

**SIXTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES**
First Regular Session

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Senate
Office of the Secretary

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SENATE

RECEIVED BY: *ja*

SENATE BILL NO. 1424

INTRODUCED BY SENATOR JOSEPH VICTOR G. EJERCITO

EXPLANATORY NOTE

In 1991, Republic Act No. 7042 was passed, otherwise known as the Foreign Investments Act of 1991 (FIA). The law was intended to attract investments from foreign sources, and in so doing expand livelihood and employment opportunities for Filipinos.

However, in the practical application of the law, there are two areas that appear inconsistent with the objectives of the FIA and merit a second look.

First, while the FIA is meant to encourage foreign equity investments, the "practice of all professions" is, oddly enough, an included item in the Foreign Investment Negative List (FINL) under the heading "No Foreign Equity". Considering that certain laws governing each profession allow foreign nationals to practice in the Philippines under reciprocity arrangements, it is misleading to include such item in the FINL as a nationalized activity. This effectively discourages foreign professionals who would otherwise be allowed to practice here by virtue of reciprocity from coming in and sharing their ideas and technical know-how, contrary to the inclusive policy of the FIA.

Second, the FIA allows non-Philippine nationals to invest in small and medium-sized domestic market enterprises (DME) with a minimum paid-in capital of US\$100,000 if they employ at least 50 direct employees. However, operationally speaking, a US\$100,000 enterprise — only a little over PhP 4.3 million — cannot immediately sustain a labor force of 50 persons. So as not to render pointless this provision of the law, and to align it with the spirit of the FIA, there is a need to retain the

employment requirement but lower the threshold to a more reasonable number.

Therefore, this bill seeks to amend the Foreign Investments Act by excluding the practice of professions from the FINL by providing that the same shall not be covered by the scope of the FIA, and by lowering the employment threshold requirement to 15 direct employees for a US\$100,000 foreign investments in small and medium-sized DMEs.

In view of the foregoing, immediate passage of this bill is earnestly sought.

A handwritten signature in black ink, appearing to read 'J. Ejercito', with a horizontal line extending to the left.

JOSEPH VICTOR G. EJERCITO



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**AN ACT
AMENDING REPUBLIC ACT NO. 7042, AS AMENDED BY REPUBLIC
ACT NO. 8179, OTHERWISE KNOWN AS THE FOREIGN
INVESTMENTS ACT OF 1991, AND FOR OTHER PURPOSES**

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

SECTION 1. Section 4 of Republic Act No. 7042, as amended by
Republic Act No. 8179, otherwise known as the Foreign Investments Act
of 1991, is hereby amended to read as follows:

"Sec. 4. *Scope.* - This Act shall not apply to THE PRACTICE OF
PROFESSIONS, OR TO banking and other financial
institutions which are governed and regulated by the General
Banking Act and other laws under the supervision o f the
Central Bank."

Sec. 2. Section 8 of Republic Act No. 7042 is hereby amended to
read as follows:

"Sec. 8. *List of Investment Areas Reserved to Philippine
Nationals (Foreign Investment Negative List).* - The Foreign
Investment Negative List shall have two (2) component lists:
A, and B.

a) List A shall enumerate the areas of activities reserved
to Philippine nationals by mandate of the Constitution and
specific laws.

b) List B shall contain the areas of activities and
enterprises regulated pursuant to law:

- 1) Which are defense-related activities, requiring prior clearance and authorization from Department of National Defense (DND) to engage in such activity, such as the manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials; unless such manufacturing or repair activity is specifically authorized, with a substantial export component, to a non-Philippine national by the Secretary of National Defense; or
- 2) Which have implications on public health and morals, such as the manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beerhouses, dance halls; sauna and steam bathhouses and massage clinics.

Small and medium-sized domestic market enterprises, with paid-in equity capital less than the equivalent two hundred thousand US dollars (US\$200,000) are reserved to Philippine nationals, Provided that if: (1) they involve advanced technology as determined by the Department of Science and Technology or (2) they employ at least [fifty (50)] **FIFTEEN (15)** direct employees, then a minimum paid-in capital of one hundred thousand US dollars (US\$100,000.00) shall be allowed to non-Philippine nationals.

Amendments to List B may be made upon recommendation of the Secretary of National Defense, or the Secretary of Health, or the Secretary of Education, Culture and Sports, endorsed by the NEDA, approved by the President, and promulgated by a Presidential Proclamation.

The Transitory Foreign Investment Negative List established in Sec. 15 hereof shall be replaced at the end of the transitory period by the first Regular Negative List to be formulated and recommended by NEDA, following the process and criteria provided in Sections 8 of this Act.

The first Regular Negative List shall be published not later than sixty (60) days before the end of the transitory period provided in said section, and shall become immediately effective at the end of the transitory period. Subsequent Foreign Investment Negative Lists

shall become effective fifteen (15) days after publication in a newspaper of general circulation in the Philippines: Provided, however, That each Foreign Investment Negative List shall be prospective in operation and shall in no way affect foreign investment existing on the date of its publication.

Amendments to List B after promulgation and publication of the first Regular Foreign Investment Negative List at the end of the transitory period shall not be made more often than once every two (2) years".

Sec. 3. *Repealing Clause.* - Sections 4 and 8 of Republic Act No. 7042, as amended by Republic Act No. 8179, and all laws, decrees, orders, rules and regulations or other issuances or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 4. *Separability Clause.* - If any portion or provision of this Act is declared unconstitutional, the remainder of this Act or any provisions not affected thereby shall remain in force and effect.

Sec. 5. *Effectivity.* - This Act shall take effect fifteen (15) after publication in two (2) newspapers of general circulation in the Philippines.

Approved,