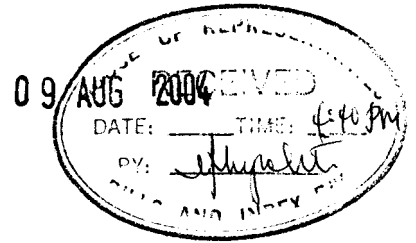


Republic of the Philippines
HOUSE OF REPRESENTATIVES
QUEZON CITY



Thirteenth Congress

First Regular Session

HOUSE BILL NO. 2252

Introduced by **HONORABLE JACINTO V. PARAS**

EXPLANATORY NOTE

The Philippine overseas shipping industry has long been confronted with the absence of available financing in their efforts to replace aging and uneconomical bottoms. Existing Philippine laws on maritime liens are inadequate thus hampering much needed foreign ship financing.

P.D. No. 1521, otherwise known as the Ship Mortgage Decree of 1978, signed on 11 June 1978 by then President Ferdinand E. Marcos, is now outdated and unclear especially on the aspect of maritime liens, thereby discouraging ship financiers from extending loans to Filipino ship-owners.

Considering the international character of shipping, it is mandatory that the provisions of a ship mortgage law conform to the internationally recognized modern practices; otherwise foreign financing will continue to deny the much-needed foreign financing that Filipino ship – owners require to replace and / or increase their fleet.

This bill properly enumerates and defines the preference of maritime liens to enable ship financiers to assess favorably ship mortgages in the Philippines to insure repayment of the loan. Moreover, this bill deals with maritime liens separately from ship mortgages and limits the number of claims secured by maritime liens to a minimum.

The enforcement of the claims of lien holders and the mortgagee is also clearly defined and delineated.

In response to the needs of the industry and in order to catalyze the expansion of Philippine overseas shipping, there is an urgent need to enact a Ship Mortgage law that will be responsive to the financial needs of Filipino ship – owners in their desire to obtain new vessels.

In view of the foregoing, the passage of this bill is strongly recommended.


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AN ACT
TO BE KNOWN AS “ THE MARITIME LIENS AND SHIP MORTGAGE
ACT OF 2004 “

Be it enacted by the Senate and House of representatives of the Philippines in Congress Assembled:

SECTION 1. *Title* – This Act shall be known as “ The Maritime Liens and Ship Mortgage Act of 2004.”

CHAPTER 1 – Maritime Lines

SECTION 2. *Definition of Terms.* – The terms used in this Act shall have the following meaning:

- a) “ Ship or Watercraft “ – a ship or watercraft includes every description of vessel capable of navigating in water, including any air cushion vehicle or similar craft used wholly or partly for navigation in waters, or any such structure, whether completed or in the course of completion, excluding those propelled by oars.
- b) “ Maritime Lien “ – is a claim constituted by virtue of this Act which attaches as a privileged claim upon ship, wherever it may be found, enforceable by an action in rem.

- c) “ Preferred Mortgage “ – is a mortgage validly executed in accordance with the provisions of this Act on the ship permanently registered, enrolled or licensed under the laws of the Philippines.
- d) “ Foreign Mortgage “ – is a mortgage which relates to a ship when it is registered in a country other than the Philippines and shall include any hypothec which relates to such as ship, validly executed in accordance with the laws of that foreign country.
- e) “ Necessaries “ – means things incorporated or furnished into the ship because they are required for her ordinary needs after she is built and equipped and starts upon her voyage which includes repairs, needs, services and materials required for the maintenance of operation thereof except those which go into her original construction and which are necessary to her completion.
- f) “ Philippine - registered Ship “ – means a ship registered under the laws of the Philippines, whether permanently or temporarily.
- g) “ owner “ – means the registered owner, demise charterer, manager or operator of the ship against whom claims had been filed in respect of loss of life or personal injury occurring on land or on water in direct connection with the operation of the ship or claims based on tort and not capable of being used on contract has been filed in respect of loss or damage to property occurring, whether on land or on water, in direct connection with the operation of the ship which, in both circumstances, constitute a maritime lien under this Act.

