

SENATE
S.B. No. 1113

'19 OCT -8 P7:21

Introduced by **SENATOR IMEE R. MARCOS**

RECEIVED BY: 

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

EXPLANATORY NOTE

Article II, Section 20 of the 1987 Constitution provides that, "*the State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.*"

In 2000, Republic Act (R.A.) No. 8762 or the "Retail Trade Liberalization Act" was enacted to promote foreign investments in the retail trade sector. Before the passage of R.A. No. 8762, there were no foreign direct investments in the retail trade sector. The share of retail in the Gross Domestic Product (GDP), in 1999, was only 11.42%, with a Gross Value Added (GVA) of only P 391.5 billion.

The passage of R.A. No. 8762 resulted in foreign direct investments flowing into the retail trade sector. The foreign investment in the sector, however, remained volatile and minimal, with investments reaching only USD 73.29 million in 2018, down from an all-time record of USD 208.19 million in 2016. In comparison, Thailand received USD 3.2 billion, Malaysia received USD 2.5 billion, Indonesia received USD 2 billion and Vietnam received USD 2 billion in 2016.

Nineteen (19) years since the passage of the law, there were only 43 prequalified foreign retailers in the country. As such, growth in the retail sector remains sluggish, with a GVA of only P 1.22 trillion, or a growth rate of 6.2%.

The principal restrictions to foreign investment in the retail trade sector of the country can be found in the minimum paid-up capital requirement and the pre-screening of qualified foreign retailers. The minimum paid-up capital of USD 2.5 million is widely seen as too high given the fact that there are initiatives to amend the Foreign Investments Act to allow investments with a minimum paid-up capital of

USD 100,000. Thus, there is a need to lower the minimum paid-up capital requirement to harmonize it closer to the Foreign Investments Act while protecting the micro and small entrepreneurs of the country.

The qualifications of the foreign retailers listed in the Retail Trade Liberalization Act also fails to capture the change in dynamics in the international retailing industry. The requirement of 5 retailing branches anywhere in the world, five years of retailing experience, and reciprocity in the retail trade sector does not capture the situation on the emergence of online retailing financed by venture capitalists around the world. Therefore, there is a need to relax the requirements for foreign retailers in order to facilitate their monitoring and regulation.

Given the abovementioned circumstances, the immediate passage of this bill is necessary.


IMEE R. MARCOS

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



Senate
Office of the Secretary

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*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 follows:
2

3 "SEC. 5. Foreign Equity Participation. - Foreign-owned partnerships,
4 associations and corporations formed and organized under the laws of the
5 Philippines may, upon registration with the Securities and Exchange
6 Commission (SEC) and the Department of Trade and Industry (DTI), or in case
7 of foreign-owned single proprietorships, with the DTI, engage or invest in the
8 retail trade business [subject to the following categories:] **WITH A**
9 **MINIMUM PAID-UP CAPITAL OF THE EQUIVALENT IN PHILIPPINE**
10 **PESO OF ONE HUNDRED THOUSAND US DOLLARS (US\$100,000.00).**
11 **PROVIDED THAT, THE FOREIGN ENTITY SHALL COMPLY WITH ANY**
12 **OF THE FOLLOWING:**

13 (1) **HIRE FILIPINO EMPLOYEES COMPRISING AT LEAST FIFTY PERCENT**
14 **(50%) OF THEIR WORKFORCE OR AT LEAST FIFTEEN (15) FILIPINO**
15 **EMPLOYEES, WHICHEVER IS HIGHER;**

- 1 (2) UTILIZE ADVANCE MACHINE INTELIGENCE OR AUTOMATED
2 WORKFORCE, AS DETERMINED BY THE DEPARTMENT OF SCIENCE
3 AND TECHNOLOGY (DOST); OR
4 (3) TRANSACT AT LEAST FIFTY PERCENT (50%) OF THEIR RETAIL
5 BUSINESS ONLINE.

