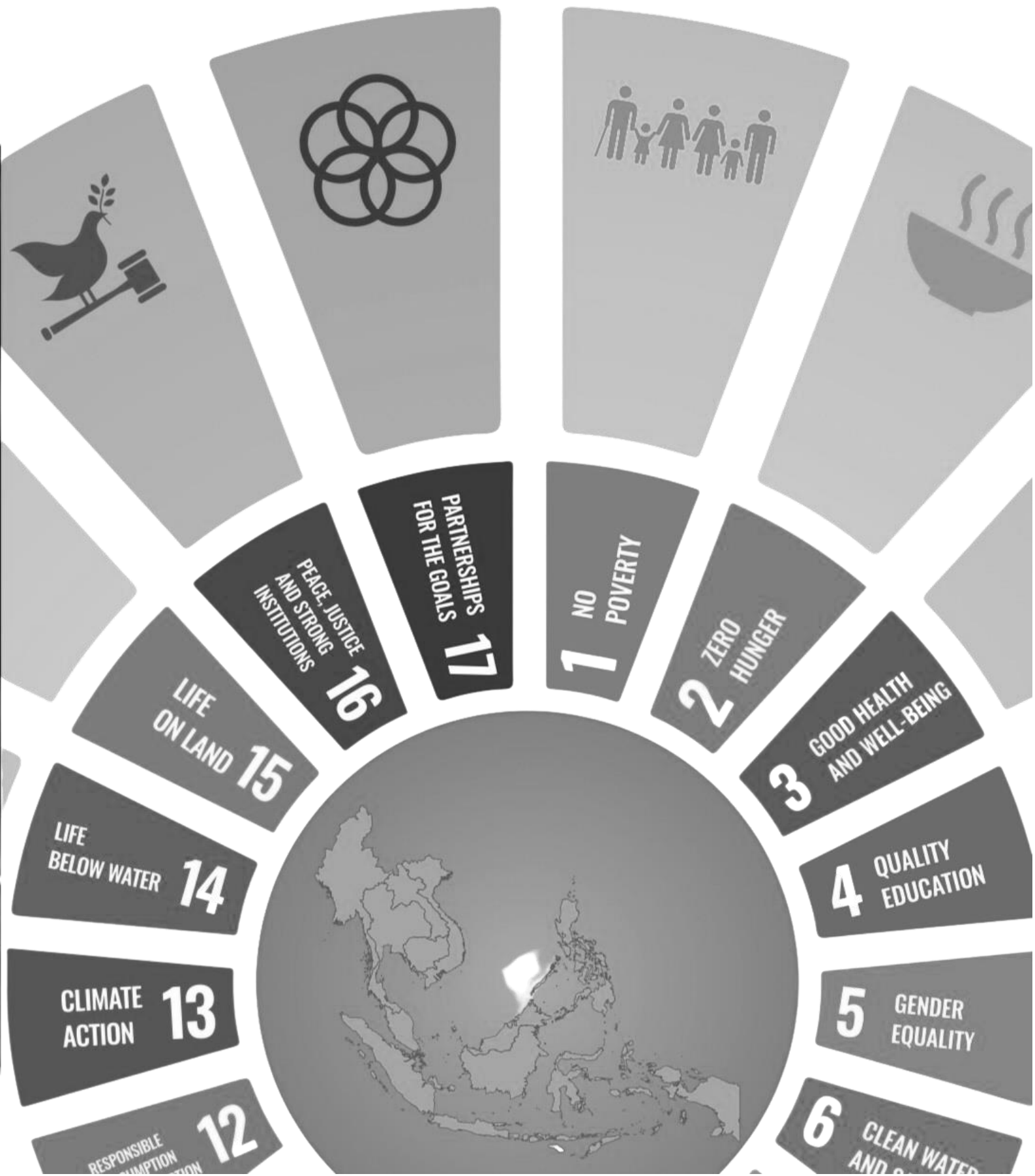


ASEAN SDG Bond Toolkit

Supplement: Legal and Regulatory Aspects for the Philippines



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Edited by Ashurst LLP

Introduction

Securities (including bonds) may not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the Philippine Securities and Exchange Commission ("**SEC**"), unless the securities are considered exempt securities or their sale or offering is considered an exempt transaction under the Securities Regulation Code ("**SRC**"). In this regard, a security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, of by any person controlled or supervised by, and acting as instrumentality of the said Government is exempt from the requirement of registration with the SEC.