SECTION 3. *Claims secured by Maritime Liens –*

1. Only the following claims and in the following rank give right to a maritime lien attaching on the ship and the freight:
 - a) Legal costs incurred in the common interest of the creditors, dues and charges to which the ship is subject, the taxes relevant to the navigation as well as the expenses for the ship's custody and maintenance as from the ship's arrival to the last port;
 - b) Claims arising from the contract of employment of Master and crew;
 - c) Expenses and awards arising from maritime assistance and salvage; and
 - d) Indemnities due to ships, passengers or cargo by reason of maritime incident.
2. A ship can still be charged with a maritime lien although she has become derelict or has been reduced to a wreck.

SECTION 4. *Priority Between Maritime Liens. –*

1. Maritime liens rank in priority over the claim of hypothecation.
2. Maritime liens set out in Section 3 (1) shall rank in the order listed, provided however that maritime liens securing claims for reward for the salvage of the vessel shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.

SECTION 5. *Nature of Maritime Liens.* –

1. Maritime liens shall arise whether the claims secured by such liens are against the owner or against the demise character.
2. Maritime liens, whether original, assigned or subrogated, shall follow the ship notwithstanding any change of ownership or of registration.

SECTION 6. *Assignment or Subrogation.* –

1. The assignment of or subrogation to a claim secured by a maritime lien shall entail the simultaneous assignment of or subrogation to such maritime lien;
2. Claimants holding maritime liens may not be subrogated to the compensation payable to the owner of the ship under an insurance contract.

SECTION 7. *Extinction of Maritime Liens.* –

1. Maritime liens shall be extinguished after a period of three (3) years from the time when the claims secured thereby arose unless, prior to the expiry of such period, the ship has been arrested, such arrest leading to a forced sale or the provision of a satisfactory security for the release of such ship from arrest.
2. The three - year period referred to in paragraph 1 shall commence:
 - a) With respect to the maritime lien set out in Section 3, paragraph 1 upon the claimant's discharge from the ship;
 - b) With respect to the maritime liens set out in Section 3, paragraph 1 (a), (c), and (d) when the claims secured thereby arise; and shall not be subject to suspension or interruption: Provided,

however, that time shall not run during the period that the arrest or seizure of the ship is not permitted by law.

CHAPTER 2 – Ship Mortgages

SECTION 8. *Application.* - The provisions of this Chapter shall apply to every mortgage wherever executed which shall, moreover, be subject to Philippine laws notwithstanding any agreement to the contrary in respect of:

- a) a ship which is registered in the Philippines; or
- b) a ship which is under construction in the Philippines.

SECTION 9 . *Subject of the Mortgage.* – Subject to the terms of the mortgage contract:

- a) a mortgage in respect of a ship shall include all the property of the mortgagor which is appropriated to the ship and on board at the time when the mortgage contract is entered into, or which is later substituted for such property; and;
- b) a mortgage in respect of a ship under construction shall include all materials, machinery and equipment in the possession of the mortgagor which are within the premises of the builder's yard and distinctly identified as intended to be incorporated in the ship under construction.

SECTION 10. *Formal Validity* – *A mortgage shall not be valid, except as between the parties, unless it is:*

- a) made by or with the consent of the owner of the ship under construction;
- b) made in writing and signed by the mortgagor and mortgagee; and
- c) registered in accordance with Section 11 of this Act.

SECTION 11. *Registration of Mortgages* – Every mortgage covering a Philippine – registered ship or one which is under construction shall be duly registered in the Maritime Industry Authority (MARINA) in order to be valid and enforceable. The application for the registration of mortgage hereunder shall be accompanied by the following:

1. An authenticated copy of the mortgage contract or other similar instrument.
2. Such forms as the Maritime Industry Authority, hereinafter referred to as the Administration, shall prescribe, signed by the mortgagor and setting out the following:
 - a) the name or description of the ship being mortgaged;
 - b) the name, nationality and place of residence of the owner of the ship;
 - c) the name of each mortgagor and each mortgagee;
 - d) the interest of the mortgagor in the ship being mortgaged;
 - e) the date of the mortgage contract;
 - f) the extent of the mortgage as specified in the mortgage contract; and
 - g) the maturity date of the mortgage and the conditions specified in the mortgage contract relating to the termination of the mortgage contract relating to the termination of the mortgage debt.
3. In the case of a ship under construction, a declaration stating:
 - a) the name and location of the construction yard;
 - b) the intended port of registration;
 - c) the yard number;
 - d) the dimensions and approximate deadweight of the ship on completion.