6 [Category A - Enterprises with paid-up capital of the equivalent in Philippine
7 Pesos of less than Two million five hundred thousand US dollars
8 (US\$2,500,000) shall be reserved exclusively for Filipino citizens and
9 corporations wholly owned by Filipino citizens.] [Category B - Enterprises with
10 a minimum paid-up capital of the equivalent in Philippine Pesos of Two million
11 five hundred thousand US dollars (US\$2,500,000) but less than Seven million
12 five hundred thousand US dollars (US\$7,500,000) may be wholly owned by
13 foreigners except for the first two (2) years after the effectivity of this Act w
14 herein foreign participation shall be limited to not more than sixty percent
15 (60%) of total equity.] [Category C - Enterprises with a paid-up capital of the
16 equivalent in Philippine Pesos of Seven million five hundred thousand US dollars
17 (US\$7,500,000) or more may be wholly owned by foreigners: Provided,
18 however, That in no case shall the investments for establishing a store in
19 Categories B and C be less than the equivalent in Philippine Pesos of Eight
20 hundred thirty thousand US dollars (US\$830,000).] [Category D - Enterprises
21 specializing in high-end or luxury products with a paid-up capital of the
22 equivalent in Philippine Pesos of Two hundred fifty thousand US dollars
23 (US\$250,000) per store may be wholly owned by foreigners.] The foreign
24 investor shall be required to maintain in the Philippines the full amount of **ITS**
25 [the prescribed minimum] capital, **OR, IN CASE ANY PART OF THE**
26 **CAPITAL IS SOLD TO A CITIZEN OF THE PHILIPPINES, OR TO A**
27 **PARTNERSHIP, ASSOCIATION, OR CORPORATION OWNED AND**
28 **CONTROLLED BY CITIZENS OF THE PHILIPPINES, THE UNSOLD**
29 **AMOUNT OF ITS CAPITAL**, unless the foreign investor has notified the SEC
30 and the DTI of its intention to repatriate its capital and cease operations in the
31 Philippines. The actual use in Philippine operations of the inwardly remitted
32 [minimum] capital [requirement] shall be monitored by the SEC. Failure to

1 maintain the [full] amount of [the prescribed minimum] capital **REQUIRED**
2 **IN THE IMMEDIATELY PRECEDING PARAGRAPH**, prior to notification of
3 the SEC and the DTI, shall subject the foreign investor to penalties or
4 restrictions on any future trading activities/business in the Philippines. Foreign
5 retail stores shall secure a certification from the Bangko Sentral ng Pilipinas
6 (BSP) and the DTI, which will verify or confirm inward remittance of ITS [the
7 minimum required] capital investment.”

8
9 **Section 2.** Sections 6 and 7 of Republic Act No. 8762 are hereby deleted and the
10 succeeding sections renumbered accordingly.

11
12 **Section 3.** Section 8 of Republic Act No. 8762 is hereby amended to read as follows:

13
14 “SEC. 8. Qualifications of Foreign Retailers. - [No foreign retailer shall be
15 allowed to engage in retail trade in the Philippines unless all the following
16 qualifications are met: a. A minimum of Two hundred million US dollars
17 (US\$200,000,000) net worth in its parent corporation for Categories B and C,
18 and Fifty million US dollars (US\$50,000,000) net worth in its parent corporation
19 for Category D; b. Five (5) retailing branches or franchises in operation
20 anywhere around the world unless such retailer has at least one (1) store
21 capitalized at a minimum of Twenty-five million US dollars (US\$25,000,000); c.
22 Five (5)-year track record in retailing; and d. Only nationals from, or juridical
23 entities formed or incorporated in countries which allow the entry of Filipino
24 retailers shall be allowed to engage in retail trade in the Philippines.] The DTI
25 is hereby authorized to pre-qualify all foreign retailers, subject to the provisions
26 of this Act, before they are allowed to conduct business in the Philippines. The
27 DTI shall keep a record of qualified foreign retailers who may, upon compliance
28 with law, establish retail stores in the Philippines. [It shall ensure that the
29 parent retail trading company of the foreign investor complies with the
30 qualifications on capitalization and track record prescribed in this section.] The
31 Inter-Agency Committee on Tariff and Related Matters of the National Economic
32 and Development Authority (NEDA) Board shall formulate and regularly update

1 a list of foreign retailers **[of high-end or luxury goods]** and render an annual
2 report on the same to Congress.”
3

4 **Section 4.** Section 9 of Republic Act No. 8762 is hereby amended to read as follows:
5

6 "Sec. [9] 7. Promotion of Locally Manufactured Products. - [For ten (10) years
7 after the effectivity of this Act, at] AT least [thirty] **TEN** percent [(30%)] (10%)
8 of the aggregate cost of the stock inventory of foreign retailers [falling under
9 Categories B and C and ten percent (10%) for Category D] shall be made in
10 the Philippines."
11

12 **Section 5. *Repealing Clause.*** – Republic Act No. 8762, and all laws, decrees,
13 executive orders, letters of instructions and regulations or any part thereof which are
14 inconsistent with any provision of this Act are hereby repealed, amended, or modified
15 accordingly.
16

17 **Section 6. *Separability Clause.*** - If for any reason, any selection or provision of his
18 Act is declared to be unconstitutional or invalid, the other sections or provisions of this
19 Act which are not affected shall continue in full force and effect.
20

21 **Section 7. *Effectivity.*** - This Act shall take effect after fifteen (15) days following its
22 publication in at least two (2) newspapers of general circulation or in the Official
23 Gazette.

Approved,