

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3186



Introduced by Representative Giorgidi B. Aggabao

EXPLANATORY NOTE

Republic Act No. 7721, otherwise known as the Foreign banks Liberalization Act provides in its declaration of policy that:

The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos and encourage, promote, and maintain a stable, competitive, efficient, and dynamic banking and financial system that will stimulate economic growth, attract foreign investment, provide a wider variety of financial services to Philippine enterprises, households and individuals, strengthen linkage with global financial centers, enhance the country's competitiveness in the international market and serve as a channel for the flow of funds and investments into the economy to promote industrialization.

Pursuant to this policy, the Philippine banking and financial system is hereby liberalized to create a more competitive environment and encourage greater foreign participation through increase in ownership in domestic banks by foreign banks and the entry of new foreign bank branches.

In allowing increased foreign participation in the financial system, it shall be the policy of the State that the financial system shall remain effectively controlled by Filipinos."

Furthermore, equal treatment is guaranteed to foreign banks, to wit:

"Sec.8. Equal Treatment - Foreign Banks authorized to operate under Section 2 of this Act, Shall perform the same functions, enjoy the

same privileges and be subject to the same limitations imposed upon a Philippine bank of the same category. These limits include, among others, the single borrower's limit and capital to risk asset ratio as well as the capitalization required for expanded commercial banking activities under the General Banking Act and other related laws of the Philippines."

The law recognizes the importance of the participation of foreign banks not only to encourage, promote and maintain a stable, competitive, efficient and dynamic banking and financial system but also to stimulate economic growth and promote industrialization. In effect, equal treatment is given to foreign banks in order to encourage their active involvement in, and continued support for, the industrialization and development of the country.

This bill is in response to the need to implement the equal treatment clause in Republic Act No. 7721, spur foreign banks to increase real-estate based lending and provide additional avenues of credit to the Filipino people. It will also preserve the value of real estate mortgage as an effective security arrangement. While there is no doubt that a real estate mortgage is the most recognized form of security arrangement in the country, foreign banks operating in the country are unable to actively participate in the mortgage loans business because of the perceived difficulty in enforcing their rights and remedies under existing law.

Under Republic Act No. 133 as amended, foreign banks, as opposed to domestic banks, are not allowed to bid or to participate in any way during the foreclosure sale of the real estate mortgaged to them. This is in view of the constitutional prohibition banning foreign entities from owning public or private lands in the Philippines. Consequently, the very purpose of the real estate as collateral is undermined since foreclosure sales often result in failed auctions due to lack of bidders or to the devaluation of real estate where unscrupulous bidders take advantage of the situation and bid for foreclosed property at a very low price. This, in turn, raises the costs and expenses incurred to maintain the property and liquidate the same to cover the banks' loan exposures. This reality clearly discourages foreign banks from even venturing into real estate lending, thus depriving the Filipino people of a viable source of credit. Worse, borrowers effectively bear these increased costs, expenses and interest incurred, in addition to their existing debt to the bank. Accordingly, in view of the taxing restriction imposed upon the said banks in cases of foreclosure, Filipino borrowers have a harder time obtaining loans from foreign banks which ultimately stagnates the desired goal of the State to stimulate the emergence of new industries and create gainful employment for economic growth and development.

This bill addresses not only the concerns of foreign banks but more importantly, the Filipino borrowers who seek credit accommodation but are only able to obtain such credit with real estate security. The importance of providing

foreign banks with certain mortgage rights was already recognized when Congress passed Republic Act No. 9501 amending Republic Act no. 6977, otherwise known as the Magna Carta for Micro, Small and Medium Enterprises ("MSME LAW"). The MSME Law, in Section 15 therefor, was amended to permit lending institution not qualified to hold land in the Philippines to foreclose property and participate in auctions, thus enabling foreign banks to actively participate in lending to MSMEs. There is no reason, however, why such capacity should only extend to MSME loans, as the free flow of credit should benefit the Filipino public as a whole.

This bill hopes to provide a mechanism that respects the Constitutional prohibition while preserving the value of real estate security arrangements, thus encouraging greater lending and commercial activity in the country.



GIORGIDI B. AGGABAO

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AN ACT
AMENDING SECTION ONE OF REPUBLIC ACT NUMBERED ONE HUNDRED
THIRTY-THREE, ENTITLED "AN ACT TO AUTHORIZE THE MORTGAGE OF
PRIVATE REAL PROPERTY IN FAVOR OF ANY INDIVIDUAL,
CORPORATION, OR ASSOCIATION SUBJECT TO CERTAIN CONDITIONS",
AS AMENDED BY REPUBLIC ACTS NUMBERED FORTY-THREE HUNDRED
EIGHTY-ONE AND FORTY-EIGHT HUNDRED EIGHTY-TWO

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

SECTION 1. Section 1 of the Republic Act No. 133. Also known as an Act to
Authorize the Mortgage of Private Real Property in Favor of Any Individual,
Corporation, or Association Subject to Certain Conditions, is hereby amended as
follows:

"Sec. 1. Any provision of law to the contrary notwithstanding, private
real property may be mortgaged in favor of any individual,
corporation, or association, but the mortgagee or his successor in
interest, if disqualified to acquire or hold lands of the public domain in
the Philippines, shall not take possession of the mortgaged property
during the existence of the mortgage and shall not take possession of
mortgaged property except after default and for the sole purpose of
foreclosure, receivership, enforcement or other proceedings and in no
case for a period of more than five years from actual possession and
shall not bid or take part in any sale of such real property in case of
foreclosure: *Provided*, that said mortgagee or successor in interest may
take possession of said property after default in accordance with the
prescribed judicial procedures for foreclosure and receivership and in
no case exceeding five years from actual possession;

"PROVIDED, FURTHER, THAT IN CASE THE MORTGAGEE OR SUCCESSOR-IN-INTEREST IS A FOREIGN BANK DULY AUTHORIZED TO OPERATE IN THE PHILIPPINES BY THE BANGKO SENTRAL NG PILIPINAS(BSP), SAID FOREIGN BANK SHALL BE ALLOWED TO BID OR TAKE PART IN ANY SALE OF THE MORTGAGED PROPERTY IN CASE OF JUDICIAL OR EXTRAJUDICIAL FORECLOSURE, AVAIL OF RECEIVERSHIP, ENFORCEMENT AND OTHER PROCEEDING AND TAKE POSSESSION OF THE MORTGAGED PROPERTY, AFTER DEFAULT, AND FOR A PERIOD NOT EXCEEDING FIVE (5) YEARS FROM ACTUAL POSSESSION. PROVIDED, FINALLY, THAT IN NO EVENT SHALL TITLE TO THE REAL PROPERTY BE TRANSFERRED TO SUCH FOREIGN BANK, WHICH SHALL BE REQUIRED TO TRANSFER ITS RIGHTS TO A QUALIFIED FILIPINO NATIONAL DURING THE SAID FIVE (5) YEAR PERIOD, WITHOUT PREJUDICE TO THE MORTGAGOR'S RIGHT UNDER APPLICABLE LAWS."

SECTION 2. This Act shall take effect fifteen (15) days after its publication in at least two (2) newspaper of general circulation. The publication shall not be later than seven days after approval hereof.

Approved.