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Introduced by Senator Sergio Osmeña III

**AN ACT AMENDING REPUBLIC ACT NO. 8762, OTHERWISE KNOWN AS
THE RETAIL TRADE LIBERALIZATION ACT, AND FOR OTHER PURPOSES**

EXPLANATORY NOTE

In March 2000, the Philippines passed the Retail Trade Liberalization law to allow the entry of foreign investment in the retail sector with a view toward stimulating economic growth, creating more jobs and providing the Filipino consumer with better choices and higher quality goods at lower prices.

Sadly, in the 14-year period since the passage of the law, the benefits of liberalization have yet to be achieved. From 2000 to 2009, foreign direct investment in the retail and wholesale sector combined was only one percent (1%) of total FDI inflow. Our unemployment rate is at 6.9 %, and while a robust retail trade industry could have been a vehicle for job creation, without such investments, the opportunity for employment is lessened.


Currently, the law has a minimum US\$2,500,000 capital requirement before a foreign entity may own 100% of a retail establishment.

On the other hand, countries like Indonesia and Singapore allow foreign investments in the retail trade sector without any minimum capital requirement and without limits on foreign equity participation. India is set to relax its own restrictions to increase allowable foreign equity in the retail sector beyond the current 51% investment cap.

These requirements, together with other barriers, have resulted in the Philippines ranking dead last in terms of having a regulatory regime favorable to foreign investment, in contrast to Singapore, Vietnam, Malaysia, Thailand, and Indonesia.

These issues need to be addressed by revisiting the Retail Trade Liberalization Law in order to make the Philippines truly competitive on the world stage.

Considering that the entry of more market players will mean more job opportunities for the Filipino, and that market competition will lead to higher quality goods and services being delivered to the Filipino public at lower costs, this bill therefore proposes to do away with these barriers to foreign investment by removing the equity and capitalization requirements in the Retail Trade Liberalization law in the country.


SERGIO OSMEÑA III
Senator

SENATE
S.B. No. 2121

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PURPOSES**

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

1 **SECTION 1.** Section 5 of Republic Act No. 8762 is hereby amended to read as
2 follows:

3 “Sec. 5. *Foreign Equity Participation* – Foreign-owned
4 partnerships, associations and corporations formed and organized under
5 the laws of the Philippines may, upon registration with the Securities and
6 Exchange Commission (SEC) and the Department of Trade and Industry
7 (DTI), or in case of foreign owned single proprietorships, with the DTI,
8 engage or invest in the retail trade business. [, subject to the following
9 categories:]

10 [*Category A* – Enterprises with paid-up capital of the equivalent in
11 Philippine Pesos of less than Two million five hundred thousand US
12 dollars (US \$2,500,000.00) shall be reserved exclusively for Filipino
13 citizens and corporations wholly owned by Filipino citizens.]

14 [*Category B* – Enterprises with a minimum paid-up capital of the
15 equivalent in Philippine pesos of Two million five hundred thousand US
16 dollars (US\$2,500,000.00) but less than Seven million five hundred
17 thousand US dollars (US\$7,500,000.00) may be wholly owned by
18 foreigners [except for the first two (2) years after the effectivity of this Act
19 wherein foreign participation shall be limited to not more than sixty percent
20 (60%) of total equity.]

1 *[Category C-* Enterprises with a paid-up capital of the equivalent
2 in Philippine Pesos of Seven million five hundred thousand US dollars
3 (US\$ 7,500,000.00) or more may be wholly owned by foreigners
4 Provided, however, That in no case shall the investments for
5 establishing a store in Categories B and C be less than the equivalent in
6 Philippine Pesos of Eight hundred thirty thousand US dollars
7 (US\$830,000.00).]

8 *[Category D-* Enterprises specializing in high-end or luxury
9 products with a paid-up capital of the equivalent in Philippine Pesos of
10 Two hundred fifty thousand US dollars (US\$250,000.00) per store may be
11 wholly owned by foreigners.]

