

SIXTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session



Senate
Office of the Secretary

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SENATE

Senate Bill No. 367

RECEIVED BY: *[Signature]*

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

The 1987 Constitution provides that the State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations..."

Our nation is also a signatory to the ILO Convention on the Right to Organize and Bargain Collectively (Convention No. 98).

Unfortunately, based on the statistics of the Department of Labor and Employment, the State has failed and has failed miserably, in protecting the right to self-organization and collective bargaining. Records from the DOLE reveal that in 2008, there are only 118,000 workers covered by Collective Bargaining Agreements (CBAs). It is also common knowledge that most workers are now only casual or contractual workers whose employment are illegally terminated before the end of six months; hence, it is almost impossible for them to join a union, even as the Labor Code allows them to do so on the very first day of employment.

Thus, it is essential that the State, by passing this bill, make it easier for the workers to organize by allowing a national union or federation, which issued the charter certificate to the local chapter, to itself file the petition for certification election, thus shielding the local officers from harassment and discrimination.

This bill, likewise allows both labor and management to demand multi-unit and/or multi-employer bargaining. With regard to a single employer with more than one bargaining unit, this would rationalize the negotiating process since the entire workforce, including rank-and-file, supervisory and managerial employees get their salaries from the same pie.

With regard to multi-employer bargaining, this will allow workers in the same industry to bargain collectively, as practiced in the developed countries, including those in Europe.

Also, both the workers and their employers will be able to save time, effort and cost, and simplify CBA negotiations by allowing each or both of them to demand multi-employer and or/multi-unit bargaining.

Equally important is the ability of workers to demand up-to-date financial statements which could serve as reasonable basis for their demands. This will translate to more responsible unionism.

Finally, this bill will return the term of CBAs to three years, instead of the current five years. This will do away with the need to negotiate for the much shorter last two years of an existing CBA. The confusion as to when a CBA starts and ends will also be removed. The same will also allow the parties to come together along industry lines much sooner.

For these reasons, the passage of this bill is urgently requested.



JINGGOY EJERCITO ESTRADA
Senator

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SENATE

Senate Bill No. 367

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

AN ACT
STRENGTHENING THE WORKERS' CONSTITUTIONAL RIGHT TO
COLLECTIVE BARGAINING, REPEALING AND REPLACING FOR THE
PURPOSE PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE
KNOWN AS THE LABOR CODE OF THE PHILIPPINES

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

SECTION 1. Article 234-A of the Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines is hereby repealed and replaced with the following provisions:

"ART. 234-A. *CHARTERING AND CREATION OF A LOCAL CHAPTER.* - A DULY REGISTERED FEDERATION OR NATIONAL UNION MAY DIRECTLY CREATE A LOCAL CHAPTER BY ISSUING A CHARTER CERTIFICATE INDICATING THE ESTABLISHMENT OF THE LOCAL CHAPTER. THE CHAPTER SHALL ACQUIRE LEGAL PERSONALITY UPON THE ISSUANCE OF THE CHARTER CERTIFICATE; PROVIDED, THAT, THE FEDERATION OR THE NATIONAL UNION WHICH ISSUED THE CHARTER CERTIFICATE MAY ITSELF FILE THE PETITION FOR CERTIFICATION ELECTION CASE, INCLUDING ALL PROCEEDINGS BEFORE, DURING AND AFTER THE CONDUCT OF CERTIFICATION.

"THE LOCAL OR CHAPTER SHALL HAVE THE OBLIGATION TO REVEAL THE NAMES OF ITS OFFICERS ONLY FROM THE START OF THE NEGOTIATIONS FOR A COLLECTIVE BARGAINING AGREEMENT.

