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

SENATE

S. No. 754

Introduced by Senator Francis G. Escudero

AN ACT
REINSTITUTING MANDATORY CREDIT ALLOCATION FOR MICRO, SMALL AND MEDIUM ENTERPRISES, IMPOSING FINES AND PENALTIES FOR NONCOMPLIANCE, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

The enactment of Republic Act No. 6977, as amended by Republic Act Nos. 8289 and 9501 in 1997 and 2008, respectively, otherwise known as the Magna Carta for Micro, Small and Medium Enterprises (MSMEs), affirmed the responsibility of the State to promote, support, strengthen and encourage the growth and development of MSMEs in all productive sectors of the economy. One of the salient features of the MSME law is the mandate imposed on all lending institutions to set aside part of their loan portfolio and make it available for small enterprise credit for a period of ten (10) years. This mandatory credit allocation benefits MSMEs in two ways: first, through the provision of channels to source financing to expand or jumpstart their operations; and second, generation of funds through penalties to finance MSME interventions.

The pandemic and its impact on business operations and consumer demand have adversely impacted the MSME sector, causing temporary and permanent closures of MSME establishments and the displacement of thousands of employees. While the economy is on its way to recovery, MSMEs remain particularly vulnerable to pre-pandemic concerns such as the limited access of MSMEs to financing and markets. As noted in the 2017-2022 MSME Development Plan, lending institutions tend to prefer non-MSME borrowers because of higher gains, lower credit risk, higher repayment rate and collateral availability. Data from the Bangko Sentral ng Pilipinas (BSP) show that in the last quarter of 2021, banks only extended 2.08% and 3.3% of their total loan portfolio to micro and small, and medium enterprises, respectively.

This restricted access to financing, among other challenges, needs to be addressed to ensure swift recovery not only of MSMEs but the entire economy. This bill seeks to reinstitute this mandatory credit allocation to provide a time-bound intervention to ease the MSMEs' financial burden and hasten its recovery from a global pandemic. Additionally, the proposed measure mandates the Department of Trade and Industry, in coordination with the Department of Finance and the BSP, to formulate and implement other interventions to improve MSMEs' access to formal sources of financing. With this twin provisions, it is hoped that providing better access to a wider range of financial services would help MSMEs realize their full potential in generating employment and boosting economic growth.

In view of the foregoing, the passage of the measure is earnestly sought.

Respectfully submitted.

FRANCIS G. ESCUDERO

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

Sec. 1. *Reinstitution of Mandatory Credit Allocation for Micro, Small and Medium Enterprises.* – For the period of ten (10) years from the effectivity of this Act, all lending institutions as defined under Bangko Sentral ng Pilipinas (BSP) rules, whether public or private, shall set aside at least eight percent (8%) for micro and small enterprises and at least two percent (2%) for medium enterprises of their total loan portfolio based on their balance sheet as of the end of the previous quarter, and make it available for Micro, Small and Medium Enterprises (MSME) credit as contemplated in this Act: *Provided,* That the Secretary of Finance may extend the effectivity period of the mandatory MSME credit allocation as may be warranted by prevailing financial and economic conditions as reflected in the number and growth rate of MSME-classified establishments, MSME share in the Total Employment, MSME share in the Gross Domestic Product, and other socioeconomic and financial indicators to be identified by the Department of Trade and Industry (DTI) and MSME Development Council.

Lending institutions may comply with the mandatory MSME credit allocation through any of the following:

(a) Actual extension of loans to eligible MSMEs;

(b) Actual subscription of preferred shares of stock of the Small Business Corporation (SBCorp);

(c) Wholesale lending to Participating Financial Institutions for on-lending to MSMEs;

(d) Purchase/discount of MSME receivables;

(e) Extension of loans to export, import, and domestic traders; or

(f) Subscription/purchase of liability instruments as may be offered by the SBCorp.

The BSP, in coordination with the Department of Finance (DOF) and the DTI shall formulate rules for the effective implementation of this provision: *Provided*, That the purchase of government notes, securities and other negotiable instruments shall not be deemed compliance with the foregoing provisions: *Provided*, *further*, That the BSP shall establish an incentive program to encourage lending beyond the mandatory MSME credit allocation, such as possible reduction in bank's reserve requirement.

The MSME Development Council shall establish mechanism to monitor all MSME loan applications in order to account for the absorptive capacity of the MSME sector.

The BSP shall furnish to the MSME Development Council on a quarterly basis comprehensive report on the banks' compliance, noncompliance and penalties of the above provisions on the mandatory credit allocation for MSMEs.

Lending institutions which are not qualified to acquire or hold lands of the public domain in the Philippines shall be permitted to bid and take part in sales of mortgaged real property in case of judicial or extra-judicial foreclosure, as well as avail of receivership, enforcement and other proceedings, solely upon default of a borrower, and for a period not exceeding five (5) years from actual possession: *Provided*, That in no event shall ownership and title to the property be transferred to such lending institutions. If the said lending institution is the winning bidder, it may, during said five (5) year period, transfer its rights to a qualified Philippine national, without prejudice to a borrower's rights under applicable laws.

Sec. 2. *Penalties for Non-compliance.* – The BSP shall impose administrative sanctions and other penalties on erring lending institutions for non-compliance with the provisions of this Act. In addition, the president, members of boards of directors, and other officers of the erring lending institutions shall be individually liable for imprisonment of ranging from six (6) months to one (1) year, a fine ranging from Five hundred thousand (P500,000.00) to Two million pesos (P2,000,000.00) each, or both, at the discretion of the court.

Ninety percent (90%) of the penalties for noncompliance shall be remitted to the MSME Development Council Fund and shall be used for the extension of low-interest, no-collateral loans for MSMEs, while the remaining ten percent (10%) shall be retained by the BSP to cover for administrative expenses.

Sec. 3. *Other Interventions to Improve MSMEs' Access to Financing.* – The DTI, in coordination with the DOF and the BSP, shall formulate and implement other interventions to improve MSMEs' access to formal sources of financing. These interventions may include, but not be limited to, the establishment of a bonds and equities market for MSMEs, development of credit enhancement mechanisms, and making use of domestic savings and foreign exchange reserves.

Sec. 4. *Implementing Rules and Regulations (IRR).* – Within thirty (30) days from the effectivity of this Act, the BSP, the DOF and the DTI shall promulgate the rules and regulations to effectively implement the provisions of this Act.

Sec. 5. *Separability Clause.* – If any provision or part hereof is declared unconstitutional, the remainder of this Act or any provision not affected thereby shall remain in full force and effect.

Sec. 6. *Repealing Clause.* – All laws, acts, decrees, executive orders, issuances, and rules and regulations or parts thereof which are contrary to and inconsistent with this Act are hereby repealed, amended or modified accordingly.

Sec. 7. *Effectivity.* – This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation, and shall remain in full force and effect for ten (10) years unless otherwise extended as provided under Section 1 of this Act.

Approved,