



# PHILIPPINES

## LGBT+ Business Climate Score<sup>1</sup>

Out Leadership's snapshot of the current state of affairs for LGBT+ people, through the lens of international business.

The business Climate Score rating is out of ten possible points, and is based on ten independently verifiable indicators of the legal, cultural and business context for LGBT+ people.

**5**

0	1	2	3	4	5	6	7	8	9	10
				<b>1</b> <i>Yes</i>						
1. Are consensual homosexual acts between adults legal?						6. Is sex reassignment surgery at birth for intersex children prohibited?				<b>0</b> <i>No</i>
2. Are marriage or civil unions for same-sex couples available?				<b>0</b> <i>No</i>		7. Are sexual orientation and gender identity discrimination in the provision of goods and services prohibited?				<b>0</b> <i>No</i>
3. Is being LGBT+ punishable by death?				<b>1</b> <i>No</i>		8. Is there a US State Department warning against travel for LGBT+ individuals?				<b>0.5</b> <i>No such warning, but there is a mention of risk of discrimination and harassment for LGBT+ individuals</i>
4. Are sexual orientation and gender identity discrimination in employment prohibited?				<b>0.5</b> <i>Only social work is protected</i>		9. Do companies sponsor Pride?				<b>0.5</b> <i>No</i>
5. Can transgender people legally change their gender markers?				<b>0.5</b> <i>No, unless they are affected by congenital adrenal hyperplasia and other intersex situations</i>		10. Are there laws prohibiting freedom of assembly or speech for LGBT+ people (i.e. "anti-propaganda laws", media gags, etc)?				<b>1</b> <i>No, but general laws on Reporting of Communicable Diseases (2019) and the Public Assembly Act (1985) are instrumentalised to stop LGBT+ propaganda</i>

<sup>1</sup> Note to Macquarie: This document is prepared based on our review of publicly available materials in English only, which may be second-hand in nature, and we are unable to review any materials in Filipino, so it would be prudent to confirm with a local counsel as necessary.

## How to Use This Brief

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As a business leader, you have the opportunity to create change for LGBT+ people around the world – both within your organizations and in the countries where you do business. This brief provides valuable information to inform your conversations with:

**Internal Staff:** Ensure that staff at your company who do business in-country are aware of the laws and other regulations that impact LGBT+ people there, and that they've adopted the appropriate internal policies for their location.

**Government Leaders:** In your meetings with government leaders, particularly those focused on business expansion or diplomacy, we encourage you to bring up the information shared in this brief in an appropriate way, and help them understand how LGBT+ inclusive policies are part of your company's best practices, and acknowledged as global standards. You are the best person to judge whether you have the ability to have such a conversation with a local leader in an appropriate way. Your Government Affairs officer, Diversity & Inclusion head, or equivalent may be appropriate to include in these conversations.

**In-country Business Partners:** In conversations with business partners, when appropriate, ask them what they're doing to address LGBT+ inclusion, and help explain why inclusion positively impacts your ability to conduct business there.

## Current Environment

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### a. Same sex activities

Non-commercial private same-sex activity between consenting adults is not criminalized in the Philippines. The age of consent is set at 18, although contact with minors (those under 18) is considered an offense if the minor consents to the act for money, gain, or any forms of remuneration, or as the result of an influence of any adult person. While same-sex relationships are not recognized, the Supreme Court has invalidated government regulations that infringed on the sexual relations of consenting adults, stating that these violated the privacy rights and personal dignity of individuals (Ocampo, 2011). This means that consenting adults cannot be prevented from engaging in sex in "hotels/motels" regardless of their sexual orientation or gender identity, and LGBT+ people have a legitimate claim on their right to privacy.

### b. Same sex marriage and civil unions

The Family Code of the Philippines defines marriage as "*a special contract of permanent union between a man and a woman*". The Constitution of the Philippines does not prohibit same-sex marriage, but also does not recognise it legally. In September 2019, the Supreme Court dismissed a petition to allow same-sex marriage, ruling that the applicant did not have a partner to apply for a marriage license and therefore could not claim to be a victim of discrimination under existing laws. The court did however acknowledge that the 1987 Constitution "*does not define or restrict marriage on the basis of sex, gender, sexual orientation, or gender identity or expression*". It also recognized the long history of discrimination and marginalization faced by the LGBT+ community and called on the Congress to address the recognition of same-sex unions.