4. No second or third priority mortgages should be recorded without the consent of the prior mortgagee.

If the mortgage is transferred or materially amended as to any of the particulars in paragraphs (2) and (3) hereof, or if one mortgage is substituted for another, the transfer, amendment or substitution shall be registered in the Maritime Industry Authority (MARINA) in the same manner as above provided. Any transfer, amendment or substitution which is not registered as aforesaid shall be invalid and unenforceable.

5. It is prohibited to change the port of registration or the name of a hypothecated ship without the written consent of the creditors who have the hypothecation of the ship.
6. registration of the mortgages under the provisions of this Act shall be exempt from payment of the Documentary stamps taxes under the appropriate provisions of the law.

SECTION 12. *Preliminary Registration* – Application for registration of a mortgage on a Philippine – registered ship may be filed through a Philippine consulate which shall transmit such application to the MARINA which in the absence of any legal impediment, communicate to the Consul the authorization to issue a Preliminary Registration Certificate indicating date and time of entry into the journal. The preliminary registration shall be valid for a period of six (6) months during which the original mortgage contract should be forwarded to MARINA for permanent registration.

SECTION 13. *Annotation of Mortgages*. – The Administration shall, at the request of the mortgagee or his authorized agent, cause the annotation upon the Certificate of Philippine Registry of the Ship subject to the mortgage the matters set out in Section 11 of this Act.

If the ship, in respect of which a mortgage has been made, holds only a provisional Certificate of Philippine registry and is abroad at the time of the registration of the mortgage, the annotation shall be made by such consular officer of the Republic of the Philippines as the Administration shall direct.

If a new certificate or a full certificate is issued to a ship by the Administration, any annotation upon the old or provisional certificate of a mortgage, which remains undischarged at the time of the issuance of the new or full certificate, shall be transferred to and annotated upon such new or full certificate.

SECTION 14. *Publication of Mortgage.* – The Administration shall, upon the registration of a mortgage, issue two (2) official copies of the relevant entry in the Record of Transfers and Encumbrances of Ships relating to the mortgage which has been registered, to the mortgagor named in the application. Each official copy of the entry shall bear the official date of the registration of the mortgage.

The mortgagor shall take all reasonable steps to exhibit in a prominent place on board the ship subject of the mortgage:

- a) at least one of the official copies issued under the first paragraph above; and
- b) an authenticated copy of the ship's Certificate of Philippine Registry duly containing the annotation of the mortgage.

Failure to exhibit the copies as specified above shall not affect the validity or enforceability of the mortgage.

SECTION 15. *Prior and Subsequent Maritime Liens on Mortgaged Ships.*

- The mortgagor upon the request by the mortgagee before the execution of the mortgage to which they are parties, shall give details in writing to the mortgagee of:

1. any prior mortgagee on the vessel which is to be the subject of the mortgage; and
2. any maritime lien to which the said vessel is subject, which is known to the mortgagor; or
3. any other obligation or liability upon the ship.

The mortgagor, without the consent of the mortgagee, shall not incur, after the execution of such mortgage and before the mortgagee has had a reasonable time in which to record the mortgage and have endorsements in respect thereto made upon the documents of the ships, any contractual obligation creating a lien upon the ship other than a lien for wages of the crew of the ship, or for salvage, including contract salvage, in respect to the ship, tonnage dues and all other charges (not to exceed P 100,000.00) of the Philippine government in respect to the ship.

A mortgagor who with intent to defraud, violates the above provisions and if the mortgagor is a corporation or association, the president or the principal executive officer of the corporation or association shall be punished by a fine of not more than P 500,000.00 or imprisonment of not more than two years, or both. The mortgage indebtedness shall thereupon become due and payable at the election of the mortgagee.

