

Philippines

AN ACT PROMOTING FOREIGN INVESTMENTS (2022)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

Contents

AN ACT PROMOTING FOREIGN INVESTMENTS, AMENDING THEREBY REPUBLIC ACT NO. 7042, OTHERWISE KNOWN AS THE "FOREIGN INVESTMENTS ACT OF 1991," AS AMENDED, 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

Recognizing that increased capital and technology benefits the Philippines and that global and regional economies affect the Philippine economy, 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 sustainable, inclusive, resilient, and innovative economic growth, productivity, global competitiveness, employment creation, technological advancement, and countrywide development to the extent that foreign investment is allowed in such activity by the Constitution and relevant laws, and consistent with the protection of national security. Foreign investments shall be encouraged in enterprises that significantly expand livelihood and employment opportunities for Filipinos; enhance economic value of agricultural products; promote the welfare of Filipino consumer; 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.

The State shall promote accountability and integrity in public office, as well as the promotion and administration of efficient public service to entice foreign investments.

Foreign investments shall be conducted based on the principles of transparency, reciprocity, equity and economic cooperation.

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 and duly recorded in the enterprise's stock and transfer book, or any equivalent registry of ownership;

c. The term "foreign investment" shall mean an equity investment made by non-Philippine national in the form of foreign exchange and/or other assets actually transferred to the Philippines and duly registered with the Bangko Sentral ng Pilipinas;

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

or 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 products goods for sale, or renders services to the domestic market entirely or if exporting a portion of its output fails to consistency 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.

h. The term "practice of profession" shall mean an activity or undertaking rendered and performed by a registered and duly licensed professional or holder of a special temporary permit as defined in the scope of practice of a professional regulatory law; and

i. The term "pipeline transaction" shall mean the sector which includes transport of goods or materials through a pipeline such as crude, refined, petroleum, natural gas, biofuels, and other chemically stable substance.

Section 4. Inter-Agency Investment Promotion Coordination Committee

There is hereby created the "Inter-Agency Investment Promotion Coordination Committee", hereinafter referred to as the "IIPCC", which shall be the body that will integrate all promotion and facilitation efforts to encourage foreign investments in the country. The Department of Trade and Industry (DTI) shall act as the IIPCC's lead agency. The IIPCC shall be composed of the:

a. Secretary of the DTI, to preside as Chairperson;

b. Secretary/Undersecretary of the Department of Finance (DOF) as Vice-Chairperson;

c. One (1) representative from the DTI-Board of Investments (BOI);

d. One (1) representative from the DTI-Philippine Economic Zone Authority (PEZA);

e. One (1) representative from the Department of Foreign Affairs (DFA), Office of the Undersecretary for Multilateral Affairs and International Economic Relations (OUMAIER);

f. One (1) representative from the National Economic and Development Authority (NEDA);

g. One (1) representative from the Department of Information and Communications Technology (DICT);

h. One (1) representative from the Commission on Higher Education (CHED);

i. One (1) representative from the Technical Education and Skills Development Authority (TESDA); and

j. Four (4) representatives composed of one (1) representative each from the National Capital Region, Luzon, Visayas and Mindanao, to be chosen from a list of nominees prepared and submitted by nationally recognized leading industry or business chambers, who shall be of known competence, probity, integrity and expertise in any of the fields of investment, advertising, banking, finance management and law, with at least ten (10) years of outstanding management or leadership experience.

The Chairperson may from time to time, as a particular foreign investment may require, request the participation of other government departments and agencies or instrumentalities, local government units (LGUs), nongovernmental organizations (NGOs) and local business chambers and enterprises. The IIPCC shall coordinate and, when necessary, partner with and assist the Bases Conversion and Development Authority (BCDA), Authority of the Freeport Area of Bataan (AFAB), Clark Development Corporation (CDC), Subic Bay Metropolitan Authority (SBMA), Cagayan Economic Zone Authority (CEZA), John Hay Management Corporation (JHMC), Poro Point Management Corporation (PPMC), Zamboanga City Special Economic Zone Authority (ZCSEZA), PHIVIDEC Industrial Authority (PIA), Aurora Pacific Economic Zone and Freeport Authority (APECO), Tourism Infrastructure and Enterprise Zone Authority (TIEZA) and all other similar existing authorities or that may be created by law, in promoting foreign investments to the country: Provided, That this shall not include the administration, design, and grant of fiscal incentives.

