

EIGHTEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. 4106

EXPLANATORY NOTE

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

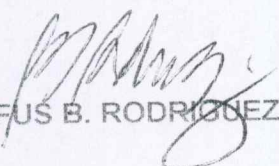
However, there are two provisions in the law that appear to be in conflict with the objectives of the Republic Act.

First, is the provision related to the "practice of all professions", which is included 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 (OME) 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, which is only a little over Php 5.1 Million, cannot immediately sustain a labor force of 50 persons. Hence, 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 R.A. 7042, by deleting the provisions relating to the "practice of professions" from among the items listed under the Foreign Investment Negative List (FINL), and by lowering the threshold of employment requirement to 15 direct employees for a US \$100,000 foreign investment in small and medium-sized domestic market industries.

In view of the foregoing, immediate approval of this measure is earnestly requested.


RUFUS B. RODRIGUEZ

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AN ACT

AMENDING SECTIONS 4 AND 8 OF REPUBLIC ACT NO. 7042, AS AMENDED,
OTHERWISE KNOWN AS THE "FOREIGN INVESTMENTS ACT OF 1991"

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

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

"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] **BANGKO SENTRAL NG PILIPINAS, AND THE PRACTICE OF PROFESSIONS.**"

SEC 2. Section 8 of Republic Act No. 7042, as amended by Republic Act No. 8179, is hereby amended to read as follows:

"SEC. 8. List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List). — The Foreign Investment Negative List shall have two (2) component 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 **THE** 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 ordnance, 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, beer houses, 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 Two Hundred Thousand US dollars (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 employ at least [fifty (50)] **FIFTEEN (15)** 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] indorsed by the NEDA, or upon recommendation *motu proprio*, of NEDA, approved by the President, and promulgated by 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 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 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."

SEC. 3. 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.

SEC. 4. Repealing Clause. – All laws, decrees, orders, rules and regulations or other issuances or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 5. Effectivity. – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

Approved,