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SENATE

S.B. No. 2102

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Introduced by SEN. WIN GATCHALIAN

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

EXPLANATORY NOTE

Republic Act No. 7042, otherwise known as the Foreign Investments Act of 1991 (FIA), was enacted to encourage investments in the Philippines by non-Filipinos in order to boost economic growth, to improve productivity through application of advanced technology, and to open up employment opportunities for Filipinos.

However, several of its provisions need to be amended to take advantage of the current dynamics in the global and regional economies, to capture the full potential of the objectives of the FIA, and to put the Philippines in a competitive position over other ASEAN countries in terms of attracting businesses wary on maintaining or expanding production in other countries.

First, there is a need to update the declaration of policy to encapsulate inclusive economic growth and advancements in technology, as well as the dynamic relationship among global and regional economies.

Second, the “practice of all professions” should be expressly excluded from the coverage of the FIA. By doing so, we are sending a clear message that specific laws allowing foreign nationals to practice their profession in the Philippines should govern each profession, while the FIA only governs investments in the Philippines by non-Filipinos, in the form of equity participation duly recorded in the stock and transfer book or its equivalent. Such exclusion will hopefully encourage foreign professionals, who would otherwise be allowed to practice here by virtue of reciprocity, to come in the Philippines and share their skills and technical know-how to Filipinos. Once foreign professionals are in the country and given that the trainability of Filipinos is high, it will be easier for the Philippines to attract businesses requiring high-skilled workers.

Third, the employment threshold for non-Filipinos investing US\$100,000.00 in small and medium-sized domestic market enterprises should be lowered from 50 to 15 direct employees. This amendment will provide a reasonable and realistic limitation given the present situation that, operationally speaking, a US\$100,000 enterprise is now worth a little more than P5.3 million, but cannot sustain a labor force of 50 persons. Further, this is in recognition of possible automation of processes adopted by SMEs.

Fourth, review of the foreign investment negative list should be done annually to ensure that the list is aligned with the policy of the State, taking into account its dynamic relationship with various parts of the world.

Finally, a joint web portal maintained by the Board of Investments, in coordination with other government agencies and investment promotion agencies, containing all information pertinent to investment policies, programs and procedures, will hopefully serve as a transparency and one-stop-shop tool that keeps things simple and clear to those intending to invest in the Philippines.

Accordingly, this bill should be considered in the context of encouraging foreign investments in the country by providing clarity to foreigners who are interested in investing in small and medium enterprises or in practicing their profession in the Philippines.

Approval of this bill is earnestly urged.



**WIN GATCHALIAN**





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REPUBLIC ACT NO. 8179, 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 2 of Republic Act No. 7042 (R.A. 7042), as  
2 amended by Republic Act No. 8179, otherwise known as the Foreign  
3 Investments Act of 1991, is hereby amended to read as follows:  
4

5           “Sec. 2. Declaration of Policy. – **RECOGNIZING THAT**  
6 **INCREASED CAPITAL AND TECHNOLOGY BENEFITS THE**  
7 **PHILIPPINES AND THAT GLOBAL AND REGIONAL**  
8 **ECONOMIES AFFECT THE PHILIPPINE ECONOMY**, [I] it is  
9 the policy of the State to attract, promote and welcome  
10 productive investments from foreign individuals, partnerships,  
11 corporations, and governments, including their political  
12 subdivisions, in activities which significantly contribute to  
13 [national industrialization and socioeconomic development]  
14 **SUSTAINABLE INCLUSIVE ECONOMIC GROWTH,**  
15 **PRODUCTIVITY, GLOBAL COMPETITIVENESS,**  
16 **EMPLOYMENT CREATION, TECHNOLOGICAL**  
17 **ADVANCEMENT, AND COUNTRYWIDE DEVELOPMENT** to