SECTION 16. *De – registration of a Ship Subject to a Mortgage –*

1. Except as otherwise provided in this Act, a Philippine registered – ship shall not be deregistered:
 - a) unless all registered mortgages, hypothèques or charges are previously deleted; or
 - b) the written consent of all holders of such mortgages, hypothèques or liens is obtained.

2. Where the deregistration of a ship from the Philippine Register of Ships is obligating in accordance with existing laws and rules and regulations, otherwise than as a result of voluntary sale, the holders of registered mortgages, hypothèques or liens shall be certified of the ending deregistration
3. No deregistration pursuant to paragraph 2 above shall be effected earlier than three months after the notice to holders had been made.

CHAPTER 3 – Enforcement of Maritime Liens and Mortgages

SECTION 17. *Enforcement of a Maritime Lien.* –

1. A person having a maritime lien under Section 3 hereof may enforce that maritime lien by bringing a proceeding in rem against the ship to which the maritime lien attaches before the court having jurisdiction over the latter, within three (3) years from the time when the claims secured thereby arose. The person bringing such proceedings shall be entitled to apply to the court *ex parte* or an order for the arrest of the ship subject to the maritime lien.
2. The court, once the ship subject of the maritime lien has been arrested pursuant to the court's order, shall make an order for the forced sale of the ship: *Provided, That*, the provisions of this Act on the enforcement of ship mortgage shall be followed.
3. The provisions of this Act on the enforcement of mortgage shall likewise apply in cases involving enforcement of maritime liens in relation to the arrest of a ship subject to the lien: *Provided, That* when reference is made to the maritime lien which is being enforced, the debtor or mortgagor and the creditor or mortgagee shall be, the owner of the ship and the lien holder, respectively.

SECTION 18. *Foreclosure, jurisdiction and procedure –*

1. A mortgage shall be entitled to foreclose on the security represented by the ship under a mortgage if:
 - a) The mortgagor defaults in the discharge of the indebtedness or other obligation secured by the mortgage;
 - b) The mortgagor or any person in possession of the mortgaged property substantially prejudiced the security of the mortgagee by any act of omission; or
 - c) The mortgagor commits any breach of the mortgage contract which, by the terms of the contract entitles the mortgagee to foreclose on the security.
2. The foreclosure on the security under the mortgage contract in the circumstances referred to in paragraph 1 hereof may be effected by a suit in rem in admiralty where the vessel itself may be made a party defendant and be arrested in the manner as provided in Section 20 in order to:
 - a) cause the forced sale of the ships in accordance with this Act; or
 - b) assume management of the ships (in the case of preferred mortgage); or
 - c) in any other manner permitted by the mortgage contract.
3. Original jurisdiction of all suits is granted to the Regional Trial Court.
4. Upon the commencement of any such suit, the mortgagee shall, in such manner as the court may direct:
 - a) give notice by publication;
 - b) give actual notice to the master, other ranking officer of the ship and any person who has recorded a notice of claim of an undischarged lien upon the ship unless after search by

the mortgagee satisfactory to the court, such mortgagor, master or other ranking officer or claimant is not found within the Philippines.

5. Failure to give notice to any such person, as required by this Section, shall not constitute a jurisdictional defect; but the mortgagee shall be liable to such person for damages in the amount of his interest in the ship terminated by the suit.

SECTION 19. *Enforcement of Mortgage in Foreign Country –*

The lien of a preferred mortgage may also be enforced by a suit in rem in admiralty or otherwise in any foreign country in which the vessel shall be found, pursuant to the procedure of said country for the enforcement of ship mortgages constituting maritime liens on vessels documented under the laws of said country.

