

Joint Foreign Chambers of the Philippines

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Philippine Association of Multinational Companies Regional Headquarters, Inc.

STATEMENT FOR HEARING OF SENATE ECONOMIC AFFAIRS COMMITTEE RE THE FOREIGN INVESTMENT ACT OF 1989 RA 7142, as amended

We appreciate the opportunity to present a position on an important law that regulates the foreign investment environment of the Philippines. RA 7142, was a major reform when enacted in 1991 by President Corazon Aquino and amended by RA 8179.

The law was intended as a major reform of her administration to encourage foreign investment in domestic market businesses by ending the requirement for a 60% Philippine majority ownership of a domestic firm and mandating issuance of a Foreign Investment Negative List (FINL) every two years. Section 2 Declaration of policy states "In domestic market enterprises, foreigners can invest as much as one hundred percent (100%) equity except in areas included in the negative list." Full foreign ownership of export firms is allowed in order to encourage exports, job creation, and transfer of technology.

The negative list principle informs potential investors which investment activities have specific restrictions on foreign ownership. Activities that do not appear on the list are presumed to be unrestricted, except by minimum requirements for capital invested (\$200,000 or \$100,000 if new technology is involved or 50 Filipinos are hired).

The FINL informs investors of the restrictions that are contained in the 1987 Constitution, various laws, and administrative issuances. Ten FINLs have been issued over the last two decades, the last in May 2015. The National Economic Development Authority acts as secretariat for the FINL, updating each new list with changes since the previous one.

Over the last two decades there have been few important changes to the FINL. No administration and no congress during that period prioritized liberalization of the restrictions beyond these changes.

The most difficult to change restrictions are those placed in the 1987 Constitution. Although changes were recommended by presidential commissions in 2000 and 2005 and by resolutions in Congress in the 16th and 17th Congress, no implementing amendments were approved. Most recently, some changes are again recommended in the recent report of the president's Consultative Committee.

The significant changes to the FINL came in the 4th, 8th, and 10th lists. In the 4th FINL, the passage of the Retail Trade Act opened this sector to foreign investors who invest a minimum of \$2.5 million and meet other requirements. The 8th FINL recorded the opening to full foreign ownership of casinos except those covered by investment agreements with PAGCOR. The 10th FINL corrected an



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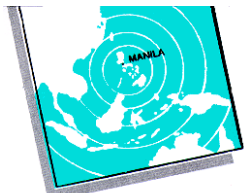
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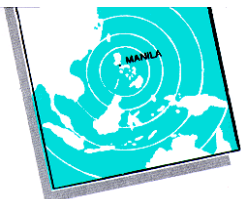
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interpretation in previous FINLs that included the practice of many professions in the FINL.

When issued the 11th FINL will recognize RA10881, which removes foreign equity restrictions on adjustment companies, lending companies, financing companies, and investment houses.

We wish to underline the relevance of the Point 3 of the Ten-Point Socioeconomic Agenda of President Duterte, which states his administration “will...pursue the relaxation of the Constitutional restrictions on foreign ownership, except as regards land ownership, in order to attract foreign direct investment.” By including this policy goal in its socioeconomic agenda, the Duterte Administration set an important target to make the Philippines more competitive in attracting foreign investors.

In the last few years, the Philippines has begun to receive increased levels of FDI. After an average of \$1.4 billion from 1989 to 2013, the level has increased significantly to an average of \$6 billion from 2014 to 2017. The amount reached \$9.5 billion in 2017, equal to Malaysia (\$9.5 billion) and more than Thailand (\$7.3 billion) but less than Vietnam (\$14.1 billion) and Indonesia (\$23.1 billion). The Philippines received only 7% of the ASEAN total FDI in 2017. (UNCTAD data).

To continue and further increase these levels is important to continue and increase the current high level of economic growth in the Philippines on its path to becoming a high middle income economy and realizing the goal of *Ambisyon Natin* by 2040.

Several major international ratings show the Philippines remains more protectionist than other ASEAN-6 economies that have attracted higher inflows of FDI. When potential investors look at the Philippines in these ratings, they may turn to other countries they consider more open and welcoming.