### **c. Anti-discrimination provisions and direct LGBT+ ordinances**

The Magna Carta for Public Social Workers addresses concerns regarding the discrimination of public social workers because of their sexual orientation:

*"Section 17. Rights of a Public Social Worker. – Public social workers shall have the following rights:*

*1.) Protection from discrimination on the grounds of sex, sexual orientation, age, political or religious beliefs, civil status, physical characteristics/disability or ethnicity;*

*2.) Protection from any form of interference, intimidation, harassment, or punishment, to include, but not limited to, arbitrary reassignment or termination of service, in the performance of his/her duties and responsibilities."*

The Implementing Rules and Regulations (IRR) of the Anti-Bullying Act of 2013 (Republic Act No. 10627) prohibits bullying in all public and private kindergarten, elementary and secondary schools, and requires schools to adopt bullying prevention and intervention programs. The IRR defines bullying to include "gender-based bullying" which refers to any act that humiliates or excludes a person on the basis of perceived or actual sexual orientation and gender identity. Failure to comply shall subject school administrators to appropriate administrative sanctions. Erring private schools shall likewise suffer the penalty of suspension of their permits to operate.

The Special Protection of Children in Situations of Armed Conflict Act (Republic Act No. 11188) provides the right of children in situations of armed conflict to be treated humanely in all circumstances, without any adverse distinction founded on sexual orientation or gender identity and expression (SOGIE), among other criteria.

The Safe Spaces Act (Republic Act No. 11313) prohibits gender-based streets and public spaces sexual harassment, which is committed through any unwanted and uninvited sexual actions or remarks against any person. This includes transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on a person's appearance. Such harassment can be done verbally or physically when it is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces. It can also be done online whether publicly or through direct and private messages. The law also requires local government units to pass an ordinance to apply such law, to provide measures provide measures to prevent gender-based sexual harassment in educational institutions, and to discourage and impose fines on acts of gender-based sexual harassment. Penalties under this law include monetary fine and/or imprisonment.

The Sexual Orientation and Gender Identity Expression (SOGIE, Equality Bill, also known as the Anti-Discrimination Bill (ADB)) is a bill that was proposed by the 17th Congress of the Philippines. It is intended to prevent various economic and public accommodation-related acts of discrimination against people based on their sexual orientation, gender identity or expression. The current version of the bill is sponsored by Kaka Bag-ao, Geraldine Roman, Tom Villarin in the House of Representatives, and Risa Hontiveros in the Senate. The version in the House of Representatives passed its third reading most recently on September 20, 2017, but died in the Senate. It has been refiled by Senator Risa Hontiveros in the 18th Congress.



The draft SOGIE Bill seeks to impose penalties for acts of discrimination against the LGBT+ community, including a fine between PHP 100,000 and PHP 500,000, and imprisonment up to 12 years.

- Marawi is the only city in the Philippines which has an intentional anti-LGBT+ ordinance. In December 2004, Marawi City Council passed a law banning gay men from "going out in public wearing female attire, makeup, earrings or other ornaments to express their inclinations for femininity". Additionally, women (only) must not "induce impure thoughts or lustful desires". The Mayor said these moves were part of an Islamic "cleaning and cleansing" drive. People who violate these rules will have paint poured on their heads by the muttawa, the religious police.

#### **d. Transgender rights and recognition of name/sex changes on legal documents**

- The Supreme Court has ruled that Filipino citizens do not have the right to legally change their sex on official documents (driver's license, passport, birth certificate, Social Security records, etc.) if they are transsexual and have undergone sexual reassignment surgery. The Supreme Court said that if a man, now anatomically a female, were to be allowed to legally change his sex it would have "serious and wide-ranging legal and public policy consequences", citing the institution of marriage in particular.

