

14th Congress of the Republic)
of the Philippines)
1st Regular Session)

7 JUN 30 2011

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SENATE

S. No. 120

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Introduced by Senator Aquilino Q. Pimentel
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EXPLANATORY NOTE

The Philippine Constitution declares in Article II, Section 20: **“The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.”**

It is sad to note that the Philippines continues to lag behind its neighbors in attracting investors both local and foreign. For valid reasons, the country is not perceived to have a business-friendly investment climate, and therefore, investor confidence in the Philippines is not as strong as it is in other ASEAN countries. Basic to this weakness is the perception that our system of laws and public governance do not work.

The general view is that the country may have good laws but these are not properly implemented. Legal loopholes abound and these are exploited by the unscrupulous. White-collar crooks are able to avoid being jailed. For instance, thus far, *nobody has been jailed for violations of the Revised Securities Act or the General Banking Act, which have time and again been blatantly violated.*

Investors come in and invest under a seemingly firm set of rules. But, down the road, the perception is that the rules are changed without prior notice and consultations. Because personal connections are perceived to count heavily, people in business perceive that the playing field is not even at all. Finally, the courts seem to take forever to arbitrate disputes and occasionally have interfered in business decisions, which should probably be left to management sound discretion.

In the light of the foregoing, there is an need to clarify roles that the government performs and that business plays so that the economic development of the country may be hastened. There is also a need for government to regain the confidence of business, so that business can, in turn, be induced to expand their operations or to invest in new ventures and contribute to nation-building.

The Magna Carta hopes to respond to these concerns by clearly spelling out the rights and obligations of business and the kind of protection that Government will accord it. The Magna Carta is envisioned to be the social compact between Government and business.

To oversee the implementation of the Magna Carta for Business, a Presidential Commission for Business Concerns (PCBC) is proposed to be created under the Office of the President.


AQUILINO Q. PIMENTEL JR.

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**AN ACT
DEFINING THE RIGHTS AND DUTIES OF ENTREPRENEURS,
THE COMMITMENTS OF THE STATE IN PROVIDING A
BUSINESS-FRIENDLY ENVIRONMENT,
CREATING THE PRESIDENTIAL COMMISSION FOR BUSINESS CONCERNS
AND FOR OTHER PURPOSES**

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

SECTION 1. *Short Title.* - This Act shall be known as the "Magna Carta for Philippine Business".

SECTION 2. *Declaration of State Policy.* - It is hereby declared the policy of the State to recognize private business enterprise as the engine for economic growth. The State also commits itself to providing the necessary policy framework and effective operational systems and structures to encourage business initiatives and activities and promote their productivity and viability.

SECTION 3. *Definition of Business.* - Business refers to any natural or juridical person, duly registered and organized under applicable laws, that legally provides goods and services.

SECTION 4. *Definition of Government* - "Government" means the national government and the local government and all their departments, instrumentalities, agencies and services.

SECTION 5. *Main Purposes.* - The purposes of this Act are: (a) to define the expectations and commitments of Business and Government to each other; and (b) to provide the mechanism and structure for monitoring fulfillment of these expectations and commitments. The ultimate purpose of this Act is to promote and foster a climate of trust, transparency, and cooperation between Government

and Business so that both parties can work productively together for the attainment of economic growth and national development.

SECTION 6. *Rights of Business* - Business shall have the following rights:

- a. Business has the right to expect a level playing field from Government. A level playing field is characterized by equal and fair application of all laws, and by transparency at all levels of policy-formulation and public governance.
- b. Business has the right to expect a reasonable rate of profit from their business operations, commensurate to the amounts of risk and capital that are involved, and consistent with law, prevailing market conditions and market structures.
- c. Business has the right to decide on and to establish all lawful operating parameters of its activities, including but not limited to, such issues as *the location of their factories and operating headquarters, the sourcing of their raw material, labor, power, water and other utility requirements, and other similar issues, free from undue interference from dictation by government regulators. No impositions on these operating business decisions may be made by Government unless in pursuance of law, public interest or welfare.*
- d. Business has the right to a speedy disposition of its cases before all judicial, quasi-judicial and administrative bodies, specifically those which may have an effect on the continuity and viability of its operations. *Towards this end, the enforcement of the continuous trial system, the use of alternative modes of dispute resolution such as conciliation, mediation and arbitration; the shortening of the reglementary period for filing pleadings and the prescribed period for decision-making; the close monitoring of the performance of members of the judiciary, the swift imposition of administrative penalties upon corrupt, lazy, incompetent and inefficient judges; and such other measures which have for their purpose the speedy disposition of cases shall be strictly and rigidly observed.*
- e. Business has the right to expect productivity from its workers and employees at output levels and quality standards consistent with industry standards.