SECTION 20. *Arrest Leading to Forced Sale. –*

1. A mortgagee entitled to enforce his mortgage may bring proceedings in rem against the ship, which is the subject of the mortgage before the court having jurisdiction over the ship, within three years from the time when the grounds, which entitle the mortgagee to enforce the mortgage, arose. The mortgagee shall be entitled in such proceedings to apply to the court *ex parte for an order for the arrest of the mortgaged ship.*
2. A mortgagee who applies to the court for an order of arrest shall file, in support of his claim, an affidavit stating the circumstances upon which the mortgagee relies as entitling him to enforce the mortgage. If the affidavit establishes this to the satisfaction of the court, the court shall make an order for the arrest of the mortgaged ship.
3. The court shall require the mortgagee applying for an order to provide a guarantee or other security in a form satisfactory to the

court as a precondition for the issuance of the order sought. The guarantee or security shall be for such as the court considers appropriate considering the amount of the mortgage debt being enforced vis –a –vis the value of the ship sought to be arrested as well as the damage that may result due to the arrest of the ship.

4. The mortgagor or any person authorized to act on his behalf or any other person interested in the ship may, at any time after the order of arrest has been granted, apply to the court for an order releasing the ship from arrest. The Court shall order the release of the ship under this paragraph unless the mortgagor provides a counter – guarantee or security in an amount equivalent to the value of the claim to secure the payment of any judgment that the creditor may recover in the action.
5. Subject to paragraph (4), the court, once the mortgaged ship has been arrested pursuant to the court's order, shall upon application by the mortgagee, make an order for its forced sale in accordance with this Act.
6. Where on an application the mortgagor satisfies the court that the order of arrest was improperly and irregularly made, the court shall order the release of the ship and notwithstanding paragraph (4) shall not require the provision of a counter – guarantee or security.
7. The Supreme Court pursuant to this Act shall provide for the regulation and the procedure to be applied in respect of applications for the arrest and forced sale of the ship under this section, in particular:
 - a) the procedure in relation to the *ex parte* application;
 - b) the procedure in relation to the provision of a guarantee or security, or of a counter – guarantee or security;
 - c) the procedure for the application for the release of a ship from arrest;
 - d) the arrangement of and procedure for a forced sale.

8. After the entry of compulsory arrest on the ship, any registration of hypothecation is null and void.

SECTION 21. *Noticed of Forced Sale.* - After ordering a forced sale, under Section 20 of this Act, and prior to the forced sale of a ship, the Court shall give or cause to be given, a fifteen (15) days written notice of the time and place of such forced sale to:

- a) The Maritime Industry Authority;
- b) All holders of registered mortgages;
- c) Such holders of maritime liens by virtue of this Act whose claims have been notified to the court;
- d) All other persons having an interest in the ship which interest has been notified to the court; and
- e) The registered owner of the ship.

The notice specified in paragraph 1 of this Section shall be given either by registered mail, or by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be published in a newspaper of a general circulation once a week for three consecutive weeks, immediately prior to the date of the sale.

CHAPTER 4 – Rights of retention

SECTION 22. *Rights of Retention*

1. The following persons, when in possession of a ship or one which is under construction, shall have the right to retain possession of the same, as follows:
 - a) a shipbuilder, to secure claims arising out of the construction of, or other work carried out in relation to the ship; and

- b) a ship repairer, to secure claims arising out of the repair or, or other work carried out in relation to the ship, effected during such possession.
- 2) The right of retention shall be extinguished when:
 - a) the claim in respect of which the said right has been exercised is met or is otherwise discharged, in accordance with the provisions of the New Civil Code on the extinguishment of obligations;
 - b) the ship ceases to be in the possession of the shipbuilder or ship repairer as the case maybe; or
 - c) the court issues an order that the ship is to be released.

CHAPTER 5 – Forced Sale

SECTION 23. *Effect of the Forced Sale of Ship –*

- 1) In the event of the forced sale of the ship, all mortgages except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the ship but shall be transferred and shall attach to the proceeds of sale: *Provided, That:*
 - a) at the time of sale, the ship is in the jurisdiction of the Philippines; and
 - b) the sale has been effected in accordance with the law of the Philippines.

Any charter party or contract for the use of the ship, in existence at the time of the forced sale, shall be deemed to be terminated, without prejudice to any claim the charterer may have against the owner of the ship, at the time of the sale.

- 2) The costs and expenses arising out of the arrest or seizure and subsequent sale of the ship shall be paid first out of the proceeds of

sale. Such costs and expenses include, inter alia, the costs for the upkeep of the ship and the crew as well as wages, other sums and costs referred to in Section 3, paragraph 1 (b), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Act, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants, the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.

