

10 FEB -1 2013

SENATE

Senate Bill No. 3577

LEGISLATIVE



Introduced by SENATOR EDGARDO J. ANGARA

EXPLANATORY NOTE

The Philippines has one of the oldest stock markets in Asia tracing its roots since 1927 with the establishment of the Manila Stock Exchange. Despite this feat, there lies however the sordid truth that at this point in the history of the country's capital market, we continuously lag behind against our Asian neighbors, even with those markets that have come much later than the Philippines'. The size of the local stock market is one of the smallest in terms of market capitalization and the level of liquidity continuous to struggle to meet international standards.

It is convenient to cite the size of the overall economy as the reason for the sluggish growth of the stock market even as we watch other economies grow by us at much faster paces. It is however, another, to exact indolence by ignoring altogether the structural problems that prevail in the environment by which our market revolves.

It has often been cited by the Philippine Stock Exchange (PSE) that not even one half of the country's population invests in the stock market. When compared with the level of participation in other economies, which range from 10-30% in Hong Kong, Malaysia and Singapore, this figure becomes alarming.

The number of listed companies has also become one of the shallowest in the past years as we see other exchanges adding 15 to 30 companies in their roster of listed companies year in year out, while the local stock market has managed to add only four companies annually.

This bill is being introduced in recognition of the importance of having a vibrant stock market to help push and sustain economic growth. The need to catch up with other markets cannot be more emphasized particularly as stock markets have become more global and the threat of being marginalized has become more apparent.

The bill primarily proposes to enhance the regulatory environment that will allow the stock market to grow by taking out the unnecessary tax impediments that have only served to make our market less competitive.

First, while we charge one of the highest taxes globally for stock market trading, other markets have moved to minimize if not remove altogether any form of taxes on stock market trading such as the case in Thailand, Vietnam, Malaysia and Singapore.

Second, a tax burden that is only unique in the Philippines is the initial public offering (IPO) tax that is charged on companies that want to raise capital in the stock market. While our government believes that it needs to tax as well for these private sector undertakings, other markets have actually introduced different tax incentives to attract more companies to go public. These incentives have come in the form of affording listed companies lower corporate income taxes once they are listed, subject to certain conditions.

Encouraging more companies to list in the stock market can be an effective mechanism for improving government revenue collections. Data show that listed companies account for a sizable portion of the corporate income tax collections by the Bureau of Internal Revenue (BIR). For instance, in 2007, the corporate income tax paid by listed companies to the government reached P81.5 billion, representing 34% of the total corporate income tax collections of the BIR. The data on the aggregate income tax collections from listed companies is gathered from only 234 companies, which actually represent only 0.06% of the potential tax base of the BIR of about the 371,000 BIR-registered corporate taxpayers.

Third, this bill also recognizes the need to update our tax systems to properly address the need to provide more hedging instruments in the market that have become more and more essential to attract more investors to pour their money in the market. It is for this reason that the bill introduces a tax framework, which is loose if not absent altogether under current tax laws, to make derivatives and commodities trading viable. These derivatives instruments will allow investors more flexibility in their trading strategies. However, this bill does not promote over-the-counter derivative trading that are loosely regulated and are not subject to counterparty risk management procedures. Rather, the bill attracts these instruments to become traded in the exchange so as to subject them to stringent rules and guidelines and minimize counterparty risks.

Lastly, this bill recognizes that to improve the stock market, there is a need to institute reforms that will allow future generations to sustain the momentum that will hopefully be triggered by this bill. It is for this reason that the bill also proposes to make mandatory the incorporation of financial literacy subjects in the high school and college curricula.

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



EDGARDO J. ANGARA
Senator

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SENATE

Senate Bill No. 3577

RECEIVED BY



Introduced by SENATOR EDGARDO J. ANGARA

STOCK MARKET COMPETITIVENESS ACT

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

1 **SECTION 1. Short Title.** -- This Act may be cited as the "Stock Market
2 **Competitiveness Act of 2009**" or **SMartCA**.

3

4 **SEC. 2. Declaration of Policy.** - It is the declared policy of the State to develop
5 the Philippine stock market into an effective and meaningful instrument of national
6 economic development. This objective can only be achieved by instituting reforms which
7 include increasing the number of publicly listed corporations, improving corporate
8 governance among listed firms and fostering a favorable tax environment for stock
9 market transactions.

