In your legal system: (PHILIPPINES)

1. What national laws and regulations govern cross-border trade and foreign investment?

Please indicate as follows, as fully as possible:

Names of laws and regulations and the relevant webpages where these may be found in English (where available):

Name of Laws/ Regulaltions	Relevant Weblinks (if any)	Relevant Ministry/ Agency
1. Republic Act No. 7916, as amended by Republic Act No. 8748 (The Special Economic Zone Act of 1995)	www.peza.gov.ph	Philippine Economic Zone Authority (PEZA)
2. Republic Act No. 7903 (Zamboanga City Special Economic Zone Act of 1995)	www.zfa.gov.ph	Zamboanga City Special Economic Zone Authority (ZAMBOECOZONE)
3. Republic Act No. 7922 (Cagayan Special Economic Zone Act of 1995)	www.ceza.gov.ph	Cagayan Economic Zone Authority (CEZA)
4. Republic Act No. 9490 (Aurora Special Economic Zone Act of 2007)	www.aurorapacific.gov.ph	Aurora Pacific Economic Zone & Freeport Authority (APECO)
5. Republic Act No. 9728 (Freeport Area of Bataan Act of 2009)	www.freportareaofbataan.gov.ph	Authority of the Freeport Area of Bataan (AFAB)
6. Republic Act No. 7227 (Bases Conversion & Development Act of 1992)	www.bcda.gov.ph	Bases Conversion & Development Authority (BCDA) BCDA administered zones: Subic Special Economic Zone Clark Special Economic Zone & Clark Freeport Zone John Hay Special Economic Zone Poro Point Freeport Zone Bataan Technology Park
7. Republic Act No. 7042 (Foreign Investment Act of 1991)	www.dti.gov.ph www.sec.gov.ph	Department of Trade & Industry (DTI) and/or Securities & Exchange Commission (SEC)
8. Republic Act No. 7652 (Investor's Lease Act)	www.dti.gov.ph	Department of Trade & Industry (DTI)
9. Executive Order No. 226 (Omnibus Investment Code of 1987)	www.boi.gov.ph	Board of Investment (BOI)

2. What free trade agreements has your country entered into?

a. ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)
b ASEAN-China Free Trade Area (ACFTA)
c. ASEAN-India Free Trade Area (AIFTA)
d. ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEPA)
e. ASEAN-Korea Free Trade Area (AKFTA)
f. ASEAN Trade in Goods Agreement (ATIGA)
g. Philippines-Japan Economic Partnership Agreement (PJEPA)

(Source: www.dti.gov.ph)

3. What bilateral or regional investment agreements (other than those of ASEAN as a group) has your country entered into?

The Philippines has entered into bilateral and regional investment agreements with the countries stated below. (Source: http://investmentpolicyhub.unctad.org/IIA/CountryBits)

No.	Partners	Status/ Date of Signature	Date of entry into force
1	Argentina	In force 20/09/1999	01/01/2002:
2	Australia	In force 25/01/1995	08/12/1995
3	Austria	In force 11/04/2002	01/12/2003
4	Bangladesh	In force 08/09/1997	01/08/1998
5	BLEU (Belgium-Luxembourg Economic Union)	In force 14/01/1998	19/12/2003
6	Cambodia	Signed (not in force) 16/08/2000	
7	Canada	In force 10/11/1995	01/11/1996
8	Chile	In force 20/11/1995	06/08/1007
9	China	In force 20/07/1992	08/09/1995
10	Czech Republic	In force 05/04/1995	04/04/1996
11	Denmark	In force 25/09/1997	19/04/1998
12	Finland	In force 25/03/1998	16/04/1999
13	France	Terminated 14/06/1976	01/07/1976
14	France	In force 13/09/1994	13/06/1996
15	Germany	In force 18/04/1997	01/02/2000
16	India	In force 28/01/2000	29/01/2001

