

Philippines

Foreign Investment Act of 1991 (1991)

Unofficial translation

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Foreign Investment Act of 1991

Republic Act No. 7042

(As amended by RA 8179)

AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Title

This Act shall be known as the "Foreign Investments Act of 1991".

Section 2. Declaration of policy

It is the policy of the State to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations, and governments, including their political subdivisions, in activities which significantly contribute to national industrialization and socio-economic development to the extent that foreign investment is allowed in such activity by the Constitution and relevant laws. Foreign investments shall be encouraged in enterprises that significantly expand livelihood and employment opportunities for Filipinos; enhance economic value of farm products; promote the welfare of Filipino consumers; expand the scope, quality and volume of exports and their access to foreign markets; and/or transfer relevant technologies in agriculture, industry and support services. Foreign investments shall be welcome as a supplement to Filipino capital and technology in those enterprises serving mainly the domestic market.

As a general rule, there are no restrictions on extent of foreign ownership of export enterprises. In domestic market enterprises, foreigners can invest as much as one hundred percent (100%) equity except in areas included in the negative list. Foreign owned firms catering mainly to the domestic market shall be encouraged to undertake measures that will gradually increase Filipino participation in their businesses by taking in Filipino partners, electing Filipinos to the board of directors, implementing transfer of technology to Filipinos, generating more employment for the economy and enhancing skills of Filipino workers.

Section 3. Definitions

As used in this Act:

- a. the term "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.
- b. the term "investment" shall mean equity participation in any enterprise organized or existing under the laws of the Philippines;

c. the term “foreign investment” shall mean an equity investment made by a non-Philippine national in the form of foreign exchange and/or other assets actually transferred to the Philippines and duly registered with the Central Bank which shall assess and appraise the value of such assets other than foreign exchange;

d. the phrase “doing business” shall include soliciting orders, service contracts, opening offices, whether called “liaison” offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, That the phrase “doing business” shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account;

e. the term “export enterprise” shall mean an enterprise wherein a manufacturer, processor or service (including tourism) enterprise exports sixty percent (60%) or more of its output, or wherein a trader purchases products domestically and exports sixty percent (60%) or more of such purchases;

f. the term “domestic market enterprise” shall mean an enterprise which produces goods for sale, or renders services to the domestic market entirely or if exporting a portion of its output fails to consistently export at least sixty percent (60%) thereof; and

g. the term “Foreign Investments Negative List” or “Negative List” shall mean a list of areas of economic activity whose foreign ownership is limited to a maximum of forty percent (40%) of the equity capital of the enterprises engaged therein.

Section 4. Scope

This Act shall not apply to banking and other financial institutions which are governed and regulated by the General Banking Act and other laws under the supervision of the Central Bank.

Section 5. Registration of investments of non-philippine nationals

Without need of prior approval, a non-Philippine national, as that term is defined in Section 3 a), and not otherwise disqualified by law may, upon registration with the Securities and Exchange Commission (SEC), or with the Bureau of Trade Regulation and Consumer Protection (BTRCP) of the Department of Trade and Industry in the case of single proprietorships, do business as defined in Section 3 d) of this Act or invest in a domestic enterprise up to one hundred percent (100%) of its capital, unless participation of non-Philippine nationals in the enterprise is prohibited or limited to a smaller percentage by existing law and/or under the provisions of this Act. The SEC or BTRCP, as the case may be, shall not impose any limitations on the extent of foreign ownership in an enterprise additional to those provided in this Act: Provided, however, That any enterprise seeking to avail of incentives under the Omnibus Investment Code of 1987 must apply for registration with the Board of Investments (BOI), which shall process such application for registration in accordance with the criteria for evaluation prescribed in said Code: Provided, finally, That a non-Philippine national intending to engage in the same line of business as an existing joint venture, in which he or his majority shareholder is a substantial partner, must disclose the fact and the names and addresses of the partners in the existing joint venture in his application for registration with SECTION During the transitory period as provided in Section 15 hereof, SEC shall disallow registration of the applying non-Philippine national if the existing joint venture enterprise, particularly the Filipino partners therein, can reasonably prove they are capable to make the investment needed for the domestic market activities to be undertaken by the competing applicant. Upon effectivity of this Act, SEC shall effect registration of any enterprise applying under this Act within fifteen (15) days upon submission of completed requirements.