10

11 **SEC. 3. Definitions.**- The following definitions shall apply in this Act, unless the
12 context otherwise requires:

13

14 a) "*Commission*" or "*SEC*" means the Securities and Exchange Commission of the
15 Philippines.

16

17 b) "*Corporation*" or "*Company*" means a juridical person organized and existing
18 under the laws of the Republic of the Philippines that is eligible for listing under
19 the rules of a local stock exchange.

20

- 1 c) "*Free Float Shares*" refers to those shares that are not held by founders,
2 directors, officers, affiliates, treasury shares, employees, shares held under lock-
3 up, or any shareholder owning, directly or indirectly, ten percent (10%) or more
4 of the Company's total outstanding shares.
- 5
- 6 d) "*Government-owned or controlled corporation*" refers to a corporation
7 organized as a stock corporation, with a majority of its capital stock owned or
8 controlled by the Government, whether directly or through its instrumentalities,
9 and with the purpose of undertaking commercial or business activities for profit
10 on behalf of the Government.
- 11
- 12 e) "*Independent director*" shall have the same meaning as an independent director
13 under the Securities Regulation Code or other relevant law who are elected by at
14 least a majority of the outstanding capital stock and Minority Shareholders.
- 15
- 16 f) "*Lists*" or "*Listing*" means the listing of shares with a stock exchange in the
17 Philippines by any of the modes allowed by its rules as approved by the
18 Commission.
- 19
- 20 g) "*Minority Shareholder*" means a shareholder owning, directly or indirectly, not
21 more than one percent (1%) of the outstanding capital stock of the Company.
- 22
- 23 h) "*National Internal Revenue Code*" or "*NIRC*" means Republic Act No. 8424,
24 otherwise known as the National Internal Revenue Code of 1997, as amended.
- 25
- 26 i) "*Net Capital Gain or Loss*" means the net capital gain or loss as defined under
27 Section 39 (A) of the NIRC.
- 28
- 29 j.) "*Notional Value*" refers to the value of the underlying assets of a futures or

1 options contract at the spot price, such as but not limited to shares of stock of a
2 company, index, commodity and exchange traded fund”

3
4 k.) “*Related Party Transaction*” means a contract, operation, business deal or similar
5 act between at least two parties when:

6 (a) one party, directly, or indirectly through one or more intermediaries;

7 (i) controls, is controlled by, or is under common control with, the
8 other party (which includes parents, subsidiaries and fellow
9 subsidiaries);

10 (ii) has an interest in the entity that gives it significant influence over
11 the entity; or

12 (iii) has joint control over the entity;

13 (b) one party is an associate of the other party;

14 (c) one party is a joint venturer of an enterprise in which the other party is also
15 a venturer;

16 (d) one party is a member of the key management personnel of the other party
17 or its parent;

18 (e) one party is a relative within the fourth civil degree of consanguinity or
19 affinity of any person referred to in (a) or (d);

20 (f) one party is an entity that is controlled, jointly controlled or significantly
21 influenced by or for which significant voting power in such entity resides
22 with, directly or indirectly, any person referred to in (d) or (e); or

23 (g) one party has a post-employment benefit plan for the benefit of employees
24 of the other party, or of any entity that is a related party of the other party.

25
26 l.) “*Securities Regulation Code*” or “*SRC*” means the Republic Act No. 8799,
27 otherwise known as “The Securities Regulation Code”.

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m.) "*Shares*" refer to shares of stock of a corporation, warrants, options, futures, as well as units of participation in a partnership (except general professional partnerships), joint stock companies, joint accounts, joint ventures taxable as corporations, associations, and recreation or amusement clubs (such as golf, polo or similar clubs), and mutual fund certificates.

n.) "*Special Income Tax Rate*" means the rate of twenty five percent (25%) or a rate differential of five percent (5%) from the regular corporate income tax rate, whichever is lower, under Section 27, Title II of the NIRC.

o.) "*Stock Exchange*" means an organized marketplace or facility that brings together buyers and sellers and executes trades of securities and/or commodities, and duly registered as an Exchange by the Commission.

p.) "*Trading Year*" refers to the twelve-month period covering a Corporation's fiscal year as provided in its Articles of Incorporation.

