

TENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
FIRST REGULAR SESSION)

'96 FEB 13 P6:24

RECEIVED BY: RFH

SENATE

COMMITTEE REPORT NO. 49

Submitted by the Committee on Economic Affairs on **FEB 13 1996**

Re : S. No. 1399, prepared by the Committee

Recommending its approval in substitution of S. Nos. 340 and 855

Sponsors: Senators Magsaysay, Jr. and Members of the Committee

Mr. President:

The Committee on Economic Affairs, to which were referred S. No. 340, introduced by Senator Macapagal-Arroyo, entitled:

“AN ACT TO FURTHER LIBERALIZE FOREIGN INVESTMENTS,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO.
7042, AND FOR OTHER PURPOSES”

S. No. 855, introduced by Senator Drilon, entitled:

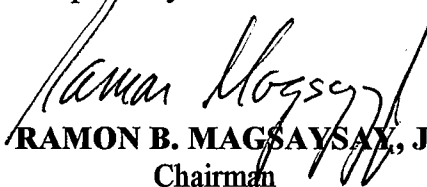
“AN ACT ALLOWING NATURAL-BORN FILIPINOS TO INVEST IN
NATIONALIZED INDUSTRIES, AMENDING FOR THE
PURPOSE REPUBLIC ACT NO. 7042, OTHERWISE KNOWN
AS THE FOREIGN INVESTMENTS ACT OF 1991”

has considered the same and has the honor to report them back to the Senate with the recommendation that the attached bill, S. No. 1399, prepared by the Committee, entitled:

“AN ACT TO FURTHER LIBERALIZE FOREIGN INVESTMENTS,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 7042,
AND FOR OTHER PURPOSES”

be approved in substitution of S. Nos. 340 and 855, with Senators Macapagal-Arroyo, Drilon, Magsaysay, Jr. and the Members of the Committee as authors thereof.

Respectfully submitted:


RAMON B. MAGSAYSAY, JR.
Chairman
Committee on Economic Affairs

Ctee Rpt. No. 49


JUAN PONCE ENRIQUE
Vice-Chairman

MEMBERS:

Raul S. Roco
RAUL S. ROCO


GREGORIO B. HONASAN

S. Osmeña III
SERGIO OSMEÑA III


with amendments
Gloria Macapagal Arroyo
GLORIA MACAPAGAL ARROYO

Ernesto F. Herrera
ERNESTO F. HERRERA

Blas F. Ople
BLAS F. OPLE
amendments

EX-OFFICIO MEMBERS:

Leticia R. Shahani
LETICIA R. SHAHANI
President Pro Tempore


ALBERTO G. ROMULO
Majority Leader

Edgardo J. Angara
EDGARDO J. ANGARA
Minority Leader

HONORABLE NEPTALI A. GONZALES
President of the Senate
Manila

1 WHOLLY OWNED BY CITIZENS OF THE PHILIPPINES
2 IN ORDER TO BE CONSIDERED A PHILIPPINE
3 NATIONAL [or];

4 (4) A corporation organized under the laws of the Philippines of
5 which at least sixty percent (60%) of the capital stock
6 outstanding and entitled to vote is owned and held by [citizens
7 of the Philippines] PHILIPPINE NATIONALS, PROVIDED,
8 that where a corporation and its NON-PHILIPPINE
9 NATIONAL stockholders own stocks in Securities and
10 Exchange Commission (SEC) registered enterprise, at least
11 sixty percent (60%) of the capital stocks outstanding and
12 entitled to vote of both corporation must be owned and held by
13 [citizens of the Philippines] PHILIPPINE NATIONALS and at
14 least sixty percent (60%) of the members of the Board of
15 Directors of EACH OF both corporations must be [citizens of
16 the Philippines] PHILIPPINE NATIONALS, in order that the
17 corporation shall be considered a Philippine national; AND

18 (5) A trustee of funds for pension or other employee retirement or
19 separation benefits, where the trustee is a Philippine national
20 and at least sixty percent (60%) of the fund will accrue to the
21 benefit of Philippine nationals”.