- 3) In the event of the forced sale of a stranded or sunken ship following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sale, before all other claims secured by a maritime lien on the ship.
- 4) If at the time of the forced sale the ship is in the possession of a shipbuilder or of a ship repairer who under this Act enjoys a right of retention, such shipbuilder or ship repairer must surrender possession of the ship to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in Section 3.
- 5) When a ship registered in the Philippines has been the object of a forced sale in the Philippines, the court having jurisdiction shall, at the written request of the purchaser, issue a certificate to the effect that the ship is sold free of all mortgages and all maritime liens and other encumbrances, except those assumed by the purchaser. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, " hypothèques" or charges, and to register the ship in the name of the purchaser or to issue a certificate of deregulation for the purpose of new registration, as the case may be.

SECTION 24. *Priority Between Kinds of Claim –*

- (1) Claims in relation to maritime liens, rights of retention and mortgages under this Act shall rank in the following order:
 - a) maritime liens;
 - b) mortgages registered in accordance with this Act;
 - c) rights of retention; and
 - d) other mortgages.
- (2) The claims referred to in paragraphs (a), (b) and (c) of paragraph (1) of this Section shall rank before all other claims on, or respect of, the ship one under construction to which they relate.

CHAPTER 6 – Maritime Liens and Mortgages in Respect of Claims Governed by Foreign Law

SECTION 25. *Maritime Liens in Respect of Claims Governed by Foreign Law. –*

- (1) A claim against the owner or against the demise or other charterer, manager or operator of a ship being a claim which is governed by the laws of a state other than the Philippines and which is recognized by that law as giving rise to maritime lien, or right of a similar nature shall be recognized by and enforceable in a court of the Philippines in the same manner as the claims set out under this Act.
- (2) A claim referred to in paragraph (1) shall not be recognized or enforced by a court in the Philippines unless, according to the laws of the Philippines, that claim constitutes or corresponds substantially to a claim set out under this Act.
- (3) Where a claim is recognized and enforced by a court in the Philippines, the provisions of this Act in relation

to maritime liens, and in particular, concerning priority, the ranking of liens between themselves and enforcement, shall apply to such a claim as they apply to claims governed by the laws of the Philippines.

SECTION 26. *Foreign Mortgages.*

- (1) A foreign mortgage shall be recognized and enforceable in a court of the Philippines: *Provided That*:
 - a) such mortgage has been effected and registered or otherwise recorded as valid and existing in accordance with the laws of the state where the ship is registered;
 - b) the registry in which the mortgage is registered or recorded and any instrument or documents which are required to be deposited with the registry in accordance with the laws of the state where the ship is registered, are open to public inspection, and that extracts of the register and copies of such instruments are obtainable from the registrar; and
 - c) either the register or any instrument referred to in paragraph (b) above specifies:
 - (i) the name and address of the person in whose favor the mortgage has been effected or that it has been issued to bearer;
 - (ii) either the amount secured by the mortgage or the manner of calculating such amount;
 - (iii) the date of the mortgage; and
 - (iv) such other particulars which, according to the laws of the state where the ship is registered, determined the rank as regards other registered or recorded mortgages.

- (2) The ranking of registered or recorded mortgages as between themselves and their effect with regard to the third parties shall be determined according to the laws of the state where the ship is registered
- (3) All matters other than ranking of mortgages relating to the procedure for the enforcement of a foreign mortgage in the Philippines shall be governed by the existing and pertinent laws of the Philippines and the provisions of this Act: *Provided, That, foreign mortgages on ships registered in the Philippines pursuant to a bareboat charter agreement but executed prior to such registration may or may not be governed by the laws of the Philippines.*

SECTION 27. *Repealing Clause.*- All laws, executive orders, decrees, rules and regulation, or part thereof, contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 28. *Separability Clause.* – If, for any reason or reasons, any part or provision of this Code shall be held to be unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 29. *Effectivity Clause.* – This Act shall take effect fifteen days after its publication in the Official Gazette or at least two national newspaper of general circulation.

Approved,