1 the extent that foreign investment is allowed in such activity  
2 by the Constitution and relevant laws, **AND CONSISTENT**  
3 **WITH THE PROTECTION OF NATIONAL SECURITY.** Foreign  
4 investments shall be encouraged in enterprises that  
5 significantly expand livelihood and employment opportunities  
6 for Filipinos; enhance economic value of [farm]  
7 **AGRICULTURAL** products; promote the welfare of Filipino  
8 consumers; expand the scope, quality and volume of exports  
9 and their access to foreign markets; and/or transfer relevant  
10 technologies in agriculture, industry and support services.  
11 Foreign investments shall be welcome as a supplement to  
12 Filipino capital and technology in those enterprises serving  
13 mainly the domestic market. xxxx”  
14

15 **SEC. 2.** Section 3 of R.A. 7042 is hereby amended to read as  
16 follows:  
17

18 “Sec. 3. Definitions. – As used in this Act:

19  
20 xxx

21  
22 b) the term “investment” shall mean equity participation in  
23 any enterprise organized and existing under the laws of the  
24 Philippines **AND DULY RECORDED IN THE STOCK TRANSFER**  
25 **BOOK, OR ITS EQUIVALENT, OF THE ENTERPRISE.**  
26

27 **SEC. 3.** Section 4 of R.A. 7042 is hereby amended to read as  
28 follows:  
29

30 “Sec. 4. Scope. – This Act shall not apply to banking and  
31 other financial institutions which are governed and regulated  
32 by the General Banking Act and other laws under the  
33 supervision of the [Central Bank] **BANGKO SENTRAL NG**  
34 **PILIPINAS, AND THE PRACTICE OF PROFESSIONS.**”  
35

36 **SEC. 4.** Section 8 of R.A. 7042, as amended by Sec. 3 of R.A. 8179,  
37 is further amended to read as follows:  
38

39 “Sec. 8. List of Investment Areas Reserved to Philippine  
40 Nationals (Foreign Investment Negative List). The Foreign  
41 Investment Negative List shall have two (2) component lists:  
42 A and B.



1 a) List A shall enumerate the areas of activities reserved  
2 to Philippine nationals by mandate of the  
3 Constitution and specific laws.  
4

5 b) List B shall contain the areas of activities and  
6 enterprises regulated pursuant to law:  
7

8 1) Which are defense-related activities, requiring  
9 prior clearance and authorization from the  
10 Department of National Defense (DND) to engage  
11 in such activity, such as the manufacture, repair,  
12 storage and/or distribution of firearms,  
13 ammunition, lethal weapons, military ordinance,  
14 explosives, pyrotechnics and similar materials;  
15 unless such manufacturing or repair activities is  
16 specifically authorized, with a substantial export  
17 component, to a non-Philippine national by the  
18 Secretary of National Defense; or  
19

20 2) Which have implications on public health and  
21 morals, such as the manufacture and distribution  
22 of dangerous drugs; all forms of gambling;  
23 nightclubs, bars, beerhouses, dance halls, sauna  
24 and steam bathhouses and massage clinics.  
25

26 Small and medium-sized domestic market enterprises,  
27 with paid-in equity capital less than the equivalent two  
28 hundred thousand US dollars (US\$200,000.00) are reserved  
29 to Philippine nationals, Provided, That if: (1) they involve  
30 advanced technology as determined by the Department of  
31 Science and Technology or (2) they employ at least [fifty (50)]  
32 **FIFTEEN (15)** direct employees, then a minimum paid-in  
33 capital of one hundred thousand US dollars (US\$100,000.00)  
34 shall be allowed to non-Philippine nationals.  
35

36 Amendments to List B may be made upon  
37 recommendation of the Secretary of National Defense, or the  
38 Secretary of Health, or the Secretary of Education, [Culture  
39 and Sports] endorsed by the NEDA, approved by the  
40 President, and promulgated by a Presidential Proclamation.  
41

42 "Transitory Foreign Investment Negative List" established  
43 in Sec. 15 hereof shall be replaced at the end of the transitory  
44 period by the first Regular Negative List to be formulated and

1 recommended by NEDA, following the process and criteria  
2 provided in Section 8 of this Act.  
3