22 SECTION 2. Sec. 7. of Republic Act No. 7042 is hereby amended to read as
23 follows:

24 Sec. 7. Foreign Investments in Domestic Market Enterprises. -
25 Non-Philippine nationals may own up to one hundred percent (100%) of
26 domestic market enterprises unless foreign ownership therein is prohibited
27 or limited by existing law or the Foreign Investment Negative List under
28 Section 8, hereof.

29 [A domestic market enterprise may change its status to export
30 enterprise if ever a three (3) year period it consistently exports in each year
31 thereof sixty per cent (60%) or more of its output.]

32 SECTION 3. Sec. 8 of the Foreign Investment Act of 1991 is hereby amended to
33 read as follows:

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“Sec. 8. List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List). - The Foreign Investment Negative List shall have three (3) component lists: A, B, and C.

a) List A shall enumerate the areas of the activities reserved to Philippine nationals by mandate of the Constitution and specific laws.

b) List B shall contain the areas of the activities and enterprises regulated pursuant to law:

1) which are defense-related activities requiring prior clearance and authorization from Department of National Defense (DND) to engage in such activity, such as the manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military ordnance, explosives, pyrotechnics and similar materials; unless such manufacturing or repair activity is specifically authorized with a substantial export component, to a non-Philippine national by the Secretary of National Defense; or

2) which have implications on public health and morals, such as the manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beer houses, dance halls; sauna and steam bathhouses and massage clinics.

Small and medium-sized domestic market enterprises, with paid-in equity capital less than the equivalent of [ONE] TWO [five] hundred [FIFTY] thousand US dollars [(US\$150,000.00)] (\$200,000.00) [(US\$500,000.00)] are reserved to Philippine nationals, unless they involve advanced technology as (1) determined by the Department of Science and Technology; OR (2) ARE LISTED UNDER A PIONEER STATUS IN THE CURRENT INVESTMENT PRIORITIES PLAN PROMULGATED IN ACCORDANCE WITH THE PROVISIONS OF EXECUTIVE ORDER NO. 226. Export enterprises which utilize raw materials from depleting natural resources, with paid-in equity capital of less than the equivalent of [ONE] TWO [five] hundred [FIFTY] thousand US dollars [(US\$150,000.00)] (\$200,000.00) [(US\$500,000.00)] are likewise reserved to Philippine nationals.

1 Amendments to List B may be made upon recommendation of the
2 Secretary of National Defense, or the Secretary of Health, or the Secretary
3 of Education, Culture and Sports, indorsed by the NEDA, or upon
4 recommendation motu proprio of NEDA, approved by the President, and
5 promulgated by Presidential Proclamation.

6 c) List C shall contain the areas of investment in which existing
7 enterprises already serve adequately the needs of the economy and the
8 consumer and do not require further foreign investments, as determined by
9 NEDA applying the criteria provided in Section 9 of this Act, approved by
10 the President and promulgated in a Presidential Proclamation.

11 The Transitory Foreign Investment Negative List established in Sec.
12 15 hereof shall be replaced at the end of the transitory period by the first
13 Regular Negative List to be formulated and recommended by NEDA,
14 following the process and criteria provided in [Sections] SECTION 8 [and
15 9] of this Act. The first Regular Negative List shall be published not later
16 than sixty (60) days before the end of the transitory period provided in said
17 section, and shall become immediately effective at the end of the transitory
18 period. Subsequent Foreign Investment Negative Lists shall become
19 effective fifteen (15) days after publication in [A NEWSPAPER] two (2)
20 newspapers of general circulation in the Philippines: Provided, however,
21 That each Foreign Investment Negative List shall be prospective in
22 operation and shall in no way affect foreign investments existing on the
23 date of its publication.

24 Amendments to Lists B and C after promulgated and publication of
25 the first Regular Foreign Investment Negative List at the end of the
26 transitory period shall not be made often than once every two (2) years.

27 SECTION 4. Sec. [9 and] 10 of Republic Act No. 7042 and all references thereto
28 in said law are hereby repealed or modified accordingly. All other laws, rules, regulations
29 and/or parts thereof repealed or modified accordingly.