No.	Partners	Status/ Date of Signature	Date of entry into force
17	Indonesia	Signed (not in force)12/11/2001	
18	Iran, Islamic Republic of	Signed (not in force) 08/10/1995	
19	Italy	In force 17/06/1988	04/11/1993
20	Korea, Republic of	In force 07/04/1994	25/09/1996
21	Kuwait	Signed (not in force) 12/03/2000	
22	Mongolia	In force 01/09/2000	01/11/2001
23	Myanmar	In force 17/02/1998	11/09/1998
24	Netherlands	In force 27/02/1985	01/10/1987
25	Pakistan	Signed (not in force) 23/04/1999	
26	Portugal	In force 08/11/2002	14/08/2003
27	Romania	In force 18/05/1994	14/06/1998
28	Russian Federation	In force 12/09/1997	29/10/1998
29	Saudi Arabia	In force 17/10/1994	11/11/1996
30	Spain	In force 19/10/1993	21/09/1994
31	Sweden	Signed (not in force) 17/08/1999	

No.	Partners	Status/ Date of Signature	Date of entry into force
32	Switzerland	In force 31/03/1997	23/04/1999
33	Syrian Arab Republic	In force 25/11/2009	04/05/2010
34	Taiwan Province of China	In force 28/02/1992	28/02/1992
35	Thailand	In force 30/09/1995	06/09/1996
36	Turkey	In force 22/02/1999	17/02/2006
37	United Kingdom	In force 03/12/1980	02/01/1981
38	Viet Nam	In force 27/02/1992	29/01/199327/02/1992

4. If an investor obtains a money judgment in another ASEAN country, can the judgement be enforced in your country? YES.

a). What is the relevant law/regulation? The applicable law in the Philippines is Section 48 of the Rules of Court. Quoted below is the provision of the law, viz:

SEC. 48. *Effect of foreign judgments or final orders*.- 'The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order, is as as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title;

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

b). What is the available procedure? (Please indicate main steps briefly)

c). When might your system reject such enforcement nonetheless? (e.g. grounds)

To answer questions (b) & (c), the Supreme Court of the Philippines stated in the case of *PRISCILLA C. MIJARES, LORETTA ANN P. ROSALES, HILDA B. NARCISO, SR. MARIANI DIMARANAN, SFIC, and JOEL C. LAMANGAN in their behalf and on behalf of the Class Plaintiffs in Class Action No. MDL 840, United States District Court of Hawaii,* Petitioners*,* versus *HON. SANTIAGO JAVIER RANADA, in his capacity as Presiding Judge of Branch 137, Regional Trial Court, Makati City, and the ESTATE OF FERDINAND E. MARCOS, through its court appointed legal representatives in Class Action MDL 840, United States District Court of Hawaii, namely: Imelda R. Marcos and Ferdinand Marcos, Jr.,* Respondents *[G.R. NO. 139325, April 12, 2005], the action to be taken for the enforcement of foreign judgment before the regular courts. Quoted below is the resolution of the Supreme Court, viz:*

To resolve this question, a proper understanding is required on the nature and effects of a foreign judgment in this jurisdiction.

The rules of comity, utility and convenience of nations have established a usage among civilized states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries.[17] This principle was prominently affirmed in the leading American case of *Hilton v. Guyot*[18] and expressly recognized in our jurisprudence beginning with *Ingenholl v. Walter E. Olsen & Co*.[19] The conditions required by the Philippines for recognition and enforcement of a foreign judgment were originally contained in Section 311 of the Code of Civil Procedure, which was taken from the California Code of Civil

Procedure which, in turn, was derived from the California Act of March 11, 1872.[20] Remarkably, the procedural rule now outlined in Section 48, Rule 39 of the Rules of Civil Procedure has remained unchanged down to the last word in nearly a century. Section 48 states:

> SEC. 48. Effect of foreign judgments. 'The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:
>
> (a) In case of a judgment upon a specific thing, the judgment is conclusive upon the title to the thing;
>
> (b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title;
>
> In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

