



Schedule to the ASEAN Comprehensive Investment Agreement

PHILIPPINES

PHILIPPINES

1.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment
Description of Measure	: National Treatment shall not apply to any measure affecting land and property associated with land, including their acquisition, ownership, lease, development, utilization, conservation and protection.
Sources of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- Civil Code of the Philippines (Republic Act (R.A.) No. 386).- Public Land Act (Commonwealth Act (C.A.) No. 141).- Indigenous Peoples Rights Act of 1997 (R.A. No. 8371).- Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179)- Agriculture and Fisheries Modernization Act of 1997 (R.A. No. 8435).- Special Purpose Vehicle Act of 2002 (R.A. No. 9182).- Investors' Lease Act (R.A. No. 7652).- Comprehensive Agrarian Reform Law of 1988 (R.A. No. 6657, as amended by RA No. 9700).- Philippine Mining Act of 1995 (R.A. No. 7942).- Philippine Fisheries Code of 1998 (R.A. No. 8550).- Water Code of the Philippines (Presidential Decree (P.D.) No. 1067).- Condominium Act (R.A. No. 4726).- Local Government Code of 1991 (R.A. No. 7160).- Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734).- Creating the Cordillera Administrative Region (Executive Order (E.O.) No. 220).- Presidential and Administrative Issuances.

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2.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to: <ol style="list-style-type: none">1. a right, franchise, privilege, property or business, which is expressly reserved by the Constitution or the laws of the Philippines to its citizens and its qualified entities that has been transferred, conveyed or leased to a foreign investor not possessing the prescribed requisites by the Constitution or such laws; and2. a foreign investor that intervenes in the management, operation, administration or control of such businesses which are reserved for Filipinos, whether such investors are officers, employees or laborers therein, except technical personnel whose employment may be specifically authorized by the Secretary of Justice.
	<p><u>Note:</u> The election of aliens as members of the board of directors or governing body of corporation or associations engaging in partially nationalized activities shall be allowed in proportion to their allowable participation or share in the capital of such entities.</p>
Source of Measure	: - 1987 Constitution of the Republic of the Philippines. - Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchises or Privileges (C.A. No. 108, as amended by P. D. No. 715). - Local Government Code of 1991 (R.A. No. 7160). - Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). - Creating the Cordillera Administrative Region (E.O. No. 220). - Presidential and Administrative Issuances.

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3.

Sector : All sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central

Type of Obligation : National Treatment
Senior Management and Board of Directors

Description of Measure : National Treatment shall not apply to measures affecting the establishment of a corporation, partnership, sole proprietorship, association or branch office of a foreign corporation. The operations of these entities shall be subject to their continuing compliance with registration and qualification requirements.

Domestic corporations shall comply with the following requirements:

1. Majority of the incorporators must be residents of the Philippines.
2. Corporate secretary shall be a resident and citizen of the Philippines.
3. Treasurer shall be a resident of the Philippines
4. Majority of the directors must be residents of the Philippines.

Branch of a foreign corporation shall have at least one resident agent in the Philippines.

Source of Measure : - 1987 Constitution of the Republic of the Philippines.
- Corporation Code of the Philippines of 1980 (Batas Pambansa (B. P.) Blg. 68).
- Presidential and Administrative Issuances.

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4.

Sector	: All sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment
Description of Measure	: National Treatment shall not apply to any measure relating to registration of foreign investment (equity and debt) and foreign loans with the Bangko Sentral ng Pilipinas.

Note:

Registration of a foreign investment (equity and debt) with the Bangko Sentral ng Pilipinas (BSP) is required if the foreign exchange needed to service the repatriation of capital and the remittance of dividends, profits and earnings which accrue thereon shall be sourced from Authorized Agent Banks (AABs) or AAB foreign exchange corporations.

The approval and registration with BSP of a foreign loan is required if the foreign exchange needed to service the loan shall be sourced from AABs or AAB foreign exchange corporations, except in the following cases, which require BSP prior approval and registration regardless of source of foreign exchange for servicing: (a) public debt; and (b) private debt which are: (i) guaranteed by government corporations and/or government financial institutions, or by AABs; or (ii) granted by local banks and directly funded or collateralized by offshore loans or deposits.

Source of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179).- Foreign Borrowings Act of 1966 (R.A. No. 4860)- New Central Bank Act (R.A. No. 7653).- Manual of Regulations on Foreign Exchange Transactions (BSP Circular 645).- Local Government Code of 1991 (R.A. No. 7160).- Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734).- Creating the Cordillera Administrative Region (E.O. No. 220).- Presidential and Administrative Issuances.
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5.