30 SECTION 5. Sec. 15. of Republic Act No. 7042 is hereby amended to read as
31 follows:

32 Sec. 15. Transitory Provisions. - Prior to effectivity of the
33 implementing rules and regulations of this Act, the provisions of Book II of

1 Executive Order 226 and its implementing rules and regulations shall
2 remain in force.

3 During the initial transitory period of thirty-six (36) months after
4 issuance of the Rules and Regulations to implement this Act, AS
5 AMENDED HEREBY, the Transitory Foreign Investment Negative List
6 shall consist of the following:

7 **A. List A:**

- 8 1. All areas of investment in which foreign ownership is limited by
9 mandate of Constitution and specific laws.

10 **B. List B:**

- 11 1. Manufacture, repair, storage and/or distribution of firearms,
12 ammunition, lethal weapons, military ordinance, explosives,
13 pyrotechnics and similar materials required by law to be licensed
14 by and under the continuing regulation of the Department of
15 National Defense; unless such manufacturing or repair activity
16 is specifically authorized, with a substantial export component,
17 to a non-Philippine national by the Secretary of National
18 Defense;

- 19 2. Manufacture and distribution of dangerous drugs; all forms of
20 gambling; nightclubs, bars, beer houses, dance halls, sauna and
21 steam bathhouses, massage clinics and other like activities
22 regulated by law because of risks they may pose to public health
23 and morals;

- 24 3. Small and medium-sized domestic market enterprises with paid-
25 in equity capital of less than the equivalent of [US\$150,000.00]
26 US\$200,000.00 [US\$500,000.00], unless they involve
27 advanced technology as (1) determined by the Department of
28 Science and Technology; OR (2) ARE LISTED UNDER A
29 PIONEER STATUS IN THE CURRENT INVESTMENT
30 PRIORITIES PLAN PROMULGATED UNDER
31 EXECUTIVE ORDER NO. 226; and

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4. Export enterprises which utilize raw materials from depleting natural resources, and with paid-in equity capital of less than equivalent of [US\$150,000.00] US\$200,000.00 [US\$500,000.00].

C. List C:

- 1. Import and wholesale activities not integrated with production or manufacture of goods;
- 2. Services requiring a license or specific authorization, and subject to continuing regulation by national government agencies other than BOI and SEC which at the time of effectivity of this Act are restricted to Philippine nationals and practice of the regulatory agencies concerned: Provided, That after effectivity of this Act, no other services shall be additionally subjected to such restrictions on nationality of ownership by the corresponding regulatory agencies, and such restrictions once removed shall not be reimposed; and
- 3. Enterprises owned in the majority by a foreign licensor and/or its affiliates for the assembly, processing or manufacture of goods for the domestic market which are being produced by a Philippine national as of the date of effectivity of this Act under a technology, know-how and/or brand name license from such licensor during the term of the license agreement: Provided, That, the license is duly registered with the Central Bank and/or the Technology Transfer Board and is operatively in force as the date of effectivity of this Act.

NEDA shall make the enumeration as appropriate of the areas of investment covered in this Transitory Foreign Investment Negative List and publish the Negative List in full at the same time as, or prior to, the publication of the rules and regulations to implement this Act.

The areas of investment contained in List C above shall be reserved to Philippine nationals only during the transitory period. The inclusion of any of them in the regular Negative List will require determination by

1 NEDA after due public hearings that such inclusion is warranted under the
2 criteria set forth in Section 8 [and 9] hereof.

3 SECTION 6. If any part or section of this Act is declared unconstitutional for any
4 reason whatsoever, such declaration shall not in any way affect the other parts or sections
5 of this Act.

6 SECTION 7. This Act shall take effect fifteen (15) days after publication in [a
7 newspaper] TWO (2) NEWSPAPERS of general circulation in the Philippines.

8 Approved.

SENATE
S. B. NO. 340

Introduced by Senator Macapagal-Arroyo

EXPLANATORY NOTE

It will be recalled that in 1991, the passage of the Foreign Investments Act was hailed by government and the business community. The most optimistic of them saw visions of the Philippines as a new dragon emerging in Asia following the entry of much foreign capital. Unfortunately, it has not worked that way.

Now it is perceived that there is need to further liberalize the investment climate by revising the 1991 Foreign Investments Act. Such perception has been prompted by the realization that 20 months after the passage of that law, only P2.19 billion worth of new capital inputs from 324 foreign companies actually came our way.