There is an evident distinction between a foreign judgment in an action *in rem* and one *in personam*. For an action *in rem,* the foreign judgment is deemed conclusive upon the title to the thing, while in an action *in personam,* the foreign judgment is presumptive, and not conclusive, of a right as between the parties and their successors in interest by a subsequent title.[21] However, in both cases, the foreign judgment is susceptible to impeachment in our local courts on the grounds of want of jurisdiction or notice to the party,[22] collusion, fraud,[23] or clear mistake of law or fact.[24] Thus, the party aggrieved by the foreign judgment is entitled to defend against the enforcement of such decision in the local forum. It is essential that there should be an opportunity to challenge the foreign judgment, in order for the court in this jurisdiction to properly determine its efficacy.[25]

It is clear then that it is usually necessary for an action to be filed in order to enforce a foreign judgment[26], even if such judgment has conclusive effect as in the case of *in rem* actions, if only for the purpose of allowing the losing party an opportunity to challenge the foreign judgment, and in order for the court to properly determine its efficacy.[27] Consequently, the party attacking a foreign judgment has the burden of overcoming the presumption of its validity.[28]

The rules are silent as to what initiatory procedure must be undertaken in order to enforce a foreign judgment in the Philippines. But there is no question that the filing of a civil complaint is an appropriate measure for such purpose. A civil action is one by which a party sues another for the enforcement or protection of a right,[29] and clearly an action to enforce a foreign judgment is in essence a vindication of a right prescinding either from a "conclusive judgment upon title" or the "presumptive evidence of a right."[30] Absent perhaps a statutory grant of jurisdiction to a quasi-judicial body, the claim for enforcement of judgment must be brought before the regular courts.[31]

There are distinctions, nuanced but discernible, between the cause of action arising from the enforcement of a foreign judgment, and that arising from the facts or allegations that occasioned the foreign judgment. They may pertain to the same set of facts, but there is an essential difference in the right-duty correlatives that are sought to be vindicated. For example, in a complaint for damages against a tortfeasor, the cause of action emanates from the violation of the right of the complainant through the act or omission of the

respondent. On the other hand, in a complaint for the enforcement of a foreign judgment awarding damages from the same tortfeasor, for the violation of the same right through the same manner of action, the cause of action derives not from the tortious act but from the foreign judgment itself.

More importantly, the matters for proof are different. Using the above example, the complainant will have to establish before the court the tortious act or omission committed by the tortfeasor, who in turn is allowed to rebut these factual allegations or prove extenuating circumstances. Extensive litigation is thus conducted on the facts, and from there the right to and amount of damages are assessed. On the other hand, in an action to enforce a foreign judgment, the matter left for proof is the foreign judgment itself, and not the facts from which it prescinds.

As stated in Section 48, Rule 39, the actionable issues are generally restricted to a review of jurisdiction of the foreign court, the service of personal notice, collusion, fraud, or mistake of fact or law. The limitations on review is in consonance with a strong and pervasive policy in all legal systems to limit repetitive litigation on claims and issues.[32] Otherwise known as the policy of preclusion, it seeks to protect party expectations resulting from previous litigation, to safeguard against the harassment of defendants, to insure that the task of courts not be increased by never-ending litigation of the same disputes, and - in a larger sense - to promote what Lord Coke in the *Ferrer's Case* of 1599 stated to be the goal of all law: "rest and quietness."[33] If every judgment of a foreign court were reviewable on the merits, the plaintiff would be forced back on his/her original cause of action, rendering immaterial the previously concluded litigation.[34]