The BOI is designated as the secretariat of the IIPCC, implementing its policies and resolutions.

Section 4-A. Powers and Functions of the IIPCC

a. To establish both a medium-and-long-term Foreign Investment Promotion and Marketing Plan (FIPMP), coordinating all existing investment development plans and programs under the BOI, PEZA, and various investment promotion agencies (IPAs), LGUs, and other agencies, as delineated in Section 4-B of this Act;

b. To design a comprehensive marketing strategy and campaign, promoting the country as a desirable

- b. To design a comprehensive marketing strategy and campaign, promoting the country as a desirable investment area;
- c. To support inbound and outbound foreign direct and trade missions for new international markets to explore the country as a possible location to do business;
- d. To encourage and support research and development in priority areas indicated by the FIPMP;
- e. To monitor actual performance against measurable and timebound targets in the FIPMP, to include job generation;
- f. To submit annual evaluation and reports to the President of the Philippines and the Congress regarding the activities of the IIPCC;
- g. To establish and regularly update an online database including a directory of ready local partners from priority sectors under the FIPMP, as a tool for promoting investments and business matching in local supply chains; and
- h. To support local government efforts to promote foreign direct investments, expedite compliance with national requirements and address investors in their different localities involved with said foreign investments."

Section 4-B. Development of the Foreign Investment Promotion and Marketing Plan (FIPMP)

A comprehensive and strategic Foreign Investment Promotion and Marketing Plan (FIPMP) shall be developed by the IIPCC for the medium five-year and the long-term ten-year plan" Provided, That it is based on competitive advantages, natural resources, skill and educational development, traditional linkages, and international market potential, and it is fully consistent with the strategic investment priorities plan under Title XIII of the National Internal Revenue Code, as amended: Provided, further, That an online portal containing the FIPMP shall thereafter be uploaded, containing further details such as the IIPCC's procedure, contacts, schedules, among others.

Said database should also include a directory of local enterprises capable and willing to partner with potential foreign investors. The IIPCC shall consult local chambers of commerce, sectoral, business groups, and other individual partners whenever foreign applicants seek partners, subcontractors, suppliers, and other local business counterparts.

Similarly, Department of Education (DepEd), CHED, TESDA, Department of Labor and Employment (DOLE), the Professional Regulation Commission (PRC), and other training agencies involved in education and skills development shall likewise direct curriculum and training efforts toward manpower requirements of the FIPMP.

The IIPCC shall coordinate with the concerned government agencies to ensure their alignment with the FIPMP.

DTI shall promulgate such rules and regulations necessary to implement this provision.

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 the DTI 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 the DTI, 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 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 SEC. 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 the domestic market activities to be undertaken by 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 enterprise 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 enterprise which a re 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 DTI, as the case may be, of any export enterprise that fails to meet the export ration requirement. The SEC or DTI 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 DTI order, without justifiable reason, shall subject the enterprise to cancellation of SEC or DTI registration, and/or the penalties provided in Section 14 hereof.

Export enterprise shall register and comply with the export requirements in accordance with Title XIII of the National Internal Revenue Code (NIRC), as amended, for purpose of availing any tax incentive or benefit.

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 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.