- f. Business has the right to consult and be consulted in the formulation of all laws and regulations through open consultative processes with legislators and regulators at both local and national levels. To this end, Congress shall create joint or separate committees to hear the suggestions, petitions, grievances, and the like, of Business relative to the business and investment climate in which it operates. Local Government Units are likewise encouraged to do so.
- g. Business has the right to complete and accurate information from Government concerning the implementation, interpretation, revision and arbitration processes of all laws, rules and regulations, and ordinances.
- h. Business has the right to seek protection from all forms of harassment, intimidation, coercion, interference and unnecessary vexation by government regulators and from unfair competition by their competitors, including those that are fully or partially capitalized by the State. Once a business has been authorized to operate by the appropriate government bodies and agencies, it shall be allowed to continue to operate under the same terms and conditions for as long as it possesses the same qualifications and none of the disqualifications as when it was originally allowed to operate except only as may be provided by law.
- i. Business has the right to expect consistency in government rules and regulations affecting it, regardless of a change in administration at the national or local levels of government. Any change in the said rules and regulations may be made to the demands of public interest and welfare only in accordance with law.
- j. Business has the right to manage and operate its organizations freely and in the manner as it may deem fit and proper, subject only to the legal and rightful demands of labor, and to obligations set forth in this Act and other laws. Business shall be protected at all times against illegal strikes even as it may not engage in illegal acts against its employees.

- k. Business has the right to security in its operations and properties against all forms of criminality and harassment.
- l. Business has the right to expect and to demand prompt, efficient, courteous, and competent service and full assistance and cooperation from all levels of government in the pursuit of their legitimate business objectives.

SECTION 7. Duties of Business. - Business shall have the following duties:

- a. Business has the duty to run its operations in a manner consistent with existing local and national laws, such as, but not limited to, laws on taxes, labor and minimum wage, anti-bribery and anti-corruption, product quality and safety standards, environmental protection and pollution control, truth in advertising, full product information and labeling requirements, consumer welfare, land zoning, the filing of complete and accurate reports with the pertinent government regulators.
- b. Business has the duty to run and manage its affairs and operations in the most efficient and effective manner consistent with the country's economic needs and priorities. It shall seek to integrate the best business practices obtaining in the world into their operations.
- c. Business has the duty within the limits of conventional business prudence and ethics, to deal with its employees, customers, suppliers, investors, competitors, and society as a whole in a fair, honest, transparent and even-handed manner. Any and all information it shares with these parties and with government regulators must be accurate, complete, coherent and up-to-date. Entrepreneurs shall not distort, hide, camouflage nor misrepresent the relevant facts of their business operations. It shall present only truthful and consistent information, including corporate reports, brochures, financial statements and the like to all parties entitled to the same and to the public.
- d. Business has the duty to pay its employees a level of compensation commensurate to their productivity levels and contribution to the

profitability of the business. At the very least, Business shall comply with minimum wage and child labor laws.

- e. Business has the duty to afford its employees every opportunity for developing their full potential as human beings through appropriate and effective promotion and incentive schemes, on-the-job training, values formation and productivity enhancement seminars, alternative income and livelihood workshops for its workers and dependents, and human resource development programs. Business shall be required to set aside every year at least three (3%) percent of its net profit after tax to be spent in the following year for human resource development programs.
- f. Business has the duty to treat all their workers with dignity and respect befitting their human nature. It shall provide its workers with safe, healthy and pleasant working conditions consistent with the best practices obtaining within their particular industries, as well as prevailing standards on safety of the workplace.
- g. Business has the duty to promote the welfare of communities within which it operates their factory sites, plantations, and manufacturing facilities. It shall set aside at least one-half ($\frac{1}{2}$) of one (1) percent ($\frac{1}{2}\%$) of its annual net sales as a fund for community development projects, such as, but not limited to, assistance to public elementary and secondary schools, construction of artesian wells and village water and sewerage systems and other community-based facilities, and environmental protection, income and livelihood projects, and cooperatives.
- h. Business has the duty to deal with civil servants in a professional manner and to protect, reinforce and enhance the latter's integrity, honesty, efficiency and productivity. Business shall not bribe or pressure, in any manner whatsoever, civil servants into committing acts, which are violate existing laws or which distort the level playing field to their advantage over the rights of consumers, workers, business competitors, and the public in general. To this end, Business shall report all forms inefficiency, dishonesty, and graft and corruption within the government bureaucracy and the perpetrators thereof to the proper government agency. Business shall have the duty to actively