Sector	: All sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment
Description of Measure	: National Treatment shall not apply to any measure relating to cooperatives. No foreign equity allowed.

Note:

As a general concept, a cooperative is a duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve a lawful common, social or economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles.

Source of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- Cooperative Code of the Philippines (R.A. No. 6938).- Local Government Code of 1991 (R.A. No. 7160).- Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734).- Creating the Cordillera Administrative Region (E.O. No. 220).- Presidential and Administrative Issuances.
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6.

Sector	: All sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to: <ol style="list-style-type: none">1. certain areas of investments, when national interest¹ so dictates; and,2. regulation over foreign investments within its national jurisdiction and in accordance with its national goals and priorities, as embodied in the Philippines Medium Term Development Plan and provided that such measure shall not affect such existing investments, where such measure is necessary and would not constitute arbitrary or unjustifiable discrimination or a disguised restriction on foreign investments.
Source of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179).- Omnibus Investments Code of 1987 (E. O. No. 226, as amended).- Special Economic Zone Act of 1995 (R.A. No. 7916, as amended by R.A. No. 8748).- Bases Conversion and Development Act of 1992 (R.A. No. 7227, as amended by R.A. No. 9400).- Medium Term Philippine Development Plan.- Presidential and Administrative Issuances.

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¹ Illustrative examples of NT and SMBD obligation-inconsistent measures in relation to national interest can include decreasing allowable foreign equity to allow more efficient control in the production, distribution and sale of commodities, e.g., oil, during an economic crisis or after a natural calamity, and consequent to the decrease in allowable foreign equity is the reduction in the allowable representation in the senior management and board of directors.

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7.

Sector	: All sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to small and medium sized domestic market enterprise ² . Foreign equity is restricted to a maximum of 40% for domestic market enterprises with paid-in equity capital of less than the equivalent of USD 200,000 <u>Note:</u> Members of the Board of Directors or governing body of corporation or associations shall be allowed in proportion to their allowable participation or share in the capital of such enterprises.
Source of Measure	: - 1987 Constitution of the Republic of the Philippines. - Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179). - Presidential and Administrative Issuances.

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² The concept of a small and medium sized domestic market enterprise is an enterprise with paid in equity capital of less than the equivalent of USD 200,000.00.

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8.

Sector	: All sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to portfolio investments, which shall include but not be limited to stocks listed in the Philippine Stock Exchange, bonds and other securities.
Source of Measure	: - 1987 Constitution of the Republic of the Philippines. - Manual of Regulations on Foreign Exchange Transactions (BSP Circular 645). - Presidential and Administrative Issuances.

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9.

Sector	: All sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment
Description of Measure	: National Treatment shall not apply to any measure relating to export requirement.

Foreign-owned corporations/entities³ shall export at least 60% of their output to be considered an export enterprise and subject to certain terms and conditions⁴.

Source of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- Foreign Investments Act of 1991 (R.A. No. 7042).- Export Development Act of 1994 (R.A. No. 7844).- Omnibus Investments Code of 1987 (E.O. No. 226, as amended).- Special Economic Zone Act of 1995 (R.A. No. 7916 as amended by R.A. No. 8748).- Bases Conversion and Development Act of 1992 (R.A. No. 7227, as amended by R.A. No. 9400).- Local Government Code of 1991 (R.A. No. 7160).- Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734).- Creating the Cordillera Administrative Region (E.O. No. 220).- Other economic and free port zones' laws.- Other Investment Laws.- Presidential and Administrative Issuances.
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³ For guidance on foreign-owned corporations/entities, a "Philippine National" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines or a corporation organized abroad and registered as doing business in the Philippine under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: *Provided*, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national.

⁴ Terms and conditions shall include but not be limited to equity restrictions, minimum investment thresholds, technology transfer, and quality requirements.

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10.

Sector	: All sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure affecting the grant of licenses and permits. This shall include but not be limited to equity restrictions, minimum investment thresholds, duration or validity, areas or hectareage and other conditions and requirements.
Source of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179).- Omnibus Investments Code of 1987 (E.O. No. 226, as amended).- People's Small-Scale Mining Act of 1991 (R.A. No. 7076).- Philippine Mining Act of 1995 (R.A. No. 7942).- Magna Carta of Small Farmers (R.A. No. 7607).- Decree Authorizing Aliens as well as Associations, Corporations or Partnerships owned in whole or in part by Foreigners to Engage in the Rice and Corn Industry, and for other purposes (P.D. No. 194).- Agriculture and Fisheries Modernization Act of 1997 (R.A. No. 8435).- Revised Forestry Code (P.D. No. 705).- Special Economic Zone Act of 1995 (R.A. No. 7916, as amended by R.A. No. 8748).- Bases Conversion and Development Act of 1992 (R.A. No. 7227, as amended by R.A. No. 9400).- Laguna Lake Development Act (R.A. No. 4850, as amended).- Local Government Code of 1991 (R.A. No. 7160)- Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734).- Creating the Cordillera Administrative Region (E.O. No. 220).- Presidential and Administrative Issuances.

