

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

'04 JUN 30 P4:12

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S E N A T E

S. No. 327

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

Small and medium Enterprises (SME's) make up a hefty ninety percent (90%) of the Philippines' business establishments and almost ninety-five percent (95%) of the export sector. The economic activity they generate in producing basic goods and services fuel the growth of our budding economy. The entrepreneurial energies unleashed by SMEs will certainly be a motive force in our country's drive for industrial development.

For now, however, the prospects for Philippine SMEs are far from sanguine. Extremely limiting capital constraints, diseconomies of scale, and lack of access to modern technology hobble the growth of SMEs and even threaten their survival.

This bill proposes the creation of the Small and Medium Enterprises Securities Exchange (SMEX) as an institution which will enable SMEs to tap the country's capital market in generating capital for their financial requirements.

The SMEX can be a window of opportunity not only for SMEs but also for investors. The securities market is an important institution that encourages entrepreneurial risk-taking as the risks engendered in businesses are spread among numerous investors who contribute towards the financing of equities. The development of a SMEX will also facilitate the setting of benchmarks for business accomplishments, providing SMEs with additional incentives to hone their capabilities in order to become investment-ready and competitive. As businesses grow, the government would gain from increased returns in tax collection.

In the United States, the National Association of Securities Dealers Automated Quotations (NASDAQ) stock market was set up for growing companies such as Intel and Microsoft, and eventually spawned the unparalleled growth of the US capital markets. In the Philippines, it is our hope that the SMEX could provide a similar stimulus towards economic resurgence.

In view of the foregoing, early passage of this bill is earnestly requested.


SERGIO OSMEÑA III
Senator

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AN ACT
ESTABLISHING THE SMALL AND MEDIUM ENTERPRISES SECURITIES
EXCHANGE AND GRANTING ADDITIONAL INCENTIVES FOR SMALL AND
MEDIUM ENTERPRISES

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

1 SECTION 1. **Title.** – This Act shall be known and cited as the “**Small**
2 **and Medium Enterprises Securities Exchange (SMEX) Act of 2004.**”

3 SEC. 2. **Declaration of Policy.** – It is hereby declared the policy of the
4 State to recognize the indispensable role of the private sector in economic
5 growth and development. In furtherance of this objective, the establishment of
6 small and medium enterprises (SMEs) shall be encouraged, increased access
7 to financing to facilitate funds necessary for their expansion shall be provided
8 and an economic environment conducive to investments, whether local or
9 foreign, to business activities of this nature, shall be created.

10 SEC. 3. **Creation of the Small and Medium Enterprises Securities**
11 **Exchange.** – The Small and Medium Enterprises Securities Exchange (SMEX),
12 a capital market catering primarily to SMEs, hereinafter referred to as the
13 exchange, is hereby established.

14 SEC. 5. **Authority of the Small Business Guarantee and Finance**
15 **Corporation.** – The Small Business Guarantee and Finance Corporation

1 (SBGFC), a wholly owned government corporation, created by virtue of Republic
2 Act 6977, otherwise known as the Magna Carta for Small Enterprises, to
3 provide, promote, develop and widen in both scope and service reach various
4 alternative modes of financing for small enterprises, is hereby mandated to
5 operationalize, manage and eventually privatize the SMEX.

6 To attain this purpose, the SBGFC is hereby granted the following
7 powers and functions:

- 8 (a) To conduct feasibility and developmental studies;
- 9 (b) To promote the exchange and solicit assistance from the private
10 sector;
- 11 (c) To create an organizational framework of the exchange;
- 12 (d) To ordain a code of ethics for the members of the exchange, including
13 the criteria for membership, grounds for disciplinary sanctions,
14 suspension and expulsion of any member;
- 15 (e) To formulate the procedures and guidelines in the accreditation, listing
16 and issuance of securities; and
- 17 (f) To perform such other functions as may be necessary and proper to
18 carry out its objectives.