#### **e. Legal recognition of name/sex changes on documents for intersex individuals**

- The Supreme Court Justice Leonardo Quisumbing on September 12, 2008 allowed Jeff Cagandahan to change both his birth certificate, gender and name from Jennifer to Jeff:

*"We respect respondent's congenital condition and his mature decision to be a male. Life is already difficult for the ordinary person. We cannot but respect how respondent deals with his unordinary state and thus help make his life easier, considering the unique circumstances in this case. In the absence of a law on the matter, the court will not dictate on respondent concerning a matter so innately private as one's sexuality and lifestyle preferences, much less on whether or not to undergo medical treatment to reverse the male tendency due to rare medical condition, congenital adrenal hyperplasia. In the absence of evidence that respondent is an 'incompetent,' and in the absence of evidence to show that classifying respondent as a male will harm other members of society [...] the court affirms as valid and justified the respondent's position and his personal judgment of being a male."*

*Court records showed that – at 6, he had small ovaries; at 13, his ovarian structure was minimized and he had no breasts and did not menstruate. The psychiatrist testified that "he has both male and female sex organs, but was genetically female, and that since his body secreted male hormones, his female organs did not develop normally." The Philippines National Institutes of Health said "people with congenital adrenal hyperplasia lack an enzyme needed by the adrenal gland to make the hormones cortisol and aldosterone."*

- In 2019, the Metro Manila Pride March recorded 70,000 protesters expressing their support for LGBT+ rights.

- On June 26, 2020, police in Manila arrested at least 20 people at an LGBT+ Pride event protesting an anti-terrorism bill that threatens rule of law in the Philippines. The police did not explain why they were arresting the protesters, only telling them that their actions were prohibited by law. There were no allegations of violence. The protesters were subsequently charged under the Law on Reporting of Communicable Diseases (2019) and the Public Assembly Act (1985).

- Filipino human rights advocates have argued that these laws do not prohibit protests and rallies, and the protesters were following social distancing protocols and wearing masks.

#### **f. Treatment of LGBT+ activism/protests**

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***g. Public viewpoints on LGBT+ matters***

CNN Philippines: <https://cnnphilippines.com/life/culture/2020/6/26/pride-march-as-protest.html>

<https://rappler.com/nation/filipinos-acceptance-homosexuality-2019-pew-research-report>

**• Giney Villar, a founding member for Women Supporting Women Center:**

- People should step up and fight for the freedom and rights;
- People should have a seat in our local government to represent the community;
- People should participate in international movements, organizations and holding discussions with communities; and The government should set up ADO (anti-discrimination ordinance).

**•Perci Cendaña, UP Babaylan and former National Youth Commission as the Commissioner for Luzon:**

- People should step up and express their feelings;
- People should be proud of who they are, and should feel no shame at all; and
- It is important to spread such message out to others.

**• Teilhard Paradela, member, Babaylanes and director of Babaylan Archive Project:**

- Her first Pride experience was in 1996;
- She wanted to remove the ideology of being homophobic and transphobic;
- Since committing in LGBT+ issues, she felt she became more mature, understanding and open-minded; and
- She realised the importance of gaining rights for LGBT+ society.

A survey regarding acceptance of homosexuality was conducted in the Philippines in 2013, and the acceptance rate of the result was around 73 percent. This shows that the Philippines society does not actually really discriminate people who are LGBT+, instead the law and government do and restrict their acceptance in the society. Filipinos with higher education standard expressed greater acceptance rate.



# Impact of LGBT Discrimination on Business & Talent

1 • NO RISK

2 • LOW RISK

3 • MODERATE RISK

4 • NOTABLE RISK

5 • HIGH RISK

## BRAND RISK **MODERATE**

In terms of supporting LGBT+ rights, there is modest brand risk to operating in the Philippines. While the government is slow in developing a solid legal framework protecting LGBT+ rights, the majority of the population does not appear to have an issue with accepting LGBT+ individuals.

## CLIENT RISK **NOTABLE RISK**

The lack of government support for LGBT+ rights and the entrenched cultural and political homophobia linked to specific areas of the Philippines (e.g. Marawi) creates a non-negligible risk that LGBT+ clients may feel alienated by business conducted in the Philippines.

## TALENT RISK **NOTABLE RISK**

Though consensual, non-commercial same-sex relations are legal in the Philippines above 18 years of age, same-sex marriage is not, making it unwise to send LGBT+ talent abroad, where they'll likely face discrimination and their spouses won't be recognized.

## MARKETING CHALLENGES **MODERATE**

In terms of supporting LGBT+ rights, there is modest marketing risk to operating in the Philippines. The rationale is the same as the Brand Risk above.





## Special Thanks

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