Section 6. Foreign investment in export enterprises

Foreign investment in export enterprises whose products and services do not fall within Lists A and B of the Foreign Investment Negative List provided under Section 8 hereof is allowed up to one hundred percent (100%) ownership.

Export enterprises which are non-Philippine nationals shall register with BOI and submit the reports that may be required to ensure continuing compliance of the export enterprise with its export requirement. BOI shall advise SEC or BTRCP, as the case may be, of any export enterprise that fails to meet the export ratio requirement. The SEC or BTRCP shall thereupon order the non-complying export enterprise to reduce its sales to the domestic market to not more than forty percent (40%) of its total production; failure to comply with such SEC or BTRCP order, without justifiable reason, shall subject the enterprise to cancellation of SEC or BTRCP registration, and/or the penalties provided in Section 14 hereof.

Section 7. Foreign investment in domestic market enterprises.

Non-Philippine nationals may own up to one hundred percent (100%) of domestic market enterprises unless foreign ownership therein is prohibited or limited by the Constitution existing law or the Foreign Investment Negative List under Section 8 hereof.

Section 8. List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List)

The Foreign Investment Negative List shall have two (2) components lists; A, and B:

- a. List A shall enumerate the areas of activities reserved to Philippine nationals by mandate of the Constitution and specific laws.
- b. List B shall contain the areas of activities and enterprises regulated pursuant to law:

1. which are defense-related activities, requiring prior clearance and authorization from Department of National Defense (DND) to engage in such activity, such as the manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials; unless such manufacturing or repair activity is specifically authorized, with a substantial export component, to a non-Philippine national by the Secretary of National Defense; or
2. which have implications on public health and morals, such as the manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beerhouses, dance halls; sauna and steam bathhouses and massage clinics.

“Small and medium-sized domestic market enterprises, with paid-in equity capital less than the equivalent two hundred thousand US dollars (US\$200,000) are reserved to Philippine nationals, Provided that if:

1. they involve advanced technology as determined by the Department of Science and Technology; or
2. they employ at least fifty (50) direct employees, then a minimum paid-in capital of one hundred thousand US dollars (US\$100,000.00) shall be allowed to non-Philippine nationals.

Amendments to List B may be made upon recommendation of the Secretary of National Defense, or the Secretary of Health, or the Secretary of Education, Culture and Sports, endorsed by the NEDA, approved by the President, and promulgated by a Presidential Proclamation.

“Transitory Foreign Investment Negative List” established in Section 15 hereof shall be replaced at the end of the transitory period by the first Regular Negative List to be formulated and recommended by NEDA, following the process and criteria provided in Sections 8 of this Act. The first Regular Negative List shall be published not later than sixty (60) days before the end of the transitory period provided in said section, and shall become immediately effective at the end of the transitory period. Subsequent Foreign Investment Negative Lists shall become effective fifteen (15) days after publication in a newspaper of general circulation in the Philippines: Provided, however, That each Foreign Investment Negative List shall be prospective in operation and shall in no way affect foreign investment existing on the date of its publication.

“Amendments to List B after promulgation and publication of the first Regular Foreign Investment Negative List at the end of the transitory period shall not be made more often than once every two (2) years”.

Section 9. Investment rights of former natural-born Filipinos

For the purpose of this Act, former natural born citizens of the Philippines shall have the same investment rights of a Philippine citizen in Cooperatives under Republic Act No. 6938, Rural Banks under Republic Act No. 7353, Thrift Banks and Private Development Banks under Republic Act No. 7906, and Financing Companies under Republic Act No. 5980. These rights shall not extend to activities reserved by the Constitution, including:

1. the exercise of profession;
2. in defense related activities under Section 8 (b) hereof. Unless specifically authorized by the Secretary of National Defense; and,
3. activities covered by Republic Act No. 1180 (Retail Trade Act). Republic Act No. 5187

(Security Agency Act), Republic Act No. 7076 (Small Scale Mining Act), Republic Act No. 3018. As amended (Rice and Corn Industry Act). And P.D. 449 (Cockpits Operation and Management)".