"SEC. 2. Article 248 (c) of P.D. 442, as amended otherwise known as the Labor Code of the Philippines is hereby repealed and replaced with the following provisions:

"Art. 28. Unfair labor practices of employers. It shall be unlawful for an employer to commit any of the following unfair labor practice:

"xxx

"G) TO VIOLATE THE DUTY TO BARGAIN COLLECTIVELY AS PRESCRIBED BY THIS CODE, INCLUDING THE DUTY TO BARGAIN COLLECTIVELY IN CASE OF MULTI-EMPLOYER BARGAINING AND /OR MULTI-UNIT BARGAINING AND THE DUTY TO BARGAIN COLLECTIVELY WITH THE FEDERATION OR NATIONAL UNION."

SEC. 3. Article 250 of P.D. 442, as amended, otherwise known as the Labor Code of the Philippines is hereby repealed and replaced with the following provisions:

"ARTICLE 250. *POLICY*- IT IS THE POLICY OF THE STATE TO PROMOTE AND EMPHASIZE THE PRIMACY OF THE FREE AND RESPONSIBLE EXERCISE OF THE RIGHT TO SELF-ORGANIZATION AND COLLECTIVE BARGAINING, EITHER THROUGH SINGLE ENTERPRISE LEVEL NEGOTIATIONS OR THROUGH THE CREATION OF A MECHANISM BY WHICH DIFFERENT EMPLOYERS AND RECOGNIZED OR CERTIFIED SOLE AND EXCLUSIVE BARGAINING AGENTS IN THEIR ESTABLISHMENTS BARGAIN COLLECTIVELY.

"IT IS LIKEWISE THE POLICY OF THE STATE TO PROMOTE THE UNITY OF THE DIFFERENT TRADE UNIONS, FEDERATIONS AND NATIONAL UNIONS – ESPECIALLY THOSE WORKING IN THE SAME INDUSTRY.

"ARTICLE 250-A. *DISCLOSURE OF INFORMATION*. – IN COLLECTIVE BARGAINING, THE PARTIES SHALL, AT THE REQUEST OF EITHER OF THEM, MAKE AVAILABLE SUCH UP-TO- DATE FINANCIAL INFORMATION ON THE ECONOMIC SITUATION OF THE UNDERTAKING, WHICH IS NORMALLY SUBMITTED TO RELEVANT GOVERNMENT AGENCIES, AS IS MATERIAL AND NECESSARY FOR MEANINGFUL NEGOTIATIONS. WHERE THE DISCLOSURE OF SOME THIS INFORMATION COULD BE PREJUDICIAL TO THE UNDERTAKING, ITS COMMUNICATION MAY BE MADE CONDITION UPON A COMMITMENT THAT IT WOULD BE REGARDED AS CONFIDENTIAL TO THE EXTENT REQUIRED. THE INFORMATION TO BE MADE AVAILABLE MAY BE AGREED UPON BY THE PARTIES TO COLLECTIVE BARGAINING.

"ARTICLE 250-B. *FORMS OF COLLECTIVE BARGAINING* – COLLECTIVE BARGAINING CAN TAKE PLACE EITHER BETWEEN A LEGITIMATE LABOR UNION AND THE EMPLOYER WITHIN A SINGLE ENTERPRISE ("SINGLE ENTERPRISE BARGAINING") BETWEEN MORE THAN ONE SOLE AND EXCLUSIVE BARGAINING AGENT AND THEIR CORRESPONDING EMPLOYERS ("MULTI-EMPLOYER BARGAINING"), OR BETWEEN MORE THAN ONE SOLE AND EXCLUSIVE BARGAINING AGENT WITHIN A SINGLE EMPLOYER AND THE EMPLOYER ("MULTI-UNIT BARGAINING").

"ARTICLE 250-C. *WHEN SINGLE BARGAINING UNIT-SINGLE ENTERPRISE BARGAINING AVAILABLE*. – ANY RECOGNIZED OR CERTIFIED SOLE AND EXCLUSIVE BARGAINING AGENT

MAY DEMAND NEGOTIATIONS WITH ITS EMPLOYER FOR TERMS AND CONDITIONS OF WORK COVERING EMPLOYEES IN THE BARGAINING UNIT CONCERNED.