Excerpts as otherwise provided under Republic Act No. 8762, otherwise known as the Retail Trade Liberalization Act of 2000 and other relevant laws, micro and small domestic market enterprise with paid-in equity capital less than the equivalent of Two hundred thousand US dollar (US\$200,000.00). 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 are endorsed as startup or startup enablers by the lead host agencies pursuant to Republic Act No. 11337, otherwise known as the Innovative Startup Act; or (3) a majority of their direct employees are Filipinos, but in no case shall the number of Filipino employees be less than fifteen (15), than a minimum paid-in capital of One hundred thousand US dollars (US\$100,000.00) shall be allowed to non-Philippine nationals: Provided, further, That registered foreign enterprises employing foreign nationals and enjoying fiscal incentive shall implement an understudy or skills development program to ensure the transfer of technology or skills to Filipinos. Compliance with this requirement shall be regularly monitored by the DOLE.

Nothing in this Act shall operate as a cause for termination of employees hired prior to the effectivity of this Act. In all cases, the provisions of Presidential Decree No. 442, otherwise known as the "Labor Code of the Philippines" and other applicable laws, rules and regulations issued by DOLE shall prevail. Amendments to List B may be made upon recommendation of the Secretary of National Defense, or the Secretary of Health, endorses by the NEDA, or upon recommendation motu proprio, of NEDA, approved by the President, and promulgated through the issuance of the Foreign Investment Negative List by Executive Order.

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 the Foreign Investment Negative List shall not be made more often than once every two (2) years: Provided, That the NEDA, in consultation and cooperation with the BOI, DTI, SEC, DICT, IPAs and other pertinent government agencies, shall, every two (2) years, (i) review the Foreign Investment Negative List, and (ii) submit to Congress an analysis of foreign investment performance economic activities of the industries under the Foreign Investment Negative List and the reasons for the recommended amendments, if any: Provided, further, That NEDA shall recommend to Congress investment-related matters requiring necessary legislation.

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

(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. Review of Strategic Industries

Upon the order of the President, the IIPCC, in coordination with the National Security Council (NSC), and the NEDA, shall review foreign investments involving military-related industries, cyber infrastructure, pipeline transportation, or such other activities which may threaten territorial integrity and the safety, security and well-being of Filipino citizens, when:

- a. Made by a foreign government-controlled entity or state-owned enterprises except independent pension funds, sovereign wealth funds and multi-national banks; or
- b. Located in geographical areas critical to national security.

Any recommendation to suspend, prohibit, or otherwise limit a reviewed foreign investment under this section shall be transmitted to the Office of the President for appropriate action.

Section 17. Anti-Graft Practices in Foreign Investment Promotions

Public officials and employees involved in foreign investment promotions shall uphold the highest standards of public service, accountability, and integrity. Accordingly, any public official or employee involved in foreign investment promotions who shall commit any of the acts under Section 3 of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, shall, in addition to the penalties provided under Section 9(a) of the said Act, be punished by a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00).

Section 18. Non-Applicability

This Act shall not apply to banking and other financial institutions which are governed and regulated by Republic Act No. 8791, otherwise known as "The General Banking Law of 2000" and other laws under the supervision of the Bangko Sentral ng Pilipinas. Moreover, this Act shall not apply to the practice of professions that are covered by specific laws and fall under the jurisdiction of various Professional Regulatory Boards (PRBs) or any other equivalent regulating body, or those subject to reciprocity agreements with other countries.

To the extent applicable, and provided that the necessary licenses, work permits and visas are properly secured from the relevant government agencies, any occupation, employment or practice of profession not covered by any special law or reciprocity agreement as provided in the previous paragraph shall be subject to the provisions of this Act.

Section 19. Appropriations

For purposes of implementing this Act, the amount of Fifty million pesos (P50,000,000.00) from the Contingent Fund of the General Appropriations Act for the current fiscal year is hereby appropriated and shall be released to the IIPCC. Thereafter, the amounts necessary to carry out this Act shall be included in the General Appropriations Act (GAA).

Section 20. Implementing Rules and Regulations.

The NEA, in consultation with the DTI and the DOF, is hereby directed to amend the existing rules and regulations necessary for the efficient implementation of this Act.

Section 21. Separability Clause

If any portion or provision of this Act is declared unconstitutional, the remainder of this Act or any provision not affected thereby shall remain in force and effect.

Section 22. Effectivity.

This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in a newspaper of general circulation in the Philippines.