- The World Bank in its 2010 Investing Across Borders report measured how 87 economies facilitate market access and operations of foreign companies. The report presents cross-country indicators analyzing laws, regulations, and practices affecting FDI in 4 policy areas: investing across sectors, starting a foreign business, accessing industrial land, and arbitrating commercial disputes. The Philippines was rated as more protectionist than the East Asia and Pacific average in 8 out of 11 sectors included in the report.
- The Organization of Economic Cooperation and Development in its 2017 FDI Restrictions report on 66 countries listed the Philippines as the most restrictive. Cambodia, China, Indonesia, Japan, Korea, Laos, Malaysia, Myanmar, and Vietnam were listed as less restrictive than the Philippines.
- The International Institute for Management Development 2018 World Competitiveness Yearbook ranked the Philippines low on the sub-indicator of “protectionism” under “government efficiency.” The Philippines was reported as dropping to six positions from 55th to 61st of



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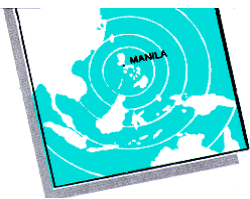
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the 63 countries included in the report or second to the last for this indicator.

After reviewing RA 7142, we have no major amendments to suggest. We support the continuation of the FINL but suggest it be issued every three years rather than two to coincide with the conclusion of each Congress. This is in accord with our argument that legal and administrative regulation is more flexible than having restrictions on foreign equity in the constitution itself. We recommend that the Congressional leadership and the Legislative Development Advisory Committee (LEDAC) include among their legislative priorities further liberalization of existing restrictions.

We recommend that the Congress pursue a policy of “making the negative list less negative.” This can be done in several ways;

- In its role as an initiator of amendments to the Constitution. In the current Congress the House held hearings in 2017 on constitutional amendments. While no committee report has been issued, the public and private sector experts at the hearing recommended removal of the foreign equity restrictions from the Constitution. In the 16th and 17th Congresses, measures were introduced to amend the restrictive provisions with language that would allow the Congress to legislate changes to them. Similar language is included in the recent report of the Consultative Committee chaired by former Chief Justice Puno.
- In its legislative role. Congress may amend the laws listed in the FINL. This was done with the Retail Trade Act of 2000 and with RA 10881, cited above. In the 17th Congress, the House has passed a bill to amend the Public Services Act and the Senate is expected to consider its companion bill in plenary. Bills amending the Retail Trade Act have been introduced in the 17th Congress. More such liberalization reforms can be introduced and considered in the next Congress.
- In its oversight role. Through resolutions and hearings such as the today’s on **Senate Resolution No. 73**, entitled: “Resolution Directing The Senate Committee On Trade, Commerce And Entrepreneurship And Other Appropriate Committee/s To Conduct An Omnibus Study And Eventual Updating, In Aid Of Legislation, Of The Present Foreign Investments Act (R.A. No. 7042, As Amended) Considering The Continuing Emerging Global Trends In Development With The Intention Of Making The Philippines A Competitive Haven For Investments And Place Of Operation For Multi-National Companies.”

We are optimistic that, with further reforms such as those being discussed at this hearing, foreign direct investment in the Philippines will grow to even higher levels than it currently has reached, contributing to the government’s goal of a 7-8% GDP growth rate.



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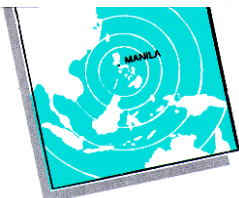
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We look forward to working with the Congress to pass legislation that will result in increased foreign investment in the economy of the Philippines and create better quality jobs for the large and multi-talented workforce of the country.

The JFC is a coalition of the American, Australian-New Zealand, Canadian, European, Japanese, Korean chambers, and PAMURI. We represent over 3,000 member companies engaged in over \$100 billion worth of trade in goods and services and some \$30 billion in investment in the Philippines. The JFC supports and promotes open international trade, increased foreign investment, and improved conditions for business to benefit both the Philippines and the countries the JFC members represent.

Sincerely yours,

James D. Wilkins

JAMES WILKINS

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