"ARTICLE 250-D. PROCEDURE IN SINGLE ENTERPRISE BARGAINING. – THE FOLLOWING PROCEDURE SHALL BE OBSERVED IN SINGLE ENTERPRISE BARGAINING:

- (a) A RECOGNIZED OR CERTIFIED COLLECTIVE BARGAINING AGENT OR AN EMPLOYER THAT DESIRES TO NEGOTIATE SHALL SUBMIT SUCH INTENTION IN WRITING TO THE OTHER PARTY, TOGETHER WITH ITS PROPOSALS FOR COLLECTIVE BARGAINING. THE OTHER PARTY SHALL SUBMIT ITS COUNTER-PROPOSAL NOT LATER THAN TEN (10) CALENDAR DAYS FROM RECEIPT OF SUCH NOTICE;
- (b) SHOULD DIFFERENCES ARISE ON THE BASIS OF SUCH PROPOSAL AND COUNTER-PROPOSAL, EITHER PARTY MAY REQUEST FOR A CONFERENCE WHICH SHALL BEGIN NOT LATER THAN TEN (10) CALENDAR DAYS FROM THE DATE OF REQUEST;
- (c) IF THE DISPUTE IS NOT SETTLED, THE SECRETARY SHALL INTERVENE UPON REQUEST OF EITHER, OR BOTH PARTIES OR AT ITS OWN INITIATIVE AND IMMEDIATELY CALL THE PARTIES TO CONCILIATION MEETINGS. THE SECRETARY SHALL HAVE THE POWER TO ISSUE SUBPOENAS REQUIRING THE ATTENDANCE OF THE PARTIES TO SUCH MEETINGS. IT SHALL BE THE DUTY OF THE PARTIES TO PARTICIPATE FULLY AND PROMPTLY IN THE CONCILIATION MEETINGS THE SECRETARY MAY CALL;
- (d) DURING THE CONCILIATION PROCEEDINGS BEFORE THE SECRETARY, THE PARTIES ARE PROHIBITED FROM DOING ANY ACT WHICH MAY DISRUPT OR IMPEDED THE EARLY SETTLEMENT OF THE DISPUTES; AND;
- (e) THE SECRETARY SHALL EXERT ALL EFFORTS TO SETTLE DISPUTES AMICABLY;
- (f) THE FOREGOING PROCEDURE IS WITHOUT PREJUDICE TO THE PARTIES ADOPTING SUCH PROCEDURES AND PROCESSES THEY MAY DEEM APPROPRIATE AND NECESSARY FOR THE EARLY CONCLUSION OF THEIR NEGOTIATIONS.

"ARTICLE 250-E. WHEN MULTI-UNIT AND/OR MULTI-EMPLOYER BARGAINING MANDATORY. – THE SOLE AND EXCLUSIVE BARGAINING AGENTS, WHETHER OR NOT BELONGING TO THE SAME EMPLOYER, MAY AGREE IN WRITING TO COME TOGETHER FOR THE PURPOSE OF COLLECTIVE BARGAINING; DIFFERENT EMPLOYERS MAY LIKEWISE AGREE IN WRITING TO COME TOGETHER FOR PURPOSES OF COLLECTIVE BARGAINING; A SINGLE EMPLOYER MAY ALSO DEMAND COLLECTIVE BARGAINING

WITH MORE THAN ONE BARGAINING UNIT IN SAD SINGLE EMPLOYER; PROVIDED:

- (a) ONLY A LEGITIMATE LABOR ORGANIZATION WHICH IS THE SOLE AND EXCLUSIVE BARGAINING AGENT IN THE COLLECTIVE BARGAINING UNIT MAY PARTICIPATE AND NEGOTIATE IN MULTI-EMPLOYER AND/OR MULTI-BARGAINING UNIT BARGAINING;
- (b) ONLY EMPLOYERS WITH COUNTERPART SOLE AND EXCLUSIVE BARGAINING AGENTS MAY PARTICIPATE AND NEGOTIATE IN MULTI-EMPLOYER BARGAINING AND;
- (c) AN OBLIGATION TO BARGAIN SHALL ARISE ON THE PART OF THE CORRESPONDING SOLE AND EXCLUSIVE BARGAINING AGENTS OR EMPLOYER/S, SHOULD MULTI-EMPLOYER AND/OR MULTI-BARGAINING UNIT BARGAINING BE DEMANDED BY EITHER A GROUP OF SOLE AND EXCLUSIVE BARGAINING AGENTS OR A SINGLE EMPLOYER OR A GROUP OF EMPLOYERS;
- (d) DIFFERENT EMPLOYERS MAY DEMAND MULTI-EMPLOYER BARGAINING FROM THEIR CORRESPONDING SOLE AND EXCLUSIVE BARGAINING AGENTS, INCLUDING THOSE BARGAINING AGENTS BELONGING TO THE SAME EMPLOYER;
- (e) DIFFERENT SOLE AND EXCLUSIVE BARGAINING AGENTS WITHIN THE SAME EMPLOYER MAY DEMAND MULTI-UNIT COLLECTIVE BARGAINING FROM THE EMPLOYER;
- (f) AN EMPLOYER MAY DEMAND MULTI-UNIT COLLECTIVE BARGAINING FROM THE DIFFERENT SOLE AND EXCLUSIVE BARGAINING AGENTS;
- (g) DIFFERENT AND SOLE EXCLUSIVE BARGAINING AGENTS MAY DEMAND COLLECTIVE BARGAINING WITH MORE THAN ONE EMPLOYERS, EVEN AS MORE THAN ONE SOLE AND EXCLUSIVE BARGAINING AGENT MAY BELONG TO THE SAME EMPLOYER.

"ARTICLE 250-F. PROCEDURE IN MULTI-EMPLOYER BARGAINING AND/OR MULTI-UNIT BARGAINING. – MULTI-EMPLOYER AND/OR MULTI-BARGAINING UNIT MAY BE INITIATED BY THE LABOR UNIONS OR BY THE EMPLOYER/S.

- (a) SOLE AND EXCLUSIVE BARGAINING AGENTS THAT WANT TO NEGOTIATE WITH THEIR EMPLOYERS COLLECTIVELY SHALL EXECUTE A WRITTEN AGREEMENT AMONG THEMSELVES, WHICH SHALL CONTAIN THE FOLLOWING:
 - (1) THE NAMES OF THE SOLE AND EXCLUSIVE BARGAINING AGENTS THAT WANT TO AVAIL OF MULTI-EMPLOYER OR MULTI-UNIT BARGAINING;
 - (2) EACH LEGITIMATE LABOR ORGANIZATION IN THE EMPLOYER UNIT;

- (3) THE FACT THAT EACH OF THE LABOR UNIONS ARE THE INCUMBENT SOLE AND EXCLUSIVE BARGAINING AGENTS FOR THEIR RESPECTIVE EMPLOYER UNITS;
- (4) THE DURATIONS OF THE COLLECTIVE BARGAINING AGREEMENTS, IF ANY, ENTERED INTO BY EACH LABOR UNION WITH THEIR RESPECTIVE EMPLOYERS.

SOLE AND EXCLUSIVE BARGAINING AGENTS WHICH ARE MEMBERS OF THE SAME REGISTERED FEDERATION, NATIONAL OR INDUSTRY UNION ARE EXEMPT FROM EXECUTION OF THIS WRITTEN AGREEMENT.

- (b) THE SOLE AND EXCLUSIVE BARGAINING AGENTS FROM DIFFERENT EMPLOYERS THAT WANT TO BARGAIN WITH MULTI-EMPLOYERS AND/OR A SINGLE EMPLOYER IN CASE OF MULTI-UNIT-SINGLE EMPLOYER BARGAINING SHALL SEND A WRITTEN NOTICE TO THIS EFFECT TO EACH EMPLOYER CONCERNED. THE WRITTEN AGREEMENT STATED IN THE PRECEDING PARAGRAPH, OR THE CERTIFICATES OF REGISTRATION OF THE FEDERATION, NATIONAL OR INDUSTRY UNION, SHALL ACCOMPANY SAID NOTICE.

