

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
Third Regular Session

HOUSE BILL NO. **6325**



Introduced by Honorable Anthony G. del Rosario

AN ACT
REMOVING/AMENDING INVESTMENT RESTRICTIONS IN SPECIFIC LAWS
GOVERNING ADJUSTMENT COMPANIES, INVESTMENT HOUSES, LENDING
COMPANIES, AND FINANCING COMPANIES CITED IN THE FOREIGN
INVESTMENT NEGATIVE LIST, EXCEPT THOSE IN THE CONSTITUTION

EXPLANATORY NOTE

The ASEAN Economic Community (AEC) Blueprint, formulated in 2007, set out to "transform ASEAN into a single market and production base, a highly competitive economic region, a region of equitable economic development and a region fully integrated into the global economy."¹ This implies the free flow of goods, services, labor and investments among the members. The Philippines, as one of the founding members of the ASEAN, is committed to this goal not only as an obligation to our neighbors. More regional integration is envisioned to promote economic development by giving the country the opportunity to participate in regional and global production networks.

However, Article XII Section 10 of the Constitution may be a hindrance to our country's compliance to the AEC Blueprint. By default at least 60% equity of corporations is reserved to Filipino citizens, corporations or associations *except* for certain areas of investment where Congress may prescribe a higher percentage. This restriction is the basis of the Foreign Investments Act of 1991 (Republic Act No. 7042, as amended by Republic Act No. 8179) which in turn, is the basis for the Foreign Investment Negative List (FINL). However, some items in the FINL may be removed if an enabling law allowing for a higher percentage of foreign ownership is passed.

This bill seeks to take advantage of the exception (as stipulated above) by removing restrictions or allowing 100% foreign investment or participation in certain

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<http://www.aseanbriefing.com/news/2014/10/14/outlook-asean-investment-2015.html#sthash.avCxciaua.dpuf>

entities namely, adjustment companies, investment houses, lending companies and financing companies. Thus, the following laws will be amended:

1. Presidential Decree 612, otherwise known as "The Insurance Code";
2. Republic Act No. 9474, otherwise known as "The Lending Company Regulation Act of 2007"; and
3. Republic Act No. 8556, otherwise known as the "Financing Company Act of 1998".

Assuming the Philippine Constitution would not be amended in the foreseeable future, this bill will enable the country to comply with a many of our commitments to the AEC and to participate in the economic benefits of ASEAN integration.

In view of the foregoing, the immediate passage of this bill is earnestly sought.



ANTHONY G. DEL ROSARIO

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

SECTION 1. Title. This Act shall be known as the "Foreign Investment Liberalization Act of 2015".

SEC. 2. Declaration of Policy. It is the policy of the State to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations, and governments, including their political subdivisions, in activities which significantly contribute to industrialization and socio economic development.

It is also the policy of the State to improve investment liberalization and facilitation in the country to comply with our ASEAN Economic Community commitments.

Given the country's development objectives/thrusts and the need to increase investments to achieve these, removing or reducing the limitations on foreign investments or participation in certain activities/areas listed in the Foreign Investment Negative List as provided for in specific laws, becomes necessary.

SEC. 3. Definition of Terms. As used in this Act:

- a) **Foreign Investment Negative List** shall refer a list of areas of economic activity whose foreign ownership is limited to a maximum of sixty percent

(60%) of the outstanding capital stock in the case of a corporation or capital in the case of a partnership;

- b) **Investment** shall refer to equity participation in any enterprise organized or existing under the laws of the Philippines. It includes both original and additional investments, whether made directly as in stock subscription, or indirectly through the transfer of equity from one investor to another in stock purchase. Ownership of bonds (including income bonds), debentures, notes or other evidences of indebtedness does not qualify as investments.

The purchase of stock options or stock warrants is not an investment until the holder thereof exercises his option and actually acquires stock from the corporation.

- c) **Foreign Investment** shall refer to an equity investment made by a non-Philippine national; *Provided, however*, that for purposes of determining foreign ownership, peso investments made by non-Philippine nationals shall be considered; *Provided further*, That access and use of foreign exchange from banks and their subsidiary/affiliate forex corporation for repatriation of divestment proceeds and income from such foreign investments shall be subject to applicable BSP rules and regulations.

