

Joint Foreign Chambers of the Philippines

American Chamber of Commerce of the Phils., Inc. ♦ Australian-New Zealand Chamber of Commerce Phils., Inc.
Canadian Chamber of Commerce of the Phils., Inc. ♦ European Chamber of Commerce of the Phils., Inc.
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Philippine Association of Multinational Companies Regional Headquarters, Inc.



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JFC Statement on House Bills 300, 399, and 1221 – Foreign Investment Act amendments

August 22, 2019

In 1991, the Foreign Investments Act (FIA) or Republic Act 7042 (amended in 1996 by RA 8179) was enacted liberalizing the entry of foreign investments into the country by opening domestic market firms to 100% foreign investment except in areas/sectors identified in the Foreign Investment Negative List (FINL). This landmark law is intended to attract more foreign investments to the Philippines thereby expanding employment opportunities for Filipinos.

We recommend passage of the two amendments sought in HB 300, HB 399, and HB 1221.

The first amendment adds to Sec. 4. Scope: “AND THE PRACTICE OF PROFESSIONS.” It is our view that the practice of professions is not a germane provision in the Foreign Investment Negative List (FINL), a document created by the Foreign Investment Act. The FINL catalogues limitations on foreign equity in non-banking business sectors. Likewise, the scope of the FIA can be amended to exclude professions.

The constitution creates a policy bias in favor of Philippine citizens, but not a strict legal barrier to the participation of foreign professionals. Although Section 14, Article XII of the Philippine Constitution states that “the practice of all professions in the Philippines shall be limited to Filipino citizens,” this statement is immediately followed by “save in cases prescribed by law.” All but one of the laws regulating professions contains reciprocity provisions (see attached list.)

There are 45 laws governing the practice of specific professions, all of which contain “reciprocity” provisions allowing foreigners to practice their profession in the Philippines, provided their countries of origin also allow Filipinos to practice these. In addition, a Supreme Court rule limits the practice of law to Philippine nationals.

Considering that 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 discourages foreign professionals who could otherwise be allowed to practice here by virtue of reciprocity from working in the Philippines and sharing their ideas and technical know-how, contrary to the inclusive policy of the FIA.

Because millions of Filipinos work abroad and support the Philippine economy with their remittances, it should be in the national interest to seek the reduction of restrictions on professionals in other countries, for example, in the negotiations on the General Agreement on Trade in Services (GATS) under the WTO and the ASEAN Framework Agreement on Services (AFAS). At the same time, having more foreign professionals practicing in the Philippines can bring new skills, ideas, connections and integration into global networks of service providers, and support sunrise sectors including creative industries, R&D, medical travel, and retirement.

In short, more foreign professionals practicing in the Philippines can mean more jobs for Filipinos at home.



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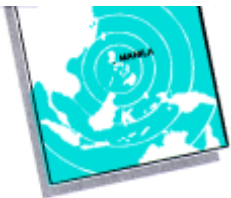
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The individual practice of a profession is not an investment activity under the scope of the Foreign Investment Act and therefore should not be included in the FINL.

The second amendment reduces the number of employees required for a US\$100,000 investment from 50 to 15. The FIA allows 100% foreign ownership in domestic market activities above a minimum investment of \$100,000 (with advanced technology or employing 50 direct employees), otherwise \$200,000. However, operationally speaking, a US\$100,000 enterprise - only a little over PhP 5.2 million - cannot initially sustain a labor force of 50 persons.

When the law was enacted in 1991, the minimum wage in the National Capital Region was PhP142 and today is PhP500. PhP5.2 million (US\$ 100,000) is not enough to sustain a labor force of 50 persons at the current minimum wage. At the current rate of PhP 52 = US\$ 1 an investor would need to spend more than US\$ 100,000 to pay basic wages for a 50-employee work force for one year. This does not take into account other labor expenses nor other costs to operate. However, with a requirement for 15 employees, the basic wage labor budget for one year would be around US\$ 35,000 with enough funds left over for other expenses.

While we have no data on the number of foreign investors who have invested by meeting the requirements to employ 50 Filipinos, we can predict that if the requirement is reduced to 15 workers, we will see more investment. For example, 100 foreign investments at the minimum of US\$100,000 employing at least 15 Filipinos will invest at least US\$10 million and employ at least 1,500 Filipinos.

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 reduce the employment requirement but lower the threshold to a more reasonable number, which the bill recommends should be fifteen.

We also wish to note that at least three ASEAN countries that receive more FDI than the Philippines (US\$ 6.5 billion in 2018) do not have similar restrictions for foreign investors. These three countries are Singapore, Thailand, and Vietnam¹. However, some may limit these rules to specific products or services.

- Singapore has no minimum investment or job creation requirements. In 2018 Singapore received US\$ 77.6 billion in FDI.
- Thailand has no minimum investment requirements for foreign investors. In 2018 Thailand received US\$ 10.5 billion in FDI. (In two previous years Thailand received more than \$10 billion, 15.5 billion in 2013 and 11.4 billion in 2007).
- Vietnam has no minimum requirement for foreign investors for neither capital nor employment. In 2018 Vietnam received \$ 15.5 billion in FDI.

The absence of minimal restrictions can enable the development of many small foreign-owned enterprises in fintech and the creative industries such as design and IT applications and similar businesses that start small and subsequently steadily grow employing increasing numbers of local workers. They can also attract smaller foreign investors who can enrich the country's tourism

¹ FDI data sourced from UNCTAD and differs from BSP and ASEAN.



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industry by providing a larger variety of cuisines and special services for foreign investors, including speakers in a variety of languages.

The JFC is a coalition of the American, Australian-New Zealand, Canadian, European, Japanese, and Korean chambers and PAMURI. We represent over 3,000 member companies engaged in over US\$100 billion worth of trade and some \$30 billion worth of investments 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,

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