EMPLOYERS SHALL GROUP THEMSELVES OR USE THEIR EXISTING ASSOCIATIONS TO ENGAGE IN MULTI-EMPLOYER BARGAINING. THEY SHALL SEND A WRITTEN NOTICE TO EACH OF THEIR COUNTERPART SOLE AND EXCLUSIVE BARGAINING AGENTS INDICATING THEIR DESIRE TO ENGAGE IN MULTI-EMPLOYER BARGAINING. SAID NOTICE SHALL INDICATE THE FOLLOWING:

- (1) THE NAMES OF THE EMPLOYERS WHO DESIRE TO AVAIL OF MULTI-EMPLOYER BARGAINING;
 - (2) THEIR CORRESPONDING SOLE AND EXCLUSIVE BARGAINING AGENT/S;
 - (3) THE FACT THAT EACH SOLE AND EXCLUSIVE BARGAINING AGENT IS AN INCUMBENT EXCLUSIVE BARGAINING AGENT;
 - (4) THE DURATION OF THE CURRENT COLLECTIVE BARGAINING AGREEMENT, IF ANY, ENTERED INTO BY EACH EMPLOYER WITH THEIR COUNTERPART SOLE AND EXCLUSIVE BARGAINING AGENT/S.
- (c) DURING THE COURSE OF NEGOTIATIONS, EMPLOYERS AND THE CORRESPONDING SOLE AND EXCLUSIVE BARGAINING AGENT/S SHALL DISCUSS AND AGREE ON THE FOLLOWING:
 - (1) MANNER BY WHICH NEGOTIATIONS SHALL PROCEED;
 - (2) THE SCOPE AND COVERAGE OF THE NEGOTIATIONS AND THE AGREEMENT;
 - (3) WHERE APPROPRIATE, THE EFFECT OF THE NEGOTIATIONS ON CURRENT AGREEMENTS OR

CONDITIONS OF EMPLOYMENT AMONG THE PARTIES.

- (d) IN CASES WHERE THE PARTIES ARE UNABLE TO COME TO AN AGREEMENT AS PROVIDED FOR UNDER THE PRECEDING PARAGRAPH, THE PROCEDURE PROVIDED FOR UNDER 250-D SHALL BE FOLLOWED;
- (e) TWO (2) SIGNED COPIED OF COLLECTIVE BARGAINING AGREEMENT SHALL BE POSTED FOR AT LEAST FIVE (5) DAYS IN TWO (2) CONSPICUOUS AREAS IN EACH WORKPLACE OF THE EMPLOYER OR EMPLOYER UNITS CONCERNED. SAID COLLECTIVE BARGAINING AGREEMENT SHALL COVER ONLY THOSE EMPLOYEES IN THE BARGAINING UNITS WHICH HAVE RATIFIED IT.

"ANY MULTI-EMPLOYER AND/OR MULTI-BARGAINING UNIT CBA SHALL COVER ALL OF THE TERMS AND CONDITIONS OF EMPLOYMENT OTHERWISE COVERED BY SINGLE ENTERPRISE BARGAINING. HOWEVER, IN CASE A SINGLE ENTERPRISE CBA AND A MULTI-EMPLOYER OR MULTI-BARGAINING UNIT CBA ARE CONCURRENTLY IN EFFECT FOR A BARGAINING UNIT AND THERE IS A CONFLICT BETWEEN THE CBAs, THE PROVISION THAT IS MORE FAVORABLE TO THE WORKER SHALL PREVAIL.

