional procedure for the dismissal of certain workers without cause in Argentina; and
- Cabrera & Company (Philippines) examines recent changes to existing foreign investment restrictions in the Philippines.

Contact us

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PwC Legal S.R.L. (Argentina) – Provisional procedure for dismissals

At a glance

Recently, Decree N° 1043/2018 has established a procedure for dismissals, including the intervention of Labor Authorities.

This procedure applies until 31 March 2019 only for dismissals without just cause for employment contracts for an indefinite period of time.

In detail

Decree N° 1043/2018, recently in force, has established a specific procedure in the event of dismissals without cause.

The procedure applies:

- a until 31 March 2019; and
- b only to dismissals without cause of workers with employment contracts for an indefinite period of time.

If the above requirements are not met (e.g. the labor relationship comes to an end by mutual agreement), this procedure does not apply. This includes circumstances where the relevant employment contact is *not* for an indefinite period of time.

Other features of this procedure are:

- a communication of the decision of the dismissal must be made to the Ministry of Production and Work with an anticipation of at least ten business days before making it effective;

- b the Ministry of Production and Work may summon the employer and the worker, together with the relevant trade union assistance, in order to hold hearings to consider the conditions of the future labor termination;
- c in the event of non-compliance with this procedure, applicable penalties will amount up to twice the amount of the Minimum Legal Wage (currently AR\$ 21.400; approx. USD 550) per case; and
- d it does not apply to the construction industry.

Besides all dispositions, in practical terms, this regulation seems to be just a formal procedure that will last only up to 31 March 2019.

Currently, we are not aware of hearings proposed by Labor Authorities in these cases.

PwC Legal S.R.L. (Argentina)

Provisional procedure for dismissals

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11th Foreign Investment Negative List: Foreign investor friendly?

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Cabrera & Company (Philippines) – 11th Foreign Investment Negative List: Foreign investor friendly?

At a glance

Republic Act No. 7042, also known as the Foreign Investments Act of 1991, as amended, regulates the participation of foreign entities in business activities in the Philippines. This law mandates, as well as formulates, a Regular Foreign Investment Negative List.

Pursuant to the above, Executive Order No. 65 (**E.O. No.65**) or the Eleventh Regular Foreign Investment Negative List (**FINL**) was promulgated on 31 October 2018. The 11th FINL version was enacted mainly to provide an updated list of areas or activities which are open to foreign investors and/or reserved to Filipino nationals.

E.O. No. 65 makes “FINL less negative” as it lifted and reduced the existing foreign investment restrictions in the Philippines.

In detail

Background

As a general rule, 100% foreign investments are allowed in domestic enterprises whose products and services do not fall within the negative list provided under the FINL.

Republic Act No. 7042 or the Foreign Investment Act (**FIA**) was enacted to govern the regulation of foreign equity participation in certain areas or business activities in the Philippines. The same law provides that FINL shall also be formulated and issued.

FINL has two component lists, namely:

- a List A which enumerates the areas of activities that are reserved to Philippine nationals by mandate of the Constitution and Specific Laws; and

- b List B which contains areas of activities regulated pursuant to a law which are defense-related activities and have implications on public health and morals.

Except for foreign ownership that is limited by mandate of the Constitution and Specific Laws wherein amendments may be made at any time to reflect changes in the specific laws, amendments to List B shall not be made more often than once every two years.

On 29 October 2018 or more than three years after the previous FINL was enacted, President Rodrigo Duterte signed E.O. No. 65 otherwise known as the 11th FINL. This was published in the Philippine Official Gazette on 31 October 2018 and took effect on 15 November 2018 or fifteen days after the date of its publication. The 11th FINL version provides for an updated shortlist of investment areas that foreign investors may engaged into.

PwC Legal S.R.L. (Argentina)

Provisional procedure for dismissals

Prior to the issuance of the 11th FINL, the 10th FINL version was signed by Former President Benigno S. Aquino III under Executive Order No. 184 in May 2015. The 10th FINL version retained the list of areas or activities previously provided in the 9th FINL version.

Particularly, the 10th FINL does not allow foreign equity participation on mass media except recording, practice of profession, retail trade enterprise with paid-up capital of less than USD2,500,000, cooperatives, private security agencies, small scale mining, utilization of marine resources, ownership and operation of cockpits, manufacture, repair, stockpiling and/or distribution of nuclear weapons, biological/chemical and radiological weapons and anti-personnel mines and manufacture of fire crackers and other pyrotechnic devices.

Zero foreign investment no more

With the issuance of E.O. No. 65, areas or activities wherein previously, non-Philippine nationals are not allowed to take part or participation is limited to a smaller percentage by existing laws, are now permitted to have 100% foreign participation, to with:

- a internet businesses now included as exemption from the category of mass media, thereby foreign investment is already allowed. Internet business refers to internet access providers that merely serve as carriers for transmitting messages;

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- b practice of profession, foreigners are now permitted to teach at higher education levels provided that the subject being taught is not a professional subject or those included in a government board or bar examinations;
- c lending companies regulated by the SEC which was previously limited to 40% foreign equity participation;
- d financing companies and investment houses;
- e adjustment companies regulated by the Insurance Commission wherein previously restricted to 40% foreign equity; and
- f wellness centers.

Further, educational institutions for short-term high-level skills development that do not form part of the formal education system which was previously not included in the list is now granted to have 40% foreign equity participation.

Increase in equity participation

As compared to the limits provided for under the 10th FINL, the 11th FINL afforded a higher limit of 40% foreign equity participation in the following areas:

- a contracts for the construction and repair of locally-funded public works which was previously limited to 25%; and

- b private radio communications network which was previously limited to 20%.

With the amendments made in the FINL, the government hopes to encourage more foreign investments and decrease unemployment rate in the country.

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