The SRC and its implementing rules and regulations provide for the procedure for registration of securities and non-financial disclosure requirements. In addition, the respective guidelines for the issuance of green, social and sustainability bonds ("**GSS Bonds**") by the ASEAN Capital Markets Forum will apply to the issuance of ASEAN GSS Bonds in the Philippines.

According to data published by the SEC, the Philippines is a leader in the issuance of ASEAN GSS Bonds. As of July 31, 2022, USD6.77 billion or 26% of the total ASEAN GSS Bonds issued were by Philippine companies.

Executive Summary

Philippine issuers

Both private and public Philippine issuers are allowed to issue ASEAN Green Bonds and ASEAN Social Bonds. There are specific requirements to fulfil for the issuance of ASEAN Green Bonds and ASEAN Social Bonds.

Incentives are not yet available to private and public sector issuers.

Philippine investors

Philippine investors are allowed to invest in ASEAN Green Bonds and ASEAN Social Bonds in the same way as non-ASEAN Green Bonds and non-ASEAN Social Bonds bonds.

There is no specific prospectus exemption framework in the Philippines. The prospectus is part of the requirements for the filing of a registration statement with the SEC.





A. Information for Issuers in the Philippines

1. Are there any regulations around issuances of GSS and SDG Bonds?

The issuance of ASEAN Green Bonds and ASEAN Social Bonds must comply with the ASEAN Green Bond Standards and the ASEAN Social Bond Standards, respectively. The issuance of ASEAN Sustainability Bonds must comply with both.

- (i) Issuer: The issuer must be incorporated in any of the ASEAN countries or the project to be financed must be located in an ASEAN country
- (ii) Origination: ASEAN GSS Bonds must originate from an ASEAN member country.
- (iii) Use of Proceeds:
 - a. Proceeds of green bonds must be exclusively applied to finance or refinance eligible green projects. Green projects must provide clear environmental benefits. Categories of eligible projects include but are not limited to: renewable energy; energy efficiency; pollution prevention and control; environmentally sustainable management of living natural resources and land use; terrestrial and aquatic biodiversity conservation; clean transportation; sustainable water and waste water management; climate change adaptation; eco-efficient and/or circular economy adapted production technologies and processes; and green buildings which meet regional, national or internationally-recognized standards. Fossil fuel power generation projects are ineligible.
 - b. Proceeds of social bonds must be exclusively applied to finance or refinance eligible social projects. Social projects must provide clear social benefits. Categories of eligible projects include but are not limited to: affordable basic infrastructure; access to essential services; affordable housing; employment generation; food security; and socioeconomic advancement and empowerment. Projects which involve activities that pose a negative social impact related to alcohol, gambling, tobacco and weaponry are ineligible.
 - c. Proceeds of sustainability bonds must be exclusively applied to finance or refinance a combination of both green and social Projects that respectively offer environmental and social benefits.
- (iv) Process for Project Selection and Evaluation: The issuer must establish the process for project evaluation and selection prior to the issuance of GSS Bonds and disclose the same to investors in the documentation for the issuance. The following information must be publicly-available at the time of issuance and throughout the tenure of the GSS Bonds: the process of project evaluation; the use of proceeds and external review report on the process (if any).
- (v) Management of Proceeds: The issuer must track the proceeds as long as the GSS Bonds are outstanding.
- (vi) Reporting: The issuer must report to investors at least on an annual basis and until full allocation and as necessary in the event of material developments the following: list of projects to which the GSS Bonds proceeds have been allocated; brief description of the projects; and the amounts allocated and their expected impact.
- (vii) External Review: Issuers are recommended to appoint external review providers for their GSS Bonds issuances.