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11.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to privatization programs and divestment of assets requirement ⁵ .
Source of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- Omnibus Investments Code of 1987 (E.O. No. 226, as amended).- Build Operate Transfer Law (R.A. No. 7718).- Electric Power Industry Reform Act (R. A. No. 9136).- Local Government Code of 1991 (R.A. No. 7160).- Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734).- Creating the Cordillera Administrative Region (E.O. No. 220).- Presidential and Administrative Issuances.

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⁵ The divestment of assets shall be in accordance with the law of registration of the entity and other conditions as mutually agreed by the State and the foreign investors.

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12.

Sector	: All sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Regional and Local
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure of Autonomous Region of Muslim Mindanao and the Cordillera Administrative Region.
Source of Measure	: - 1987 Constitution of the Republic of the Philippines. - Local Government Code of 1991 (R.A. No. 7160). - Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). - Creating the Cordillera Administrative Region (E.O. No. 220). - Indigenous Peoples Rights Act of 1997 (R.A. No. 8371). - Local Government Code of 1991 (R.A. No. 7160). - Creating the Cordillera Administrative Region (E.O. No. 220). - Presidential and Administrative Issuances.

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13.

Sector	: Manufacturing
Sub-Sector	: Printing and Publishing (e.g., publishing of brochures/pamphlets, printing of catalogues on account of machinery producers)
Industry Classification	: ISIC 2211, 2219, 2221
Level of Government	: Central
Type of Obligation	: National Treatment
Description of Measure	: No foreign equity allowed.
Source of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- Presidential Memorandum dated 04 May 1994.- Presidential and Administrative Issuances.

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14.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors (SMBD) obligations shall not apply to any measure relating to the employment of foreign nationals. Restrictions may be imposed on the number, duration and type of SMBD positions where foreign nationals may be employed.
Source of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- Labor Code of the Philippines, as amended (P.D. No. 442, as amended).- Philippine Immigration Act of 1940, (C.A. No. 613, as amended).- Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchises or Privileges (C.A. No. 108, as amended by P.D. No. 715).- Omnibus Investments Code of 1987 (E.O. No. 226).- Local Government Code of 1991 (R.A. No. 7160).- Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734).- Creating the Cordillera Administrative Region (E.O. No. 220).- Presidential and Administrative Issuances.

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15.

Sector	: Manufacturing and Services Incidental
Sub-Sector	: -
Industry Classification	: ISIC Division 15-36 (All manufacturing) ISIC 2927 (Manufacture of weapons and ammunitions) ISIC 2429 (Manufacture of other chemical products n.e.c.) ISIC 3530 (Manufacture of aircraft and spacecraft) ISIC 2423 (Manufacture of pharmaceuticals, medicinal chemicals and botanical products) ISIC 2710 (Manufacture of basic iron and steel) and 2731 (Casting of iron and steel) ISIC 3220 (Manufacture of television and radio transmitters and apparatus for line telephony and line telegraphy) ISIC 3320 (Manufacture of optical instruments and photographic equipment)
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to measures relating to investments such as but not limited to the following sectors, for reasons of security, defense, risk to health and morals: <ol style="list-style-type: none">1. Manufacture of firecrackers and other pyrotechnic devices2. Manufacture of arms and explosives3. Manufacture of dangerous drugs National Treatment and the Senior Management and Board of Directors obligations shall not apply to measures relating to investments such as but not limited to the following sectors, consistent with economic development goals: <ol style="list-style-type: none">1. Manufacture of iron and steel products; and,2. Establishment, installation, addition and operation of any wood or forest products processing plants. Measures may include but not be limited to foreign equity restrictions and export requirements.
Source of Measure	: - 1987 Constitution of the Republic of the Philippines. - Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179.) - Iron & Steel Industry Act (R.A. No. 7103). - Omnibus Investments Code of 1987 (E.O. No. 226). - Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165).