12 The foreign investor shall be required to maintain in the Philippines
13 the full amount of **ITS** [the prescribed minimum] capital, **OR, IN CASE**
14 **ANY PART OF THE CAPITAL IS SOLD TO A CITIZEN OF THE**
15 **PHILIPPINES, OR TO A PARTNERSHIP, ASSOCIATION OR**
16 **CORPORATION OWNED AND CONTROLLED BY CITIZENS OF THE**
17 **PHILIPPINES, THE UNSOLD AMOUNT OF ITS CAPITAL,** unless the
18 foreign investor has notified the SEC and the DTI of its intention to
19 repatriate its capital and cease operations in the Philippines. The actual
20 use in Philippine operations of the inwardly remitted [minimum] capital
21 [requirement] shall be monitored by the SEC.

22 Failure to maintain the [full] amount of [the prescribed minimum]
23 capital **REQUIRED IN THE IMMEDIATELY PRECEDING PARAGRAPH,**
24 prior to notification of the SEC and the DTI, shall subject the foreign
25 investor to penalties or restrictions on any future trading activities/business
26 in the Philippines **AS DETERMINED BY THE DTI.**

27 Foreign retail stores shall secure a certification from the Bangko
28 Sentral ng Pilipinas (BSP) and the DTI, which will verify or confirm inward
29 remittance of **ITS** [the minimum required] capital investment.

30 **Sec. 2.** Section 6 of Republic Act No. 8762 is hereby deleted.

31 **Sec. 3.** Section 7 of Republic Act No. 8762 is hereby deleted.

1 **Sec. 4.** Section 8 of the Republic Act No. 8762 is hereby amended to read
2 as follows:

3 “*Sec. 8. Qualification of Foreign Retailers.* - **[No foreign retailer**
4 **shall be allowed to engage in retail trade in the Philippine unless all the**
5 **following qualifications are met:**

6 (a) A minimum of Two hundred million US dollar
7 US\$200,000,000.00) net worth in its parent corporation for Categories B
8 and C, and Fifty million US dollar (US\$50,000,000.00) net worth in its
9 parent corporation for category D;

10 (b) (5) retailing branches or franchises in operation anywhere
11 around the world unless such retailer has at least one (1) store capitalized
12 at a minimum of Twenty-five million US dollars (US\$25,000,000.00);

13 (c) Five (5)-year track record in retailing; and

14 **(d)]** Only nationals from, or juridical entities formed or incorporated
15 in countries which allow the entry of Filipino retailers shall be allowed to
16 engage in retail trade in the Philippines.

17 The DTI is hereby authorized to pre-qualify all foreign retailers,
18 subject to the provisions of this Act, before they are allowed to conduct
19 business in the Philippines.

20 The DTI shall keep a record of qualified foreign retailers who
21 may, upon compliance with law, establish retail stores in the Philippines.
22 **[It shall ensure that parent retail trading company of the foreign investor**
23 **complies with the qualifications on capitalization and track record**
24 **prescribed in this section.]**

25 The Inter-Agency Committee on Tariff and Related Matters
26 Authority (NEDA) Board shall formulate and regularly update a list of
27 foreign retailers of high-end or luxury goods and render an annual report
28 on the same to Congress.

1 **Sec. 5.** Section 9 of Republic Act No. 8762 is hereby amended to read as follows:

2 *Sec. 9. Promotion of Locally Manufactured Products.* - [For ten
3 (10) years after the effectivity of this Act,] at least [thirty] **TEN percent**
4 **(10%) [30%]** of the aggregate cost of the stock inventory of foreign
5 retailers [falling under Categories B and C and ten percent (10%) for
6 category D] shall be made in the Philippines.

7 **Sec. 6. Repealing Clause.** – Republic Act No. 8762, and all laws, decrees,
8 orders, rules and regulations or other issuances or parts thereof inconsistent with the
9 provisions of this Act are hereby repealed or modified accordingly.

10 **Sec. 7. Separability Clause-** If any portion or provision of this Act is declared
11 unconstitutional, the remainder of this Act or any provisions not affected thereby shall
12 remain in force and effect.

13 **Sec. 8. Effectivity.**- This Act shall take effect fifteen (15) days after publication in
14 two (2) newspapers of general circulation in the Philippines.

15 Approved,