2. Can bonds be issued by private and public sector entities in the Philippines?

	Private Placement ¹ <i>Offers not made to the general public</i>	Public Placement ² <i>Offers made to the public</i>
Private Entity Issuers³ <i>Private companies and other entities</i>	Yes, private placements are exempt from registration with the SEC. 	Yes, though this is generally subject to the registration of the bonds with the SEC (unless considered an exempt transaction or an exempt security under the SRC). Typically, bonds under a public offer are listed with the Philippine Dealing and Exchange Corp ("PDEX"). 
Public Sector Issuers⁴ <i>Government bodies and agencies</i>	Yes, via over-the-counter method (see discussion under "Specific requirements for public sector issuers" in Question 3 of Part A). 	Yes. 

3. What key requirements must issuers in the Philippines fulfil to issue GSS and SDG Bonds?

	Private Placement <i>Offers not made to the general public</i>	Public Placement <i>Offers made to the public</i>
Corporate Form	Issuers are usually Philippine-incorporated corporations.	
Currency	Bonds may be issued in local or foreign currency.	
Registration with the SEC	Private issuances of bonds are exempt from SEC registration requirements.	Generally, a registration statement needs to be filed with the SEC. Additional requirements of the SEC include, among others: (i) prospectus, (ii) underwriting agreement with a universal bank, investment house or any other financial institution duly licensed by the Investment Houses Law (unless issuer can provide proof that it has the ability to sell all or substantially all of the bonds to the public), and (iii) credit rating agency rating.
Listing requirements	None.	Below is the general criteria for listing with the PDEX: (i) the security is technologically capable of being traded on the PDEX trading platform, (ii) security must be uncertificated, (iii) due diligence must have been performed in accordance with applicable regulatory standards by underwriters/arrangers/issue

¹ "Private Placement" refer to private placements or sale of securities to fewer than twenty persons in the Philippines during any twelve-month period.

² "Public Placement" refer to public offering under the SRC which is any offering of securities to the public or to anyone, whether solicited or unsolicited. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering: (i) publication in any newspaper, magazine or printed reading material which is distributed within the Philippines, (ii) presentation in any public or commercial place, (iii) advertisement or announcement on radio, television, telephone, electronic communications, information communication technology or any other forms of communication; or (iv) distribution and/or making available flyers, brochures or any offering material in a public or commercial place or to prospective purchasers through the postal system, information communication technology and other means of information distribution.

³ "Private entity issuer" means a private corporation incorporated in the Philippines.

⁴ "Public sector issuer" means the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as instrumentality of the said Government.