cooperate in all investigative and judicial processes aimed at eradicating corruption and other obstacles to the creation of a wholesome business environment.

- i. Business has the duty to minimized any damage on the environment caused or aggravated by its business operations and to assure that the ecology of the area is restored to its original or pristine state prior to the business venture's entry into the locality. It may be held liable for the damage to the ecology of the area to the extent of the actual costs incurred by the government to repair such damage and to restore the environment to an acceptable level. Business may negotiate with the government agency concerned to arrive at a compromise on its liability. No adverse implications may be derived from any offer of compromise by the Business concerned on this matter. Such recompense is without prejudice to other penalties and fines, as provided for by law. To include Business to enhance and improve the ecology of the area, the national and the local governments may extend to it appropriate packages of tax credits, financial rewards and other incentives commensurate with the actual and opportunity costs incurred by the business entity for protecting and improving the environment.

- j. Business has the duty within the limits imposed by technology, economies of scale, and other relevant factors, of promoting free and open competition. To this end, business shall refrain from resorting to monopolist activities, price manipulation and connivance, false or misleading advertising, and other unfair trade practices.

SECTION 8. Government Main Obligations to Business. – The Government shall:

- a. Provide an efficient and level playing field for Business characterized by the equal application of law on all players without bias for or against any member of the business community or any business group. To this end, any memoranda of agreement, or understanding and contracts entered into by Business and Government shall be enforced as valid and binding or the parties thereof unless retrained by the Supreme Court.

government agencies shall cooperate with the business community in the development of infrastructure projects.

- i. Construct infrastructure, such as, but not limited to, roads, bridges, airports, seaports, and cost-effective power and communication facilities not only for Business but also for the community in which the Business is located. In the event that the government does not have the necessary funds to undertake such investments, private enterprise may be invited to invest in these facilities under existing mechanisms, such as, but not limited to Build-Operate-Transfer (BOT) schemes and its variants. Local governments concerned may also provide the infrastructure above mentioned without any additional authority from the national government.
- j. Not compete, except in emergency situations or in the interest of national security, with Business by setting up new agencies or allowing existing ones to engage in parallel business activities which are already being adequately served by the private sector. Such market interventions shall be undertaken only for the duration of an emergency or a crisis. The Government may not invest in or grant favors to companies run by the political cronies, allies, accountants or lawyers of the President or other officials who have jurisdiction over the line of business activities engaged in by the companies concerned.
- k. Not enforce or implement temporary or restraining orders by courts other than the Supreme Court to stop, impede or delay the operations of Business unless such operations constitute a real and present danger to the national interest as may be recommended by the Presidential Commission for Business Concerns.

SECTION 9. *Creation of the Presidential Commission for Business Concerns.* - To enforce the intents and purposes of this Act, there is hereby created an agency to be known as the Presidential Commission for Business Concerns (PCBC). The agency shall be attached for supervision purposes to the Office of the President.

SECTION 10. *Composition of the Presidential Commission for Business Concerns.* - The Commission shall have the following composition:

- a. PCBC Executive Director as PCBC Chairman
- b. Secretary of Trade and Industry
- c. Secretary of Labor and Employment
- d. Chairman of Senate Committee on Trade and Industry

- e. Chairman of House of Representatives Committee on Trade and Industry
- f. Four (4) nominees by and from private business groups duly registered with the Securities and Exchange Commission, such as, but not limited to the Philippine Chamber of Commerce, Inc., the Makati Business Club, and the Bishops-Businessmen's Conference.
- g. One (!) nominee from foreign chambers of commerce and
- h. Three (3) nominees from labor groups

The department secretaries concerned may designate one of their undersecretaries to represent them at the meetings of the commission, to vote, and to act on their behalf, as they may deem appropriate and proper.