SEC. 4. *Special Income Tax Rate* – The special income tax rate shall apply to a company that lists its shares with a local stock exchange within five (5) years from the effectivity of the tax regulations implementing this Act. *Provided*, further, the company meets during the taxable year the following requirements as certified by the stock exchange:

- a) *Volume Turnover Ratio* – the total volume turnover of the Company's shares for the Trading Year must at least be 30% of its total outstanding listed shares;
- b) *Tradability* – the shares of the Company must be traded at least 90% of the Trading Days during the trading year;

1
2 c) The number of Free Float Shares must at least be 30% of its outstanding shares;

3
4 d) Related Party Transactions are disclosed to the Commission and the stock
5 exchange in accordance with the rules promulgated by the Commission;

6
7 e) The company has paid out dividends equivalent to at least thirty percent (30%) of
8 its net income for the preceding year out of its unrestricted retained earnings; not
9 later than the fifteenth day of the sixth month following the close of its fiscal
10 year;

11
12 f) The company has Independent Directors as defined in this Act,; and

13
14 g) The company has adopted an alternative dispute resolution system that
15 expeditiously and efficiently addresses intra-corporate controversies such as but
16 not limited to mediation, conciliation and arbitration, the material features of
17 which have been duly disclosed to the Commission and the stock exchange.

18
19 The special income tax rate shall be provided for a period of ten (10) years from
20 the date of listing by a company of its shares with a local stock exchange.

21
22 **SEC. 5. *Additional Incentives*** – A company that nitially lists its shares within five
23 years from the effectivity of this Act shall herein enjoy these additional incentives:

24
25 a) ***IPO Tax Exemption*** - It shall be exempt from the Initial Public Offering Tax
26 imposed by Section 127(B), Title V of the NIRC;

27
28 b) ***Last Priority in Tax Audit*** – the corporation shall be entitled to last priority in
29 tax audit and collection of corporate income taxes paid to the national

1 government with respect to the tax years preceding the listing, and in the event
2 of tax deficiency for said years, it shall enjoy a tax amnesty by paying not
3 more than fifty percent (50%) of the tax due to the government for each of
4 said years.

5
6 c) *Immunity* – Its officers, employees, professionals and any person acting on its
7 behalf in the preparation of its income tax return filed prior to listing shall be
8 immune from any prosecution for tax evasion under applicable laws.

9
10 **SEC 6. *Government-Owned or Controlled Corporations*** - Not later than five
11 (5) years from the effectivity of this Act, government-owned or controlled corporations
12 as defined in this Act, which are eligible for listing under the rules of a stock exchange,
13 shall offer their shares to the public and list the same with the stock exchange. They
14 shall be entitled to the same incentives and privileges granted by Sections 4 and 5 of this
15 Act upon compliance with the conditions set forth therein.

16
17 **SEC. 7. *Stock Transaction Tax*** - The stock transaction tax provided under
18 Section 127 (A), Title V of the NIRC shall be one-fourth (1/4) of one percent (1%) of the
19 gross selling price or gross value in money of the shares sold, bartered, exchanged or
20 otherwise disposed of payable by the seller, including commodity contracts listed and
21 traded in a local exchange; Provided that in the case of equity-based options and futures
22 and, the rate shall not be more than one-twentieth (1/20) of one (1) percent of the notional
23 value of the contract.

24
25 **SEC. 8. *Investor Education*** - The Commission on Higher Education shall
26 ensure that a stand-alone subject on the stock market be included as part of the
27 curriculum for college students. The Department of Education shall likewise ensure that
28 the course of instruction for high school students shall include a component on the stock
29 market. Such component shall instruct the students on the principles of savings,

1 investments, prudent management and how the stock market operates and reflects the
2 national economy. The Secretary of Education shall determine how to incorporate such
3 component in the existing curriculum for high school students.

4

5 **SEC. 9. *Implementing Rules and Regulations*** – Within 120 days from the
6 effectivity of this Act, the Commission and the Bureau of Internal Revenue, in
7 consultation with other stakeholders including The Philippine Stock Exchange, Inc., shall
8 promulgate the implementing rules and regulations of this Act.

9

10 **SEC. 10. *Effect on Existing Law and Repealing Clause*** - All laws, decrees,
11 orders, rules and regulations, or parts thereof inconsistent with this Act are hereby
12 repealed or amended accordingly.

13

14 **SEC. 11. *Separability*** - Should any provision of this Act be declared
15 unconstitutional, any other provision not affected thereby shall remain in full force and
16 effect.

17

18 **SEC. 12. *Effectivity Clause*** - This Act shall take effect fifteen (15) days from the
19 date of its publication in at least two (2) newspapers of general publication in the
20 Philippines.

21

22 Approved,