		managers, (iv) must have a licensed registrar, (v) must have a facility agent, (vi) must be freely transferable, (vii) must be registered with the SEC or exempt from registration, (viii) issuer or issue must be rated at the time of listing by duly licensed credit-rating agency, and (ix) must be subject of the commitments of market maker and broker specialists.
BSP Approval/Registration	<p>Generally, <i>Bangko Sentral ng Pilipinas</i>, the Philippines' central banking authority ("BSP") approval is required for a private issuer-issued and publicly-guaranteed foreign currency denominated bonds/notes/debt instruments whether to be issued onshore or offshore and for Peso-denominated bonds/notes/other debt instruments issued offshore, whether to be settled in foreign or local currency.</p> <p>If the bond/note/debt instrument is not publicly-guaranteed, it may be registered with the BSP to allow servicing using foreign exchange from the Philippine banking system.</p>	<p>Generally, BSP approval is required for a private issuer-issued and publicly-guaranteed foreign currency denominated bonds/notes/debt instruments whether to be issued onshore or offshore and for Peso-denominated bonds/notes/other debt instruments issued offshore, whether to be settled in foreign or local currency.</p> <p>If the bond/note/debt instrument is not publicly-guaranteed, it may be registered with the BSP to allow servicing using foreign exchange from the Philippine banking system.</p>
GSS specific requirements	None.	Please see item (vi) of Question 1 of Part A on the reporting requirements for GSS Bonds.
Specific requirements for public sector issuers	<p>Security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, of by any person controlled or supervised by, and acting as instrumentality of the said Government is exempt from the requirement of registration with the SEC.</p> <p>"Government Securities" are securities issued by the Republic of the Philippines and includes treasury bills, certificate of indebtedness, treasury bonds, notes, securities, and other indebtedness. Government Securities may be issued at a discount basis, at a premium, or at par and payable with or without coupon in accordance with the terms and conditions of issuance under a notice of offering or public notice issued by the Secretary of Finance. As a general rule, Government Securities are issued in scripless form, unless a physical certificate is otherwise Government securities and the subsequent transfers thereof shall be recorded in the Registry of Scripless Securities ("RoSS").</p> <p>Government Securities are generally issued and offered through (i) auction method, (ii) over-the-counter method, and (iii) tap method. Under the auction method, prospective buyers accredited by the Bureau of Treasury ("BTr") submit tenders and bids through the BTr's auction system. Over-the-counter method, on the other hand, is manner of primary origination or sale of Government Securities through offer or negotiation to entities as may be allowed by the BTr such as but not limited to government-owned and controlled corporations, tax-exempt institutions and local government units. The tap method is the sale or offering of Government Securities, open exclusively to Government Securities Eligible Dealers (GSEDs, those SEC-licensed dealer in Government Securities accredited by the BTr to participate in the primary sale of Government Securities) qualifying as market makers, BTr-managed funds, and other entities as may be allowed by the Secretary of Finance through the BTR.</p> <p>Generally, BSP approval is required for a public issuer issued foreign currency denominated bonds/notes/debt instruments whether to be issued onshore or offshore and for Peso-denominated bonds/notes/other debt instruments issued offshore, whether to be settled in foreign or local currency.</p>	

Specific requirements for foreign issuers	<p>The following securities are also exempt from registration requirements with the SEC:</p> <ul style="list-style-type: none"> (a) Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province, or political subdivision thereof on the basis of reciprocity, provided that the SEC may require compliance with the form and content of disclosures that the SEC may prescribe. (b) Any security issued or guaranteed by multilateral financial entities established through a treaty or any other binding agreement to which the Philippines is a party or subsequently becomes a member (“MFE”), e.g., international financial institutions, multilateral development banks, development finance institutions or any other similar entities; or by facilities or funds established, administered, and supported by MFEs, provided that the issuer shall file an offering circular/memorandum in a format prescribed by the SEC and containing among others: (1) information about the issuer and the security to be issued; (2) information about the MFE; and (3) information about the guarantee.
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4. Are there any incentives for issuers of GSS Bonds or SDG Bonds?

No. There are no specific incentives for GSS bonds.

5. Other comments





None.

B. Information for Investors in the Philippines

1. Are there any regulations around offers of GSS and SDG Bonds to investors in the Philippines?

Please see Question 1 of Part A. There are no specific exemptions for GSS Bonds.

2. Can investors in the Philippines subscribe for SDG and GSS Bonds?

	Private Placement <i>Offers not made to the general public</i>	Public Placement <i>Offers made to the public</i>
Private Entity Issuers <i>Private companies and other entities</i>	Yes. 	Yes. 
Public Sector Issuers <i>Government bodies and agencies</i>	Yes. 	Yes. 

3. Are there any incentives for investors investing in GSS Bonds or SDG Bonds?

No. There are no specific incentives for GSS bonds.

4. When can an offer be made to investors in the Philippines without a prospectus?

There is no specific prospectus exemption framework in the Philippines. The prospectus is part of the requirements for the filing of a registration statement with the SEC. As mentioned previously, certain securities and transactions are exempt from the requirement of registration.