SECTION 11. *Mission of the Commission.* - The mission of the Commission is to help create a business-friendly environment for the purpose of attracting investments into the country, generating jobs and economic opportunities for the citizenry and promoting economic development. The mission shall:

- (a) Take all appropriate and necessary actions which will create, maintain, and promote the level of investor confidence in the country;
- (b) Promote better coordination among the different agencies of government, on both policy formulation and policy implementation levels;
- (c) Reduce the amount of bureaucratic red tape which hampers business operations and provides a fertile ground for graft and corruption;
- (d) Identify existing laws, ordinances, rules and regulations which are perceived as being anti-business or may impede business efficiency and viability, and working for their amendment or repeal;
- (e) Identifying infrastructural, superstructural, and systemic bottlenecks which impede business efficiency and productivity;
- (f) Encourage and promote a business-friendly attitude in Philippine society, particularly in the civil service and among government regulators;
- (g) Undertake policy studies and developing appropriate recommendations for the resolution of specific business issues and for the improvement of investor confidence in the country; and
- (h) Receive and act on complaints, suggestions and recommendations from all sectors of society regarding the operation of business.

SECTION 12. *Commission Secretariat and policy Research Group.* – The Commission shall establish a full-time working secretariat and a policy research group, to be headed by the Executive Director.

SECTION 13. *Commission Executive Director.* - The Executive Director of the Commission shall be at least forty (40) years old; has a master's degree in business administration, business management, public administration, law, or economics and a proven track record either in public service or as a business professional. He/She shall be appointed by and shall serve for a term of six (6) years unless removed for cause pursuant to the rules of the Civil Service Commission.

He/She shall receive an annual compensation of Five Hundred Thousand Pesos (PHP500,000.00) .

The Executive Director shall also serve as the Commission Chairperson and shall preside over all its meetings. He/She shall not vote during the deliberations except in case of a tie.

SECTION 14. *Commission Vice-Chairman* - A Vice-Chairperson shall be elected from the private sector membership of the Commission. He/she shall preside over meetings of the Commission in the absence of the Chairman. When presiding in the absence of the Chairman, he/she shall also not vote during its deliberations, except in case of a tie.

SECTION 15. *Quorum* - The Commission shall hold monthly meetings every third Monday of the month. A quorum is deemed to exist if at least 50% plus one (1) of the voting members of the Commission are physically present at the meeting. These regular monthly meetings shall be held at the Commission's main office in the Metro Manila area. The Commission may also hold special meetings not more than twice a month as it may deem necessary and at places it may deem convenient.

SECTION 16. *Honoraria and salaries* – The Commission shall fix reasonable honoraria for the Vice-chairman and other members of the Commission. All other employees of the Commission shall receive salaries, emoluments and benefits as may be fixed by the Commissions subject to pertinent rules of the civil service

SECTION 17. *Funding.* - Initial funding for the operations of the Commission shall be Fifty Million (50,000,000.00) Pesos which may be taken from the funds of the Office of the President. Every year thereafter, the Executive Director shall prepare a budget for the operating and capital expenditures of Commission and submit it to the Office of the President for inclusion in the Annual Appropriations Act.

SECTION 18. *Implementing Rules and Regulations.* - Within sixty (60) days after the effectivity of this Act, the President shall appoint the Executive Director of the Commission. The Executive Director shall within fifteen (15) days from his or her appointment recommend to the President the appointment of the private sector representatives, mentioned in this Act. As soon as eight (8) private sector representatives shall have been appointed by the President, the Executive Director shall convene the organizational meeting of the Commission. The Commission shall draft and complete the *Implementing Rules of this Act* within a period of ninety (90) days from its organization

SECTION 19. *Penalties.* - Any individuals who violates the duties imposed by this Act upon Business and the Government shall be punished with imprisonment of not less than six (6) months or more than one (1) year and a fine of not less than One Hundred Thousand (100,000.00) Pesos. The fine may be imposed upon any juridical person who violates the provisions of this Act.

SECTION 20. *Effectivity.* - This Act shall take effect after one month following its approval and publication in a newspaper of national circulation.

Approved,