

SENATE

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S.B. 3023

(In Substitution of S.B. No. 2517)

Prepared by the Committee on Economic Affairs, RECEIVED BY: JW
with Sen. Joseph Victor G. Ejercito as author thereof.

AN ACT
AMENDING FOREIGN OWNERSHIP RESTRICTIONS IN
SPECIFIC LAWS GOVERNING ADJUSTMENT COMPANIES,
LENDING COMPANIES, FINANCING COMPANIES AND INVESTMENT
HOUSES CITED IN THE FOREIGN INVESTMENT NEGATIVE LIST,
EXCEPT THOSE IN THE CONSTITUTION & FOR OTHER PURPOSES

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

1 **SECTION 1. Declaration of Policy.** It is the policy of the State to attract
2 and promote investments from foreign individuals, partnerships,
3 corporations and governments including their political subdivisions, in
4 activities that significantly contribute to industrialization, socio-economic
5 development and sustainable inclusive growth.

6
7 To this end, it is, therefore, imperative to align the restrictive policies
8 with the current development thrusts and the needed increase in foreign
9 investments, thereby, liberalizing participation in certain activities and
10 areas listed in the Foreign Investment Negative List as provided in
11 specific laws.

12
13 **SEC. 2. Definition of Terms.** As used in this Act:

14 **a) Foreign Investment Negative List** shall mean a list of areas of
15 economic activity whose foreign ownership is limited to a maximum of
16 forty per cent (40%) of the outstanding capital stock in the case of a
17 corporation or capital in the case of partnership;

18
19 **b) Investment** shall mean equity participation in any enterprise
20 organized or existing under the laws of the Philippines. It includes both
21 original and additional investments, whether made directly through the
22 transfer of equity from one investor to another in stock purchase.
23 Ownership of bonds (including income bonds), debentures, notes or other
24 evidence of indebtedness do not qualify as investments.

1
2 The purchase of stock options or stock warrants are not investments
3 until the holder thereof exercises his option and actually acquires stock
4 from the corporation;

5
6 **c) Foreign Investment** shall mean an equity investment made by a
7 non-Philippine national; *Provided*, however, that for purposes of
8 determining foreign ownership, peso investments made by a non-
9 Philippine national shall be considered; *Provided, further*, access and use
10 of foreign exchange from banks and their subsidiary/affiliate forex
11 corporations for repatriation of divestment proceeds and income from
12 such foreign investments shall be subject to applicable Bangko Sentral
13 ng Pilipinas (BSP) rules and regulations; and *Provided; finally*, That, for
14 purposes of Section 8 of Republic Act No. 7042, as amended by Republic
15 Act No 8179, and Rule VIII, Section 6 of its Implementing Rules and
16 Regulations, Existing Foreign Investment shall mean an equity
17 investment made by a non-Philippine national duly registered with the
18 Securities and Exchange Commission (SEC) or the Consumer Protection
19 and Advocacy Bureau in the form of foreign exchange and/or other
20 assets transferred to the Philippines.

21
22 **d) Philippine National** shall mean a citizen of the Philippines; or a
23 domestic partnership or association wholly owned by citizens of the
24 Philippines; or a corporation organized under the laws of the Philippines
25 of which at least sixty percent (60%) of the capital stock outstanding and
26 entitled to vote is owned and held by citizens of the Philippines; or a
27 corporation organized abroad and registered as doing business in the
28 Philippines under the Corporation Code of which 100% of the capital
29 stock outstanding and entitled to vote is wholly owned by Filipinos; or a
30 trustee of funds for pension or other employee retirement separation
31 benefits, where the trustee is a Philippine national and at least sixty
32 percent (60%) of the fund will accrue to the benefits of Philippine
33 nationals; *Provided*, that where a corporation and its non-Filipino
34 stockholders own stocks in SEC-registered enterprise, at least sixty
35 percent (60%) of the fund will accrue to the benefits of Philippine
36 nationals ; *Provided*, that where a corporation and its non-Filipino
37 stockholders own stocks in SEC-registered enterprise, at least sixty

1 percent (60%) of the members of the Board of Directors of each of both
2 corporations must be citizens of the Philippines, in order that the
3 corporation must be citizens of the Philippines, in order that the
4 corporation shall also be considered a Philippine national. The control
5 test shall be applied for this purpose.

6
7 Compliance with the required Filipino ownership of a corporation shall
8 be determined on the basis of outstanding capital stock whether fully
9 paid or not, but only such stocks which are generally entitled to vote
10 are considered.

11
12 For stocks to be deemed owned and held by Philippine citizens or
13 Philippine nationals, mere legal title is not enough to meet the required
14 Filipino equity. Full beneficial ownership of the stocks, coupled with
15 appropriate voting rights are essential. Thus stocks, the voting rights of
16 which have been assigned or transferred to aliens cannot be considered
17 held by Philippine citizens or Philippine nationals.