It appears that there are provisions in the Foreign Investment Act which need to be further liberalized such as the paid-in equity requirement of not less than US\$500,000.00 for foreign-owned domestic market enterprises.

It appears further that certain economic areas which are the exclusive domain of Filipino businessmen should be further opened up to the foreigners. Such business activities are in the areas of retail trade, banking and those reserved under the Constitution. In other words, these are the areas enumerated in List A of the Foreign Investments Negative List and therefore reserved to Philippine nationals by mandate of the Constitution and/or the repeal/amendment of other specific laws.

Amendment of the Constitution and other nationalization laws may take a long period of time. Nevertheless, an amendment of the Foreign Investment Act of 1991, for purposes of further liberalizing it without involving Constitutional and other nationalization laws, is possible within a shorter time frame. In fact, such is the objective of this measure.

For this reason, immediate passage of this bill is strongly recommended.


GLORIA MACAPAGAL-ARROYO
Senator

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

S E N A T E
S. B. NO. 340

Introduced by Senator Macapagal-Arroyo

**AN ACT
TO FURTHER LIBERALIZE FOREIGN INVESTMENTS, AMENDING FOR THE
PURPOSE REPUBLIC ACT NO. 7042, AND FOR OTHER PURPOSES**

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

SECTION 1. Sec. 7 of Republic Act No. 7042, otherwise known as the Foreign Investments Act of 1991 is hereby amended to read as follows :

SEC. 7. Foreign Investments in Domestic Market Enterprises. - Non-Philippine nationals may own up to one hundred percent (100%) of domestic market enterprises unless foreign ownership therein is prohibited or limited by existing law or the Foreign Investment Negative List under Section 8, hereof.

[A domestic market enterprise may change its status to export enterprise if ever a three (3) year period it consistently exports in each year thereof sixty per cent (60%) or more of its output.]

SEC. 2. Sec. 8 of the Foreign Investment Act of 1991 is hereby amended to read as follows :

SEC. 8. List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List).- The Foreign Investment Negative List shall

have three (3) component lists : A, B, and C:.

a) List A shall enumerate the areas of activities reserved to Philippine nationals by mandate of the Constitution and specific laws.

b) List B shall contain the areas of activities and enterprises regulated pursuant to law :

1) which are defense-related activities requiring prior clearance and authorization from Department of National Defense (DND) to engage in such activity, such as the manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials; unless such manufacturing or repair activity is specifically authorized with a substantial export component, to a non-Philippine national by the Secretary of National Defense; or

2) which have implications on public health and morals, such as the manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beerhouses, dance halls; sauna and steam bathhouses and massage clinics.

Small and medium-sized domestic market enterprises, with paid-in equity capital less than the equivalent of ONE [five] hundred FIFTY thousand

US dollars US\$150,000.00 [(US\$500,000)] are reserved to Philippine nationals, unless they involve advanced technology as (1) determined by the Department of Science and Technology; OR (2) LISTED UNDER A PIONEER STATUS IN THE CURRENT INVESTMENT PRIORITIES PLAN PROMULGATED IN ACCORDANCE WITH THE PROVISIONS OF EXECUTIVE ORDER NO. 226. Export enterprises which utilize raw materials from depleting natural resources, with paid-in equity capital of less than the equivalent of ONE [five] hundred FIFTY thousand US dollars (US\$150,000.00 [(US\$500,000.00)] are likewise reserved to Philippine nationals.

Amendments to List B may be made upon recommendation of the Secretary of National Defense, or the Secretary of Health, or the Secretary of Education, Culture and Sports, indorsed by the NEDA, or upon recommendation motu proprio of NEDA, approved by the President, and promulgated by Presidential Proclamation.

c) List C shall contain the areas of investment in which existing enterprises already serve adequately the needs of the economy and the consumer and do not require further foreign investments, as determined by NEDA applying the criteria provided in Section 9 of this Act, approved by the President and promulgated in a Presidential Proclamation.