- d) **Philippine national** shall refer to a citizen of the Philippines or a domestic partnership or association wholly owned by citizens of the Philippines; or 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 citizens of the Philippines; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which 100% of the capital stock outstanding and entitled to vote is wholly owned by Filipinos; or 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 funds will accrue to the benefits of Philippine nationals; *Provided*, That where a corporation and its non-Filipino stockholders own stocks in SEC registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation must be citizens of the Philippines, in order that the corporation shall be considered Philippine national. The control test shall be applied for this purpose.

Compliance with the required Filipino ownership of a corporation shall be determined on the basis of outstanding capital stock whether fully paid

or not, but only such stocks which are generally entitled to vote are considered.

For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.

SEC. 4. *Lifting of Nationality Requirements.* All statutory laws and implementing rules and regulations that impose nationality requirements or foreign investment limitations on investment houses, adjustment companies, lending companies and financing companies are hereby repealed, except as otherwise provided in this Act, and subject to the provisions of the Constitution.

SEC. 5. *Adjustment Companies.* Section 332 of Presidential Decree 612, otherwise known as "The Insurance Code" as amended by Republic Act No. 10607 is hereby amended to read as follows:

"Section 332. No person, partnership, association, or corporation shall act as an adjuster, as herein earlier defined, unless authorized so to act by virtue of a license issued or renewed by the Commissioner pursuant to the provisions of this Code".

No foreign national may be allowed to act as an adjuster unless the country of which he is a national accords reciprocal rights to Filipinos.

SEC. 6. *Investment Houses.* Section 2 of Republic Act No. 8366, amending certain sections of Presidential Decree No. 129, otherwise known as "The Investment House Law, is hereby amended to read as follows"

"Section 2. Citizenship Requirements. At least sixty percent (60% of the voting stock of any Investment House shall be owned by citizens of the Philippines. In determining the percentage of foreign-owned voting stocks in Investment Houses, the basis for the computation shall be the citizenship of each stockholder, and if the stockholder is a corporation, the citizenship of the individual stockholders holding voting shares in that corporation. In approving foreign equity applications in Investment Houses, the Securities and Exchange Commission shall approve such applications only if the same or similar rights are enjoyed by Philippine nationals in the applicant's country.

Foreign nationals may become members of the board of directors to the extent of the foreign participation in the equity of said enterprise".

SEC. 7. *Lending Companies.* Section 6 of Republic Act No. 9474, otherwise known as the "Lending Company Regulation Act of 2007", is hereby amended to read as follows:

"Section 6. *Citizenship Requirements.* A lending company may be owned up to 60% by foreign nationals, *Provided, however,* that where the loan is secured by land, a lending company, more than 40% of whose capital is owned by foreign nationals, shall not bid or take part in any sale of such land as a consequence of such mortgage. *However,* they shall be allowed to take part in the sale of foreclosed land only if title to said land shall not be transferred to such lending companies."

No foreign national may be allowed to own stocks unless the country of which he is a national accords reciprocal rights to Filipinos.

SEC. 8. *Financing Companies.* Section 6 of Republic Act No. 8556, otherwise known as the "Financing Company Act of 1998" is hereby amended to read as follows:

"Section 6. *Form of organization and capital requirements.* Financing companies shall be organized in the form of stock corporations, may be owned up to 60% by foreign nationals, and shall have a paid-up capital of not less than Ten Million Pesos (Php10,000,000.00) in case the financing company is located in Metro Manila and other first class cities, Five Million Pesos (Php5,000,000.00) in other classes of cities and Two Million Five Hundred Thousand Pesos (Php2,500,000.00) in municipalities: *Provided, however,* That no foreign national may be allowed to own stock in any financing company unless the country of which he is a national accords the same reciprocal rights to Filipinos in the ownership of financing companies or their counterpart entities in such country: and *Provided, further,* That financing companies duly existing and in operation before the effectivity of this Act shall comply with the minimum capital requirement within one (1) year from the date of the said effectivity; and *Provided finally,* that where land is concerned, the financing company shall comply with the Constitutional provision on foreign ownership of land."

SEC. 9. *Repealing Clause.* All statutory laws, orders, issuances, rules and regulations and/or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 10. *Effectivity.* This Act shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general circulation.

Approved,