18
19 Individual or juridical entities not meeting the aforementioned
20 qualifications are considered as non-Philippine nationals.

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22 **SEC. 3. Lifting of Foreign Ownership Restrictions.** All statutory laws
23 and implementing rules and regulations that impose nationality
24 requirements or foreign investment limitations on adjustment
25 companies, lending companies, financing companies and investment
26 houses are hereby repealed, except as otherwise provided in this Act, and
27 subject to the provisions of the Constitution.

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29 **SEC. 4. Adjustment Companies.** Section 332 of Presidential Decree
30 612, otherwise known as "The Insurance Code" as amended by
31 Republic Act No. 10607 is hereby amended to read as follows:

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33 "Section 332. No person, partnership, association, or corporation shall
34 act as an adjuster, as hereinafter defined, unless authorized so to act by
35 virtue of a license issued or renewed by the Commission pursuant to the
36 provisions of this Code.

37

1
2 No foreign national may be allowed to own stocks unless the country of
3 which he is a national accords reciprocal rights to Filipinos.”
4

5 **SEC. 5 Lending Companies.** Section 6 of Republic Act No. 9474,
6 otherwise known as the “Lending Company Regulation Act of 2007”, is
7 hereby amended to read as follows:
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9 “Section 6. Citizenship Requirements.

10 A lending company may be owned up to 100% by foreign nationals;
11 Provided, *however*, that where the loan is secured by land, a lending
12 company, more than 40% of whose capital is owned by foreign nationals,
13 may bid and take part in a sale of a mortgaged real property as well as
14 avail of enforcement proceedings, take possession and transfer their
15 rights to qualified Philippine nationals for a period not exceeding five (5)
16 years from actual possession; provided, further, that the title to the real
17 property shall not be transferred to said lending institutions; provided,
18 finally, that investments of a lending company shall be in accordance
19 with the provisions of the Constitution.
20

21 No foreign national may be allowed to own stocks unless the country of
22 which he is a national accords reciprocal rights to Filipinos.”
23

24 **SEC. 6. Financing companies.** Section 6 of Republic Act No. 8556,
25 otherwise known as the “Financing Company Act of 1998” is hereby
26 amended to read as follows:
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28 “Section 6. Form of organization and capital requirements. Financing
29 companies shall be organized in the form of stock corporations, may be
30 owned up to 100% by foreign nationals, and shall have a paid-up capital
31 of not less than Ten million pesos (Php10,000,000.00), in case the
32 financing company is located in Metro Manila and other first class cities,
33 Five Million Pesos (Php5,000,000.00) in other classes of cities and Two
34 Million Five Hundred Thousand pesos (Php2,500,000.00) in
35 municipalities: Provided, however, that no foreign national may be
36 allowed to own stock in any financing company unless the country of
37 which he is a national accords the same reciprocal rights to Filipinos in

1 the ownership of financing companies or their counterpart entities in
2 such country: and Provided, further, that financing companies duly
3 existing and in operation before the effectivity of this Act shall comply
4 with the minimum capital requirement within one (1) year from the date
5 of the said effectivity; and Provided, finally, that where land is concerned,
6 the financing company shall comply with the Constitutional provision on
7 foreign ownership of land.”

8
9 **SEC. 7. Investment Houses.** Section 5 of Presidential Decree No.129, as
10 amended by Republic Act 8366, otherwise known as the “Investment
11 Houses Law”, is hereby amended to read as follows:

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13 “Section 5. Citizenship requirements. – An Investment House may be
14 owned up to 100% by foreign nationals. In approving foreign equity
15 applications in Investment Houses, the Securities and Exchange
16 Commission shall approve such applications only if the same or similar
17 rights are enjoyed by Philippine nationals in the applicant’s country
18 subject to the provisions of the Constitution and existing laws on
19 nationalized and partly-nationalized entities.

20
21 Foreign nationals may become members of the board of directors to the
22 extent of the foreign participation in the equity of said enterprise.”

23
24 **SEC. 8. Separability Clause.** If any of the provisions of this Act is
25 declared invalid, the other provisions not affected thereby shall remain in
26 full force and effect.

27
28 **SEC. 9. Repealing Clause.** All statutory laws, orders, issuances, rules
29 and regulations and/or parts thereof which are inconsistent with the
30 provisions of this Act are hereby repealed or modified accordingly.

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32 **SEC. 10. Effectivity.** This Act shall take effect fifteen (15) days after
33 publication in the Official Gazette or in a newspaper of general
34 circulation.

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36 *Approved,*