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There is another consideration of supreme relevance in this case, one which should disabuse the notion that the doctrine affirmed in this decision is grounded solely on the letter of the procedural rule. We earlier adverted to the internationally recognized policy of preclusion,[46] as well as the principles of comity, utility and convenience of nations[47] as the basis for the evolution of the rule calling for the recognition and enforcement of foreign judgments. The US Supreme Court in *Hilton v. Guyot*[48] relied heavily on the concept of comity, as especially derived from the landmark treatise of Justice Story in his Commentaries on the Conflict of Laws of 1834.[49] Yet the notion of "comity" has since been criticized as one "of dim contours"[50] or suffering from a number of fallacies.[51] Other conceptual bases for the recognition of foreign judgments have evolved such as the vested rights theory or the modern doctrine of obligation.[52]

There have been attempts to codify through treaties or multilateral agreements the standards for the recognition and enforcement of foreign judgments, but these have not borne fruition. The members of the European Common Market accede to the *Judgments Convention,* signed in 1978, which eliminates as to participating countries all of such obstacles to recognition such as reciprocity and *révision au fond.*[53] The most ambitious of these attempts is the *Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters*, prepared in 1966 by the Hague Conference of International Law.[54] While it has not received the ratifications needed to have it take effect,[55] it is recognized as representing current scholarly thought on the topic.[56] Neither the Philippines nor the United States are signatories to the Convention.

Yet even if there is no unanimity as to the applicable theory behind the recognition and enforcement of foreign judgments or a universal treaty rendering it obligatory force, there is consensus that the viability of such recognition and enforcement is essential. Steiner and Vagts note:

. . . The notion of unconnected bodies of national law on private international law, each following a quite separate path, is not one conducive to the growth of a transnational community encouraging travel and commerce among its members. There is a contemporary resurgence of writing stressing the identity or similarity of the values that systems of public and private international law seek to further - a community interest in common, or at least reasonable, rules on these matters in national legal systems. And such generic principles as reciprocity play an important role in both fields.[57]

Salonga, whose treatise on private international law is of worldwide renown, points out:

Whatever be the theory as to the basis for recognizing foreign judgments, there can be little dispute that the end is to protect the reasonable expectations and demands of the parties. Where the parties have submitted a matter for adjudication in the court of one state, and proceedings there are not tainted with irregularity, they may fairly be expected to submit, within the state or elsewhere, to the enforcement of the judgment issued by the court.[58]

There is also consensus as to the requisites for recognition of a foreign judgment and the defenses against the enforcement thereof. As earlier discussed, the exceptions enumerated in Section 48, Rule 39 have remain unchanged since the time they were adapted in this jurisdiction from long standing American rules. The requisites and exceptions as delineated under Section 48 are but a restatement of generally accepted principles of international law. Section 98 of The Restatement, Second, Conflict of Laws, states that "a valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States," and on its face, the term "valid" brings into play requirements such notions as valid jurisdiction over the subject matter and parties.[59] Similarly, the notion that fraud or collusion may preclude the enforcement of a foreign judgment finds affirmation with foreign jurisprudence and commentators,[60] as well as the doctrine that the foreign judgment must not constitute "a clear mistake of law or fact."[61] And finally, it has been recognized that "public policy" as a defense to the recognition of judgments serves as an umbrella for a variety of concerns in international practice which may lead to a denial of recognition.[62]

The viability of the public policy defense against the enforcement of a foreign judgment has been recognized in this jurisdiction.[63] This defense allows for the application of local standards in reviewing the foreign judgment, especially when such judgment creates only a presumptive right, as it does in cases wherein the judgment is against a person.[64] The defense is also recognized within the international sphere, as many civil law nations adhere to a broad public policy exception which may result in a denial of recognition when the foreign court, in the light of the choice-of-law rules of the recognizing court, applied the wrong law to the case.[65] The public policy defense can safeguard against possible abuses to the easy resort to offshore litigation if it can be demonstrated that the original claim is noxious to our constitutional values.

