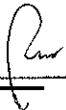


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SENATE
S. B. **2792**

RECEIVED BY: 

Introduced by **SENATOR VILLAR**

EXPLANATORY NOTE

In 1991, Republic Act No. 7042 was passed, otherwise known as the Foreign Investments Act of 1991 (FIA). The law was intended to attract investments from foreign sources, and in so doing expand livelihood and employment opportunities for Filipinos.

However, in the practical application of the law, there are two areas that appear inconsistent with the objectives of the FIA and merit a second look.

First, while the FIA is meant to encourage foreign equity investments, the “practice of all professions” is, oddly enough, an included item in the Foreign Investment Negative List (FINL) under the heading “No Foreign Equity”. Considering that certain laws governing each profession allow foreign nationals to practice in the Philippines under reciprocity arrangements, it is misleading to include such item in the FINL as a nationalized activity. This effectively discourages foreign professionals who would otherwise be allowed to practice here by virtue of reciprocity from coming in and sharing their ideas and technical know-how, contrary to the inclusive policy of the FIA.

Second, the FIA allows non-Philippine nationals to invest in small and medium-sized domestic market enterprises (DME) with a minimum paid-in capital of US\$100,000 if they employ at least 50 direct employees. However, operationally speaking, a US\$100,000 enterprise – only a little over PhP 4.3 million – cannot immediately sustain a labor force of 50 persons. So as not to render pointless this provision of the law, and to align it with the spirit of the FIA, there is a need to retain the employment requirement but lower the threshold to a more reasonable number.

Therefore, this bill seeks to amend the Foreign Investments Act by excluding the practice of professions from the FINL by providing that the same shall not be covered by the scope of the FIA, and by lowering the employment threshold requirement to 15 direct employees for a US\$100,000 foreign investments in small and medium-sized DMEs.

In view of the foregoing, immediate passage of this bill is earnestly sought.


MANNY VILLAR



FOURTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

11 MAY -2 P3:12

SENATE
S. B. **2792**

RECEIVED BY: Car

Introduced by **SENATOR VILLAR**

**AN ACT AMENDING REPUBLIC ACT NO. 7042, AS AMENDED BY REPUBLIC
ACT NO. 8179, OTHERWISE KNOWN AS THE FOREIGN INVESTMENTS ACT
OF 1991, AND FOR OTHER PURPOSES**

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

1 SECTION 1. Section 4 of Republic Act No. 7042, as amended by Republic Act No.
2 8179, otherwise known as the Foreign Investments Act of 1991, is hereby amended to read as
3 follows:

4 "Sec. 4. *Scope.* – This Act shall not apply to **THE PRACTICE OF**
5 **PROFESSIONS, OR TO** banking and other financial institutions which are
6 governed and regulated by the General Banking Act and other laws under the
7 supervision of the Central Bank."

8 Sec. 2. Section 8 of Republic Act No. 7042 is hereby amended to read as follows:

9 "Sec. 8. *List of Investment Areas Reserved to Philippine Nationals*
10 *(Foreign Investment Negative List).* - The Foreign Investment Negative List
11 shall have two (2) component lists: A, and B.

12 a) List A shall enumerate the areas of activities reserved to Philippine
13 nationals by mandate of the Constitution and specific laws.

14 b) List B shall contain the areas of activities and enterprises regulated
15 pursuant to law:

16 1) which are defense-related activities, requiring prior clearance and
17 authorization from Department of National Defense (DND) to engage
18 in such activity, such as the manufacture, repair, storage and/or
19 distribution of firearms, ammunition, lethal weapons, military

1 ordinance, explosives, pyrotechnics and similar materials; unless such
2 manufacturing or repair activity is specifically authorized, with a
3 *substantial export component, to a non-Philippine national by the*
4 Secretary of National Defense; or

5 2) which have implications on public health and morals, such as the
6 manufacture and distribution of dangerous drugs; all forms of
7 gambling; nightclubs, bars, beerhouses, dance halls; sauna and steam
8 bathhouses and massage clinics.

9 Small and medium-sized domestic market enterprises, with paid-in
10 equity capital less than the equivalent two hundred thousand US dollars
11 (US\$200,000) are reserved to Philippine nationals, Provided that if: (1) they
12 involve advanced technology as determined by the Department of Science and
13 Technology or (2) they employ at least [fifty (50)] **FIFTEEN (15)** direct
14 employees, then a minimum paid-in capital of one hundred thousand US
15 dollars (US\$100,000.00) shall be allowed to non-Philippine nationals.

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

20 The Transitory Foreign Investment Negative List established in Sec.
21 15 hereof shall be replaced at the end of the transitory period by the first
22 Regular Negative List to be formulated and recommended by NEDA,
23 following the process and criteria provided in Sections 8 of this Act.

24 The first Regular Negative List shall be published not later than sixty
25 (60) days before the end of the transitory period provided in said section, and
26 shall become immediately effective at the end of the transitory period.
27 Subsequent Foreign Investment Negative Lists shall become effective fifteen
28 (15) days after publication in a newspaper of general circulation in the
29 Philippines: Provided, however, That each Foreign Investment Negative List
30 shall be prospective in operation and shall in no way affect foreign investment
31 existing on the date of its publication.

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

1 *Sec. 3. Repealing Clause.* – Sections 4 and 8 of Republic Act No. 7042, as amended
2 by Republic Act No. 8179, and all laws, decrees, orders, rules and regulations or other
3 issuances or parts thereof inconsistent with the provisions of this Act are hereby repealed or
4 modified accordingly.

5 *Sec. 4. Separability Clause.* – If any portion or provision of this Act is declared
6 unconstitutional, the remainder of this Act or any provisions not affected thereby shall remain
7 in force and effect.

8 *Sec. 5. Effectivity.* – This Act shall take effect fifteen (15) after publication in two (2)
9 newspapers of general circulation in the Philippines.

10 Approved,