The Transitory Foreign Investment Negative List established in Sec. 15 hereof shall be

replaced at the end of the transitory period by the first Regular Negative List to be formulated and recommended by NEDA, following the process and criteria provided in SECTION [Sections] 8 [and 9] of this Act. The first Regular Negative List shall be published not later than sixty (60) days before the end of the transitory period provided in said section, and shall become immediately effective at the end of the transitory period. Subsequent Foreign Investment Negative Lists shall become effective fifteen (15) days after publication in A **NEWSPAPER** [two (2) newspapers] of general circulation in the Philippines : Provided, however, That each Foreign Investment Negative List shall be prospective in operation and shall in no way affect foreign investments existing on the date of its publication.

Amendments to Lists B and C after promulgation and publication of the first Regular Foreign Investment Negative List at the end of the transitory period shall not be made often than once every two (2) years.

SEC. 3. SECTIONS 9 and 10 of Republic Act No. 7042 and all references thereto in said law are hereby repealed or modified accordingly. All other laws, rules, regulations and/or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 4. SEC. 15 of the same Republic Act No. 7042 is hereby amended to read as follows :

SEC. 15. Transitory Provisions. - Prior to effectivity of the implementing rules and regulations of this Act, the provisions of Book II

of Executive Order 226 and its implementing rules and regulations shall remain in force.

During the initial transitory period of thirty-six (36) months after issuance of the Rules and Regulations to implement this Act, the Transitory Foreign Investment Negative List shall consist of the following :

A. List A:

- 1. All areas of investment in which foreign ownership is limited by mandate of Constitution and specific laws.

B. List B:

- 1. Manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials required by law to be licensed by and under the continuing regulation of the Department of National Defense; unless such manufacturing or repair activity is specifically authorized, with a substantial export component, to a non-Philippine national by the Secretary of National Defense;
- 2. Manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beerhouses, dance halls; sauna and steam bathhouses, massage clinics and other like

activities regulated by law because of risks they may pose to public health and morals;

3. Small and medium-sized domestic market enterprises with paid-in equity capital of less than the equivalent of US\$150,000.00 [US\$500,000.00], unless they involve advanced technology as (1) determined by the Department of Science and Technology; OR (2) LISTED UNDER A PIONEER STATUS IN THE CURRENT INVESTMENT PRIORITIES PLAN PROMULGATED UNDER EXECUTIVE ORDER NO. 226; and

4. Export enterprises which utilize raw materials from depleting natural resources, and with paid-in equity capital of less than equivalent of US\$150,000.00 [US\$500,000.00].

C. List C :

1. Import and wholesale activities not integrated with production or manufacture of goods;

2. Services requiring a license or specific authorization, and subject to continuing regulation by national government agencies other than BOI and SEC which at the time of effectivity of this Act are restricted to Philippine nationals by existing administrative regulations and practice of the regulatory agencies concerned : Provided, That after

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effectivity of this Act, no other services shall be additionally subjected to such restrictions on nationality of ownership by the corresponding regulatory agencies, and such restrictions once removed shall not be reimposed; and

3. Enterprises owned in the majority by a foreign licensor and/or its affiliates for the assembly, processing or manufacture of goods for the domestic market which are being produced by a Philippine national as of the date of effectivity of this Act under a technology, know-how and/or brand name license from such licensor during the term of the license agreement: Provided, That, the license is duly registered with the Central Bank and/or the Technology Transfer Board and is operatively in force as of the date of effectivity of this Act.

NEDA shall make the enumeration as appropriate of the areas of investment covered in this Transitory Foreign Investment Negative List and publish the Negative List in full at the same time as, or prior to, the publication of the rules and regulations to implement this Act.

The areas of investment contained in List C above shall be reserved to Philippine nationals only during the transitory period. The inclusion

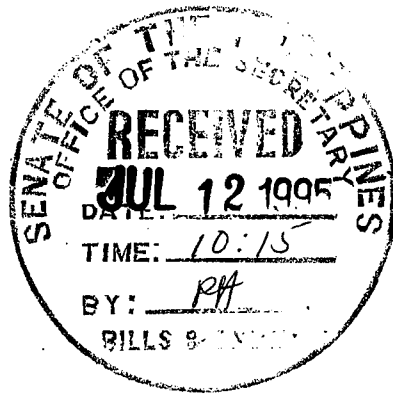
of any of them in the regular Negative List will require determination by NEDA after due public hearings that such inclusion is warranted under the criteria set forth in Sections 8 and 9 hereof.