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- Local Government Code of 1991 (R.A. No. 7160).
- Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734).
- Creating the Cordillera Administrative Region (E.O. No. 220).
- Medium Term Philippine Development Plan.
- Treaties.
- Presidential and Administrative Issuances.

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16.

Sector	: Agriculture and Fishery and Services Incidental
Sub-Sector	: -
Industry Classification	: ISIC 0111 (Growing of cereals and other crops n.e.c) ISIC 0500 (Fishing, operation of fish hatcheries and fish farms; service activities incidental to fishing) CPC Groups 881-882 (Services incidental to agriculture, hunting and forestry) (Services incidental to fishing)
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to food security, poverty alleviation and social equity, income enhancement and profitability, global competitiveness and sustainability. This shall include restrictions on foreign equity. ⁶
Source of Measure	: - 1987 Constitution of the Republic of the Philippines. - Agriculture and Fisheries Modernization Act of 1997 (R.A. No. 8435). - Decree Authorizing Aliens as well as Associations, Corporations or Partnerships owned in whole or in part by Foreigners to Engage in the Rice and Corn Industry, and for other purposes (P.D. No. 194). - Philippine Fisheries Code of 1998 (R.A. No. 8550). - High Value Crops Development Act of 1995 (R.A. 7900). - Local Government Code of 1991 (R.A. No. 7160). - Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). - Creating the Cordillera Administrative Region (E.O. No. 220). - Presidential and Administrative Issuances.

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⁶ For illustrative purposes, small-scale fishing is closed to foreign investments while foreign equity in the production of biofuel crops and deep-sea fishing may be allowed up to 40% subject to other requirements and terms and conditions imposed by the relevant authorities.

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17.

Sector	: Forestry and Services Incidental
Sub-Sector	: -
Industry Classification	: ISIC 0200 (Forestry, logging and related service activities) CPC Group 881 (Services incidental to agriculture, hunting and forestry)
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to utilization, exploitation, occupation, possession, or conduct of any activity within any forest and grazing land. Foreign equity may be allowed up to 40%, subject to government approval <u>Note:</u> Members of the Board of Directors or governing body of corporation or associations shall be allowed in proportion to their allowable participation or share in the capital of such enterprises.
Source of Measure	: - 1987 Constitution of the Republic of the Philippines. - Revised Forestry Code of the Philippines (P.D. No. 705). - Chainsaw Act (R.A. No. 9175). - Local Government Code of 1991 (R.A. No. 7160). - Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). - Creating the Cordillera Administrative Region (E.O. No. 220). - Presidential and Administrative Issuances.

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18.

Sector	: Mining and Quarrying and Services Incidental
Sub-Sector	: -
Industry Classification	: ISIC Section C (Mining & Quarrying) CPC Group 883 (Services Incidental to Mining)
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and the Senior Management and Board of Directors obligations shall not apply to measures relating to exploration, development and utilization of mineral resources ⁷ . This shall include but not be limited to prohibition on foreign equity in small-scale mining and restriction on foreign equity on other mining activities.
Source of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- People's Small-Scale Mining Act of 1991 (R.A. No. 7076).- Establishing Small-scale Mining as a New Dimension in Mineral Developments (P.D. No. 1899).- Philippine Mining Act of 1995 (R.A. No. 7942).- Geothermal Energy, Natural Gas and Methane Gas Law (R.A. No. 5092).- Atomic Energy Regulatory and Liability Act of 1968 (R.A. No. 5207).- Coal Development Act of 1976 (PD 972).- Local Government Code of 1991 (R.A. No. 7160).- Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734).- Creating the Cordillera Administrative Region (E.O. No. 220).- Presidential and Administrative Issuances.

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⁷ For greater certainty, mineral resources shall include, but not be limited to metallic and non-metallic minerals, oil, geothermal, petroleum, natural gas, coal, and radioactive materials such as uranium and thorium.

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19.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment
Description of Measure	: National Treatment shall not apply to measures affecting national patrimony ⁸ and the rights of indigenous cultural communities in accordance with national development.
Source of Measure	: <ul style="list-style-type: none">- 1987 Constitution of the Republic of the Philippines.- Indigenous Peoples Rights Act of 1997 (R.A. No. 8371).- Local Government Code of 1991 (R.A. No. 7160).- Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734).- Creating the Cordillera Administrative Region (E.O. No. 220).- Presidential and Administrative Issuances.

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⁸ "National patrimony" refers to the natural resources of the Philippines and cultural heritage of the Filipinos. It also refers to Filipinos' intelligence in arts, sciences and letters.