19 **SEC. 5. *Incentives to Small and Medium Enterprises.*** – SMEs
20 accredited by the SBGFC shall be entitled to the following incentives:

- 21 (a) Any gain derived from any sale, barter, exchange or disposition of
22 shares of stocks, warrants, or other equity derivatives issued by a
23 small and medium enterprise listed and traded in the SMEX, or in any
24 regional or secondary stock exchange organized exclusively for small
25 and medium enterprises as provided in Republic Act 6977, shall be
26 subject to a final tax at the rate of one half of one percent (1/2 of 1%)
27 of the gross selling price or gross value in money of shares of stock or
28 equity derivatives sold, bartered, exchanged, or otherwise disposed
29 which shall be paid by the seller or transferor.

1 (b) Any small and medium enterprise shall be entitled to carry-over its net
2 operating losses incurred during the period of five (5) years from the
3 effectivity of this Act, as deduction from taxable income up to five (5)
4 years following the year of loss and any portion of such loss which
5 exceeds the taxable income of such first year shall be deducted in like
6 manner from the taxable income of the next remaining four (4) years,
7 *Provided, however,* That newly incorporated companies shall be
8 entitled to deduct its net operating loss incurred in any of the first five
9 (5) years of operations for five (5) years immediately following the
10 year of such loss and portion of such loss which exceeds the taxable
11 income of such first year shall be deducted in like manner from the
12 taxable income of the next remaining from years.

13 (c) The issuance of shares of the capital stock of any small and medium
14 enterprise in the following manner shall be exempt per se from
15 registration under the Revised Securities Act:

16 (1) The issuance of its capital stock in an amount of up to an
17 aggregate par value of PESOS: TWENTY-FIVE MILLION
18 (P25,000,000.00) to not more than twenty (20) persons;

19 (2) The additional issuance of shares of its capital stock to existing
20 shareholders and/or its affiliates under common control; and

21 (3) The issuance of its capital stock regardless of the amount and
22 number of persons, to the following: institutional investors,
23 venture capital corporation, mutual funds, investment
24 companies, investment houses, including their trust and
25 managed accounts, dealers in securities, stock brokers,
26 publicly owned holding companies, insurance companies,
27 government financial institutions, banks to the extent of their
28 allowable equity investments and their trust and managed
29 accounts, pension and retirement funds approved by the

1 Bureau of Internal Revenue, and other entities which the
2 Securities and Exchange Commission may, from time to time,
3 classify as institutional investors.

4 (d) The sale, barter, exchange or disposition of shares of stocks,
5 warrants, or other equity derivatives issued by a small and medium
6 enterprise through initial public offering, shall not be subject to any
7 tax.

8 (e) For purposes of this Act, any investment in primary shares of stock to
9 any SBGFC accredited SMEs shall form part of the allowable
10 compliance to Section 13 of Republic Act 6977.

11 For purposes of determining the enterprises that may be eligible for
12 the above state incentives, SBGFC shall establish an accreditation
13 system and shall be responsible for issuing or withdrawing accreditation
14 authority. All small and medium enterprises wishing to qualify for
15 incentives under this Act shall register with the SBGFC. Furthermore,
16 other incentives and services currently offered by SBGFC shall be
17 accorded to SMEs.

18 SEC. 6. **Accountability.** – The funds of the exchange, including
19 disbursements, shall be subject to existing auditing rules and regulations
20 governing government owned and controlled corporations.

21 SEC. 7. **Transitory Provision.** – The SBGFC shall cause the
22 privatization of the exchange and turn over the management and operation to its
23 members within a period not earlier than three (3) years but not more than five
24 (5) years.

25 SEC. 8. **Repealing Clause.** – Any provision of law, decree, executive
26 order or issuance inconsistent herewith are hereby repealed and/ or modified
27 accordingly.

28 SEC. 9. **Separability Clause.** – If any of the sections or provisions of this
29 Act is held invalid, all the other provisions not affected thereby shall remain valid

1 SEC. 4. **Effectivity Clause.** - This Act shall take effect fifteen (15) days
2 after its publication in the *Official Gazette* or in at least two (2) national
3 newspapers of general circulation

4 Approved,