Exempt securities are:

- Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of said Government;
- Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity, provided that the SEC may require compliance with the form and content of disclosures as the SEC may prescribe.
- Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory body.
- Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Regulatory Board, or the Bureau of Internal Revenue.
- Any security issued by a bank except its own shares of stock.

The SEC may, by rule or regulation after public hearing, add to the foregoing any class of securities if it finds that the enforcement of the SRC with respect to such securities is not necessary in the public interest and for the protection of investors. In this regard, the 2015 Rules and Regulations of the SRC ("SRC IRR") provides for additional exempt securities.⁵

⁵ Rule 9.1 of the SRC IRR provides that the registration requirements does not apply to:

- Any evidence of indebtedness issued by a financial institution that has been licensed by the BSP to engage in banking or quasi-banking;
- Evidence of indebtedness issued to the BSP under its open market and/or rediscounting operations;
- Bills of exchange arising from a *bona fide* sale of goods and services that are distributed and/or traded by banks or investment houses duly licensed by the SEC and BSP through an organized market that is operated under the rules approved by the SEC;
- Any security issued or guaranteed by MFEs; Provided, that the issuer shall file an offering circular/memorandum in a format prescribed by the SEC and containing among others; (1) information about the issuer and the security to be issued, (2) information about the MFE, and (3) information about the guarantee; and
- Evidence of indebtedness, *e.g.*, commercial papers, that meet the following conditions: (a) issued to not more than nineteen (19) non-institutional lenders; (b) payable to a specific person; (c) neither negotiable nor assignable and held on to maturity; and (d)

In addition to exempt securities, the registration requirement does not apply to exempt transactions. The following transactions, among others, are generally considered exempt transactions:

- (a) the sale of securities by an issuer to fewer than twenty (20) persons in the Philippines during any twelve-month period.
- (b) The sale of securities to any number of the following qualified buyers: (i) bank; (ii) registered investment house; (iii) insurance company; (iv) pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof or managed by a bank or other persons authorized by the BSP to engage in trust functions; (v) investment company; or (vi) such other person as the SEC may by rule determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.

C. Notable developments

In November 2021, the Republic of the Philippines (“**ROP**”) established its Sustainable Finance Framework to support its sustainability commitments. The framework sets out how the ROP intends to raise GSS bonds, loans, and other debt instruments in the international capital markets. Proceeds raised under this framework will be used to support projects that reflect the Philippines’ commitment toward sustainable development and the United Nations Sustainable Development Goals, and the ROP’s climate change commitments under the National Framework Strategy on Climate Change and the ROP’s Nationally Determined Contribution.

in an amount not exceeding One Hundred Fifty Million Pesos (PhP150,000,000.00) or such higher amount as the Commission may prescribe.



About Ashurst

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In Singapore, through our Formal Law Alliance, known as Ashurst ADT Law, we are able to provide the full breadth of Singapore and international law services from one integrated platform.

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About SyCip Salazar Hernandez & Gatmaitan

Founded in 1945, SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) is one of the largest law firms in the Philippines with offices in Makati City, the country's business and financial center, as well as in Cebu City, Davao City and the Subic Bay Freeport Zone. The Firm offers a broad and integrated range of legal services, covering the following fields: Banking, finance and securities, Special projects, Corporate services, General business law, Tax, Intellectual property, Employment and immigration, Litigation, and Dispute resolution. SyCipLaw is ranked by Chambers Global, Chambers Asia Pacific, The Legal 500, asialaw Profiles, Asia Business Law Journal, IFLR1000 and Benchmark Litigation as a top-tier firm in the Philippines.

SyCipLaw has had a Sustainability Policy since 2017. Under the latter, the firm seeks to assist in the task of social and economic development by practicing law in the best traditions of the profession, and to assist the firm's clients in their own quest for sustainability.

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