Section 10. Other rights of natural born citizen pursuant to the provisions of article xii, section 8 of the constitution

Any natural born citizen who has lost his Philippine citizenship and who has the legal capacity to enter into a contract under Philippine laws may be a transferee of a private land up to a maximum area of five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land to be used by him for business or other purposes. In the case of married couples, one of them may avail of the privilege herein granted: Provided, That if both shall avail of the same, the total area acquired shall not exceed the maximum herein fixed.

In the case the transferee already owns urban or rural land for business or other purposes, he shall still be entitled to be a transferee of additional urban or rural land for business or other purposes which when added to those already owned by him shall not exceed the maximum areas herein authorized.

A transferee under this Act may acquire not more than two (2) lots which should be situated in different municipalities or cities anywhere in the Philippines: Provided, That the total land area thereof shall not exceed five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land for use by him for business or other purposes. A transferee who has already acquired urban land shall be disqualified from acquiring rural land and vice versa".

Section 11. Compliance with environmental standards

All industrial enterprises regardless of nationality of ownership shall comply with existing rules and regulations to protect and conserve the environment and meet applicable environmental standards.

Section 12. Consistent government action

No agency, instrumentality or political subdivision of the Government shall take any action in conflict with or which will nullify the provisions of this Act, or any certificate or authority granted hereunder.

Section 13. Implementing rules and regulations

NEDA, in consultation with BOI, SEC and other government agencies concerned, shall issue the rules and regulations to implement this Act within one hundred and twenty (120) days after its effectivity. A copy of such rules and regulations shall be furnished the Congress of the Republic of the Philippines.

Section 14. Administrative sanctions

A person who violates any provision of this Act or of the terms and conditions of registration or of the rules and regulations issued pursuant thereto, or aids or abets in any manner any violation shall be subject to a fine not exceeding one hundred thousand pesos (P100,000).

If the offense is committed by a juridical entity, it shall be subject to a fine in an amount not exceeding 1/2 of 1% of total paid-in capital but not more than five million pesos (P5,000,000). The president and/or officials responsible therefor shall also be subject to a fine not exceeding two hundred thousand pesos (P200,000.00).

In addition to the foregoing, any person, firm or juridical entity involved shall be subject to forfeiture of all benefits granted under this Act.

SEC shall have the power to impose administrative sanctions as provided herein for any violation of this Act or its implementing rules and regulations.

Section 15. Transitory provisions

Prior to effectivity of the implementing rules and regulations of this Act, the provisions of Book II of Executive Order 226 and its implementing rules and regulations shall remain in force.

During the initial transitory period of thirty-six (36) months after issuance of the Rules and Regulations to implement this Act, the Transitory Foreign Investment Negative List shall consist of the following:

A. List A:

1. All areas of investment in which foreign ownership is limited by mandate of Constitution and specific laws.

B. List B:

1. Manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military

ordnance, explosives, pyrotechnics and similar materials required by law to be licensed by and under the continuing regulation of the Department of National Defense; unless such manufacturing or repair activity is specifically authorized, with substantial export component, to a non-Philippine national by the Secretary of National Defense;

2. Manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beerhouses, dance halls; sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks they may pose to public health and morals;

3. "Small and medium-sized domestic market enterprises with paid-in equity capital less than the equivalent of Two-hundred thousand US dollars (US\$200,000.00), reserved to Philippine nationals. Provided, That if:

1. they involve advanced technology as determined by the Department of Science and Technology; or
2. they employ at least fifty (50) direct employee, then a minimum paid-in capital of One hundred thousand US dollars (US\$100,000.00) shall be allowed to non-Philippine nationals.

Section 16. Repealing clause

Articles forty-four (44) to fifty-six (56) of Book II of Executive Order No. 226 are hereby repealed.

All other laws or parts of laws inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 17. Separability clause

If any part or section of this Act is declared unconstitutional for any reason whatsoever, such declaration shall not in any way affect the other parts or sections of this Act.

Section 18. Effectivity

This Act take effect from fifteen (15) days after approval and publication in two (2) newspapers of general circulation in the Philippines.

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