4 The first Regular Negative List shall be published not later  
5 than sixty (60) days before the end of the transitory period  
6 provided in said section, and shall immediately become  
7 effective fifteen (15) days after publication in a newspaper of  
8 general circulation in the Philippines: *Provided, however,*  
9 That each Foreign Investment Negative List shall be  
10 prospective in operation and shall in no way affect foreign  
11 investment existing on the date of its publication.  
12

13 Amendments to List B after promulgation and publication  
14 of the first Regular Foreign Investment Negative List at the  
15 end of the transitory period shall not be made more than once  
16 every two (2) years.  
17

18 **SEC. 5. THE NATIONAL ECONOMIC AND DEVELOPMENT**  
19 **AUTHORITY (NEDA), IN COOPERATION AND CONSULTATION WITH**  
20 **THE BOARD OF INVESTMENTS, THE DEPARTMENT OF TRADE AND**  
21 **INDUSTRY, THE SECURITIES AND EXCHANGE COMMISSION,**  
22 **INVESTMENT PROMOTION AGENCIES, AND OTHER PERTINENT**  
23 **GOVERNMENT AGENCIES, SHALL CONDUCT AN ANNUAL REVIEW OF**  
24 **THE REGULAR NEGATIVE LIST AND SUBMIT TO CONGRESS EVERY**  
25 **APRIL 30 OF THE YEAR A COST-BENEFIT ANALYSIS ON THE**  
26 **CONTRIBUTION TO THE ECONOMY OF THE INVESTMENT AREAS**  
27 **INCLUDED IN THE NEGATIVE LIST. IT SHALL LIKEWISE**  
28 **RECOMMEND TO CONGRESS INVESTMENT-RELATED MATTERS**  
29 **REQUIRING NECESSARY LEGISLATION. (n)**  
30

31 **SEC. 6. IN ORDER TO EFFECTIVELY GUIDE INVESTORS ON**  
32 **POTENTIAL AREAS OF INVESTMENTS IN THE PHILIPPINES, THE**  
33 **BOARD OF INVESTMENTS, IN COORDINATION AND COOPERATION**  
34 **WITH OTHER GOVERNMENT AGENCIES AND INVESTMENT**  
35 **PROMOTION AGENCIES, SHALL MAKE AVAILABLE FOR PUBLIC**  
36 **ACCESS A JOINT WEB PORTAL THAT WILL BEAR ALL INFORMATION**  
37 **PERTINENT TO INVESTMENT POLICIES, PROGRAMS, AND**  
38 **PROCEDURES. THE WEB PORTAL SHALL ALSO INCLUDE**  
39 **INFORMATION ON RELEVANT INDUSTRIES AND SERVICES THAT**  
40 **WILL BE PROMOTED FOR INVESTMENTS PURPOSES, A DATABASE**  
41 **OF FILIPINO SMALL AND MEDIUM ENTERPRISES THAT COULD BE**  
42 **POTENTIAL PARTNERS OF FOREIGN INVESTORS, REGIONAL**  
43 **INVESTMENT INFORMATION, AND SUCH OTHER RELEVANT**



1 INFORMATION NEEDED IN SETTING UP BUSINESS IN THE  
2 PHILIPPINES. (n)  
3

4 **SEC. 7. THE NEDA IS HEREBY DIRECTED TO MAKE THE**  
5 **NECESSARY AMENDMENTS TO THE IMPLEMENTING RULES AND**  
6 **REGULATIONS OF REPUBLIC ACT NO. 7042 IN ORDER TO REFLECT**  
7 **THE CHANGES EMBODIED IN THIS ACT. (n)**  
8

9 **SEC. 8. *Repealing Clause.*** – All statutory laws, orders, issuances,  
10 rules and regulations and/or parts thereof which are inconsistent with  
11 the provisions of this Act are hereby repealed or modified accordingly.  
12

13 **SEC. 9. *Separability Clause.*** – If any portion or provision of this  
14 Act is declared invalid or unconstitutional, the portions or provisions  
15 which are not affected shall remain valid and in force and effect.  
16

17 **SEC. 10. *Effectivity.*** – This Act shall take effect fifteen (15) days  
18 after its publication in the Official Gazette or in a newspaper of general  
19 circulation.  
20

21 ***Approved,***