SEC. 5. If any part or section of this Act is declared unconstitutional for any reason whatsoever, such declaration shall not in any way affect the other parts or sections of this Act.

SEC. 6. This Act shall take effect fifteen (15) days after publication in a newspaper of general circulation in the Philippines.

Approved,

fn: fia
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TENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

S E N A T E

S. NO. 855

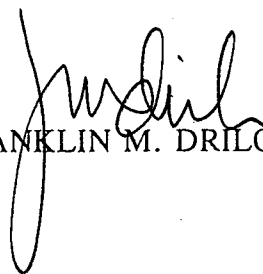
Introduced by: Senator Franklin M. Drilon

EXPLANATORY NOTE

This proposed amendment to the "Foreign Investments Act of 1991" (RA 7042) seeks to allow natural-born Filipinos who had lost Philippine citizenship to invest in nationalized economic activities in the Philippines.

It is envisioned that once enacted into law, this Bill would open up certain investment areas (presently restricted by law to Philippine citizens) to the business knowledge and financial resources of former Philippine natural-born citizens. Likewise, it is hoped, that this additional source of capital and investments inflow would further spur the continued growth of the Philippine economy - as was conclusively demonstrated by the now progressive economies of Israel and Taiwan.

Thus, by re-defining the term Philippine national so as to include former natural-born Filipino citizens, we also provide them the incentive and encouragement to maintain their social and economic ties with their home country.


FRANKLIN M. DRILON

24

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

S E N A T E

S. NO. _____

Introduced by: Senator Franklin M. Drilon

EXPLANATORY NOTE

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Thus, by re-defining the term Philippine national so as to include former natural-born Filipino citizens, we also provide them the incentive and encouragement to maintain their social and economic ties with their home country.

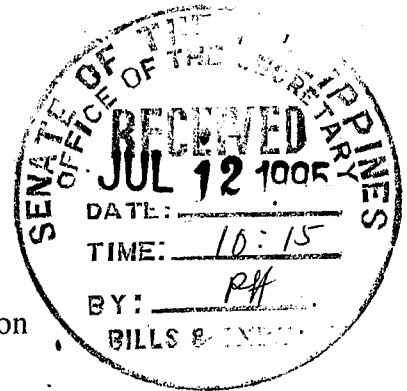
FRANKLIN M. DRILON

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

S E N A T E

S. No. 855

Introduced by: Senator Franklin M. Drilon



**AN ACT ALLOWING NATURAL-BORN FILIPINOS TO INVEST
IN NATIONALIZED INDUSTRIES, AMENDING FOR THE PURPOSE,
REPUBLIC ACT NO. 7042, OTHERWISE KNOWN AS THE "FOREIGN
INVESTMENTS ACT OF 1991."**

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

SECTION 1. Section 3, paragraph (a), of Republic Act No. 7042,
otherwise known as the "Foreign Investments Act of 1991," is hereby amended
to read as follows:

"Sec. 3. Definitions. - as used in this act:

a) the term Philippine national shall include:

1. A citizen of the Philippines;
2. A natural-born Filipino who had lost his Philippine citizenship by acquisition of another citizenship, *provided*, that in economic activities reserved by the Constitution, in whole or in part, for Philippine citizens he shall not be considered a Philippine national;
3. A domestic partnership or corporation wholly owned by Philippine nationals, *provided*, that a partnership formed for the exercise of a common profession shall be wholly owned by citizens of the Philippines in order to be considered a Philippine national;
4. A corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by Philippine nationals, *provided*, that where a corporation and its non-Philippine national

stockholders own stocks in Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stocks outstanding and entitled to vote of both corporations must be owned and held by Philippine nationals and at least sixty percent (60%) of the members of the Board of Directors of both corporations must be Philippine nationals, in order that the corporation shall be considered a Philippine national;

5. A trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals;".

SECTION 2. This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in two newspapers of general circulation, whichever comes earlier.

Approved,