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

REPUBLIC ACT NO. 7042

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”.

SEC. 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 socioeconomic 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,

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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.

SEC. 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 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 stocks outstanding and entitled to vote 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 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 totalling 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.

SEC. 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.

SEC. 5. Registration of Investments of Non-Philippines: 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 SEC. During the transitory period as provided in Section 15 hereof, the 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.

SEC. 6. Foreign Investments 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.

SEC. 7. Foreign Investments 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 existing law or the Foreign Investment Negative List under Section 8 hereof.

A domestic market enterprise may change its status to export enterprise if over a three (3)–year period it consistently exports in each year thereof sixty percent (60%) or more of its output.

SEC. 8. List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List).—The Foreign Investment Negative List shall have three (3) component lists: A, B, and C:

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

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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 ordnances, 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 of Five hundred thousand US dollars (US\$500,000) are reserved to Philippine nationals, unless they involve advanced technology as determined by the Department of Science and Technology. Export enterprises which utilize raw materials from depleting natural resources, with paid-in equity capital of less than the equivalent of Five hundred thousand US dollars (US\$500,000) are likewise reserved to 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, indorsed by the NEDA, or upon recommendation motu proprio of NEDA, approved by the President, and promulgated by a Presidential Proclamation.

c) List C shall contain the areas of investment in which existing enterprises already serve adequately the needs of the economy and the consumer and do not require further foreign investments, as determined by NEDA applying the criteria provided in Section 9 of this Act, approved by the President and promulgated in a Presidential Proclamation.

The 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 the NEDA, following the process and criteria provided in Sections 8 and 9 of this Act. The first Regular Negative Lists 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 two (2) newspapers 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 investments existing on the date of its publication.

Amendments to Lists B and C 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.

SEC. 9. Determination of Areas of Investment for Inclusion in List C of the Foreign Investment Negative List.—Upon petition by a Philippine national engaged therein, an area of investment may be recommended by NEDA for inclusion in List C of the Foreign Investment Negative List upon determining that it complies with all the following criteria:

- a) The industry is controlled by firms owned at least sixty percent (60%) by Filipinos;
- b) Industry capacity is ample to meet domestic demand;
- c) Sufficient competition exists within the industry;

- d) Industry products comply with Philippine standards of health and safety or, in the absence of such, with international standards, and are reasonably competitive in quality with similar products in the same price range imported into the country;
- e) Quantitative restrictions are not applied on imports of directly competing products;
- f) The leading firms of the industry substantially comply with environmental standards; and

The petition shall be subjected to a public hearing at which affected parties will have the opportunity to show whether the petitioner industry adequately serves the economy and the consumer, in general, and meets the above stated criteria in particular. The NEDA may delegate evaluation of the petition and conduct of the public hearing to any government agency having cognizance of the petitioner industry. The delegated agency shall make its evaluation report and recommendations to NEDA which retains the right and sole responsibility to determine whether to recommend to the President to promulgate the area of investment in List C of the Negative List. An industry or area of investment included in List C of the Negative List by Presidential Proclamation shall remain in the said List C for two (2) years, without prejudice to re-inclusion upon new petition, and due process.

SEC. 10. Strategic Industries.—Within eighteen (18) months after the effectivity of this Act, the NEDA Board shall formulate and publish a list of industries strategic to the development of the economy. The list shall specify, as a matter of policy and not as a legal requirement, the desired equity participation by Government and/or private Filipino investors in each strategic industry. Said list of strategic industries, as well as the corresponding desired equity participation of government and/or private Filipino investors, may be amended by NEDA to reflect changes in economic needs and policy directions of the Government. The amended list of strategic industries shall be published concurrently with publication of the Foreign Investment Negative List.

The term “strategic industries” shall mean industries that are characterized by all of the following:

- a) Crucial to the accelerated industrialization of the country;
- b) Require massive capital investments to achieve economies of scale for efficient operations;
- c) Require highly specialized or advanced technology which necessitates technology transfer and proven production techniques in operations;
- d) Characterized by strong backward and forward linkages with most industries existing in the country; and
- e) Generate substantial foreign exchange savings through import substitution and collateral foreign exchange earnings through export of part of the output that will result with the establishment, expansion or development of the industry.

SEC. 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.

SEC. 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.

SEC. 13. Implementing Rules and Regulations.—The 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.

SEC. 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).

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

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

SEC. 15. Transitory Provisions.—Prior to effectivity of the implementing rules and regulations of this Act, the provisions of Book II of Executive Order No. 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 a 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 of less than the equivalent of US\$500,000, unless they involve advanced technology as determined by the Department of Science and Technology, and
4. Export enterprises which utilize raw materials from depleting natural resources, and with paid-in equity capital of less than the equivalent of US\$500,000.

C. List C:

1. Import and wholesale activities not integrated with production or manufacture of goods;
2. Services requiring a license or specific authorization, and subject to continuing regulation by national government agencies other than BOI and SEC which at the time of effectivity of this Act are restricted to Philippine nationals by existing administrative regulations and practice of the regulatory agencies concerned: Provided, That after effectivity of this Act, no other services shall be additionally subjected to such restrictions on nationality of ownership by the corresponding regulatory agencies, and such restrictions once removed shall not be reimposed; and

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3. Enterprises owned in the majority by a foreign licensor and/or its affiliates for the assembly, processing or manufacture of goods for the domestic market which are being produced by a Philippine national as of the date of effectivity of this Act under a technology, know-how and/or brand name license from such licensor during the term of the license agreement: Provided, That, the license is duly registered with the Central Bank and/or the Technology Transfer Board and is operatively in force as of the date of effectivity of this Act.

The NEDA shall make the enumeration as appropriate of the areas of investment covered in this Transitory Foreign Investment Negative List and publish the Negative List in full at the same time as, or prior to, the publication of the rules and regulations to implement this Act.

The areas of investment contained in List C above shall be reserved to Philippine nationals only during the transitory period. The inclusion of any of them in the regular Negative List will require determination by NEDA after due public hearings that such inclusion is warranted under the criteria set forth in Sections 8 and 9 hereof.

SEC. 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.

SEC. 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.

SEC. 18. Effectivity Clause.—This Act shall take effect fifteen (15) days after approval and publication in two (2) newspapers of general circulation in the Philippines. Approved, June 13, 1991.