

Supreme Court allows foreign construction firms to obtain regular licenses to engage in construction in the Philippines

The Supreme Court of the Philippines (**Court**) recently published its Decision in *Philippine Contractors Accreditation Board v. Manila Water Company, Inc.* (G.R. No. 217590, 10 March 2020), where it was held that parts of Rule 3 and Rule 12 of the Implementing Rules and Regulations (**IRR**) of Republic Act No. 4566, otherwise known as the Contractor's License Law (**RA 4566**), are void. The aforementioned portions of the IRR of RA 4566 impose foreign ownership restrictions for obtaining a Regular License to engage in construction in the Philippines.

Types of licenses under the IRR of RA 4566

Under the IRR of RA 4566, a person or entity that intends to engage in construction contracting in the Philippines must first obtain a contractor's license from the Philippine Contractors Accreditation Board (**PCAB**) (**PCAB License**).

There are two types of PCAB Licenses, namely, a Regular License and a Special License.

A Regular License may be issued only to Filipino sole proprietorships, and to partnerships and corporations that have at least 60% Filipino equity participation and that are organized under Philippine law. It authorizes the licensee to engage in construction contracting within the field and scope of the license classification, and is renewable annually.

On the other hand, a Special License may be issued to (i) a foreign contractor, (ii) a joint venture composed of two contractors that have obtained their respective PCAB Licenses, or (iii) a consortium composed of a contractor that has obtained a PCAB License and a non-contractor. The issuance of a Special License is permissible only for very limited types of projects (i.e., government projects, generally), and will authorize the licensee to engage only in the construction of a single specific project. It must be renewed annually for as long as the project is in progress, but the number of renewals will be limited to the period until the completion of the specific project for which the license was issued.

In 2015, the IRR of RA 4566 was amended to allow for the issuance of a Regular License with Annotation, which is a sub-type of Regular License under the Quadruple A Category (**Quadruple-A License**). A Quadruple-A License may be issued to a corporation organized under Philippine law, including ones that are up to 100% foreign-owned. An applicant for a Quadruple-A License must have a minimum paid-up capitalization of at least PhP 1 Billion at the time it applies for the license. The holder of a Quadruple-A License may undertake only specific types of vertical and horizontal projects, each with a prescribed minimum contract value.

Ruling of the Court in *PCAB v. Manila Water Company, Inc.*

Voting 14-1, the Court struck down the provisions in the IRR of RA 4566 that imposed foreign ownership restrictions on the issuance of a Regular License.

The Court held that, although RA 4566 authorizes the PCAB to adopt rules to effect classification of contractors as may be necessary, RA 4566 did not intend to discriminate against foreign contractors, inasmuch as there are no restrictions that may be found in the law itself. It was ruled that the directive in RA 4566 for the PCAB to effect a classification for contractors is limited only to the classifications specifically provided under the said law, namely, general engineering contracting, general building

contracting, and specialty contracting. Nationality-based classification is not among the classifications contemplated under RA 4566.

The Court also held that the constitutional provision that limits the practice of professions to Filipino citizens is inapplicable to the licensing of contractors in the construction industry. The license required under RA 4566 is for the purpose of engaging in the business of construction contracting, and not for the purpose of practicing a profession.

It was also highlighted that, while the first and second Foreign Investment Negative Lists (**FINL**), which were issued in 1994 and 1996, respectively, included "private domestic construction contracts", from the third FINL in 1998 until the most recent 11th FINL issued in 2018, private construction contracts were no longer included.

Further, the Court acknowledged the Philippine Competition Commission's *amicus curiae* position that the construction industry should not be restricted to Filipinos, in order to encourage healthy competition among local and foreign contractors.

The Court found that the Philippine Constitution has not reserved the construction industry exclusively for Filipinos, and that the laws enacted by Congress also do not prohibit foreign entities from engaging in construction projects in the Philippines. Accordingly, the Court held that setting a foreign equity limit for a Regular License has no basis.

Why this ruling is significant

The Court's ruling effectively lifts the foreign ownership restrictions on engaging in construction projects in the Philippines, save only for those that remain under certain special laws. This is a welcome development for foreign construction firms that are looking to enter the Philippine market or expand their operations in the Philippines. This development is also significant because, as the Court itself noted, this will "open opportunities for development and innovation that the foreign industry may introduce to our local contractors to make them more competitive in the world market".

Actions to consider

Foreign contractors that are looking to establish or expand operations in the Philippines should keep abreast of developments on this matter, and plan their next actions accordingly.

Quisumbing Torres is closely monitoring the PCAB's response to the Supreme Court ruling, as the PCAB may need to put in place new procedures and/or requirements for PCAB License applications, in order to implement the ruling. We will be publishing updates on this matter in due course, as developments arise.

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The law is stated as of 21 September 2020.

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