"ARTICLE 250-G. FEDERATION AND NATIONAL UNION'S ROLE IN COLLECTIVE BARGAINING. FEDERATIONS AND NATIONAL UNIONS SHALL HAVE THE RIGHT TO REPRESENT THEIR LOCAL UNIONS OR LOCAL CHAPTERS, AND ALL THEIR MEMBERS, IN ALL ASPECTS OF COLLECTIVE BARGAINING, SUBJECT TO THE RIGHT OF ALL OF THE MEMBERS OF THE BARGAINING UNIT TO RAIFY OR REJECT ANY NEGOTIATED COLLECTIVE BARGAINING AGREEMENT.

"THE PRINCIPAL IN ANY COLLECTIVE BARGAINING AGREEMENT AND IN THE NEGOTIATIONS THEREOF SHALL BE THE FEDERATION OF THE NATIONAL UNION. HOWEVER, NEGOTIATIONS SHALL BE JOINTLY CONDUCTED BY THE FEDERATION/NATIONAL UNION AND THE LOCAL OR CHAPTER. ANY AGREEMENT MUST BE RATIFIED BY A MAJORITY OF THE TOTAL NUMBER OF COVERED EMPLOYEES IN ALL OF THE BARGAINING UNITS.

"FURTHERMORE, A COLLECTIVE BARGAINING AGREEMENT MUST BE RATIFIED BY THE MAJORITY OF THE MEMBERS OF EACH BARGAINING UNIT, AND ONLY THE BARGAINING UNITS WHICH RATIFIED THE CBA SHALL BE BOUND BY THE AGREEMENT."

SEC. 4 Art. 253-A is hereby repealed and replaced with the following provisions:

"Art. 253-A. Terms of a collective bargaining agreement. Any Collective Bargaining Agreement that the parties may enter into shall be for a term of THREE (3) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such THREE-year term of the Collective Bargaining Agreement. ANY PARTY TO A COLLECTIVE BARGAINING AGREEMENT MAY SUBMIT A PROPOSAL TO THE OTHER PARTY NOT EARLIER THAN SIX MONTHS PRIOR TO THE EXPIRATION OF THE CBA.

"Any agreement conducted after the expiration of the CBA shall retroact to the day after the expiration of such CBA.

"The effectivity dates of the multi-unit and/or multi-employer CBA shall prevail over those of the local CBAs – including for purposes of determining the freedom period."

SEC. 5. Article 263 of P.D. No. 442, as amended, otherwise known as the Labor Code of the Philippines is hereby repealed and replaced with the following provisions:

"Art. 263. Strikes, picketing and lockouts.

"x x x

"c) In case of bargaining deadlocks, including those in multi-employer and/or multi-unit bargaining, the duly certified or recognized bargaining agent/s may file a notice of strike or the employer may file a notice of lockout with the Department at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

"In case of multi-employer and/or multi-unit bargaining and/or collective bargaining agreements, only those employers who commit unfair labor practice or who violate the duty to bargain collectively may be the subject of a notice of strike.

"x x x

"f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by a secret ballot in meetings or referenda called for that purpose. IN CASE OF MULTI-EMPLOYER AND/OR MULTI-UNIT BARGAINING OR COLLECTIVE BARGAINING AGREEMENT, A STRIKE CAN BE LAUNCHED ONLY BY A UNION WHICH APPROVED THE STRIKE BY A MAJORITY VOTE OF ITS MEMBERS. A decision to declare a lockout must be approved by a

majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The DOLE may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the DOLE the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided."

SEC. 6. *Implementing Rules and Regulations.* Within thirty (30) days from the effectivity of this Act, the Secretary of Labor and Employment, in consultation with the trade unions, labor organizations, and other stakeholders, shall issue and publish the necessary rules and regulations to implement the provisions of this Act.

SEC. 7. *Separability Clause.* If any provision of this Act, or any parts thereof, is declared unconstitutional, the same shall not affect the validity and effectivity of the other portions.

SEC. 8. *Repealing Clause.* All laws, executive orders, presidential decrees, proclamations, rules and regulations, issuances and enactments of parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 9. *Effectivity.* This Act shall take effect after fifteen (15) days from its complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines, whichever comes earlier.

Approved,