There is no obligatory rule derived from treaties or conventions that requires the Philippines to recognize foreign judgments, or allow a procedure for the enforcement thereof. However, generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations.[66] The classical formulation in international law sees those customary rules accepted as binding result from the combination two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the *opinion juris sive necessitates* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.[67]

While the definite conceptual parameters of the recognition and enforcement of foreign judgments have not been authoritatively established, the Court can assert with certainty that such an undertaking is among those generally accepted principles of international law.[68] As earlier demonstrated, there is a widespread practice among states accepting in principle the need for such recognition and enforcement, albeit subject to limitations of varying degrees. The fact that there is no binding universal treaty governing the practice is not indicative of a widespread rejection of the principle, but only a disagreement as to the imposable specific rules governing the procedure for recognition and enforcement.

Aside from the widespread practice, it is indubitable that the procedure for recognition and enforcement is embodied in the rules of law, whether statutory or jurisprudential, adopted in various foreign jurisdictions. In the Philippines, this is evidenced primarily by Section 48, Rule 39 of the Rules of Court which has existed in its current form since the early 1900s. Certainly, the Philippine legal system has long ago accepted into its jurisprudence and procedural rules the viability of an action for enforcement of foreign judgment, as well as the requisites for such valid enforcement, as derived from internationally accepted doctrines. Again, there may be distinctions as to the rules adopted by each particular state,[69]but they all prescind from the premise that there is a rule of law obliging states to allow for, however generally, the recognition and enforcement of a foreign judgment. The bare principle, to our mind, has attained the status of *opinio juris* in international practice.

This is a significant proposition, as it acknowledges that the procedure and requisites outlined in Section 48, Rule 39 derive their efficacy not merely from the procedural rule, but by virtue of the incorporation clause of the Constitution. Rules of procedure are promulgated by the Supreme Court,[70] and could very well be abrogated or revised by the high court itself. Yet the Supreme Court is obliged, as are all State components, to obey the laws of the land, including generally accepted principles of international law which form part thereof, such as those ensuring the qualified recognition and enforcement of foreign judgments.[71]

Thus, relative to the enforcement of foreign judgments in the Philippines, it emerges that there is a general right recognized within our body of laws, and affirmed by the Constitution, to seek recognition and enforcement of foreign judgments, as well as a right to defend against such enforcement on the grounds of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

(Source: www.sc.judiciary.gov.ph)

5. Is your country a signatory to the New York Convention on the recognition and enforcement of international arbitration awards?

YES. The Philippines was among the first countries to sign the New York Convention on the recognition and enforcement of international arbitration awards. The Philippines signed on June 10, 1958. (Source: www.newyorkconvention.org/new-york-convention-countries)

If yes, what is the domestic implementing legislation for the New York Convention in your country?

The Philippines will only apply the New York Convention to the recognition and enforcement of awards made in the territory of another contracting state & only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under their national law. (Source: www.philippinesarbitartion.com)

6. Is your country a party to the ICSID Convention?

YES. The Philippines is a party to the ICSID Convention. The Philippines signed on September 26, 1978. Pursuant to Article 54(2) of the ICSID Convention, the Philippines has designated the Regional Trial Court of the City or Province where the arbitral proceedings were held or where the losing party resides or does business as competent for the recognition and enforcement of ICSID awards. (Source: www.philippinesarbitartion.com)

7. Does your system have an agency or team that is designated to address investor complaints or to assist aggrieved investors (particularly from ASEAN)? YES.

a). In the Philippine Economic Zone Authority (PEZA), aggrieved investors may file their complaints with the Office of the Director General. The PEZA is located at PEZA Bldg. Roxas Blvd. cor San Luis St., Pasay City, Philippines. The direct line is (632) 5513454; trunkline number: (632) 5513430-37 loc. 612 and telefax number: (632) 8916380.

b). In the Department of Trade and Industry (DTI), aggrieved investors may file their complaints at Investment Assistance and Services Department (IASD), Board of Investments at Industry & Investments Building, 385 Sen. Gil J. Puyat Avenue, Makati City, Philippines. The direct line is (632) 895-3989; trunkline number: (632) 897-6682 and telefax number: (632) 896-7342.