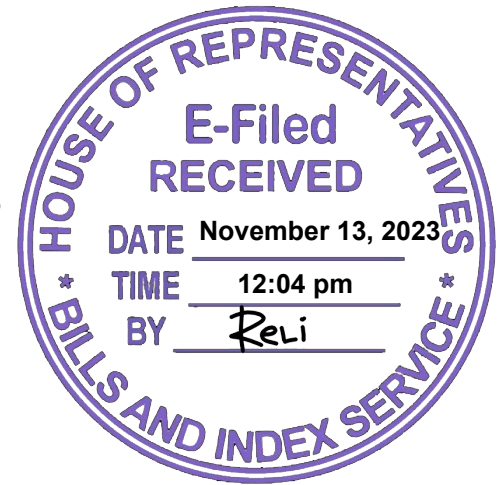


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City
NINETEENTH CONGRESS
Second Regular Session



HOUSE BILL NO. 9522

Introduced by HON. GUS S. TAMBUNTING

**AN ACT TO AMEND THE 100% FILIPINO BOARD OF DIRECTORS
REQUIREMENT IN THE INVESTMENT COMPANY ACT**

EXPLANATORY NOTE

There is no foreign equity limitation under the 1987 Philippine Constitution or the Foreign Investments Negative List for investment companies. Notwithstanding this, the Investment Company Act requires 100% Filipinos in the board of directors of investment companies. This 100% Filipino board requirement applies regardless of whether the investment company is owned wholly or partially by foreign stockholders. Thus, even if Philippine law allows foreign-owned investment companies, the foreign stockholders would not be able to elect foreign directors in the investment company's board of directors because of the 100% Filipino board requirement in the Investment Company Act.

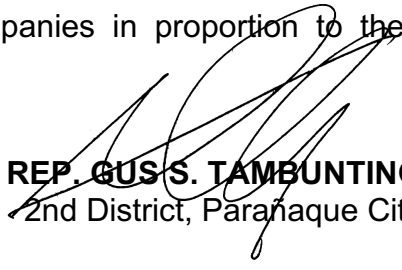
This inability to elect representatives in the board of directors is a deal-breaker for foreign funds. Common business sense requires that majority stockholders should be able to participate in the exercise of corporate control through board representation. It would not make sense for a foreign investor to set up an investment company if it cannot have board representation.

It is also worth noting that the Anti-Dummy Law even allows proportionate representation of foreigners in the board of directors based on their percentage of shareholdings. Hence, if the Anti-Dummy Law allows proportionate board representation from foreigners, there should be no reason why the Investment Company Act will not allow proportionate board representation for foreign stockholders of investment companies.

The unintended consequence of the 100% Filipino board requirement in the Investment Company Act is to disincentivize the formation of foreign-owned funds in the country, such as venture capital funds, private equity funds, and hedge funds. This is also the reason why there are very few investment companies being set up in the Philippines, even though there is no foreign equity limitation for investment companies.

In view of the foregoing, it is hoped that this bill will be favorably considered and enacted into law, to allow foreign stockholders of foreign-owned investment companies to have

representation in the board of directors of such companies in proportion to their percentage of shareholding.



REP. GUS S. TAMBUNTING
2nd District, Parañaque City

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**AN ACT TO AMEND THE 100% FILIPINO BOARD OF DIRECTORS REQUIREMENT IN
THE INVESTMENT COMPANY ACT**

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

Section 1. *Short Title.* – This law shall be known as “*Foreign Board Representation in Investment Companies Act*”.

Section 2. *Declaration of Policy.* – It is hereby declared the policy of the State to encourage foreign investments and promote a conducive business environment in the Philippines. In line with this policy, it is recognized that investment companies may have both Filipino and foreign stockholders, and the board of directors of such companies should reflect the diverse ownership structure, allowing for proportionate representation of foreign stockholders based on their percentage of shareholding.

Section 3. *Amendment of Section 15 of the Republic Act No. 2629.* – Section 15 of the Republic Act No. 2629 or the Investment Company Act is hereby amended to read as follows:

“Section 15. *Board of directors; election; term vacancies; and salaries.* – No person shall serve as a director of a registered investment company unless **they are** elected to that office by the holders of the outstanding voting securities of such company, at an annual or a special meeting duly called for the purpose; **Provided, that the election of foreigners as members of the board of directors of the investment company shall be allowed in proportion to their participation or share in the capital of the investment company.** Vacancies occurring between such meeting may be filled in any otherwise legal manner if immediately after filing any such vacancy at least two-thirds of the directors then holding office shall have been elected to such office by the holders’ of the outstanding voting securities of the company at such an annual or special meeting. In the event that at any time less than a majority of the directors of such company holding office at that time were so elected by the holders of the outstanding voting securities, the board of directors or proper officer of such company shall forthwith

cause to be held as promptly as possible and in any event within sixty days a meeting of such holders for the purpose of electing directors to fill any existing vacancies in the board of directors unless the Commission shall by order extend such period. The foregoing provisions shall not apply to members of an advisory board.”

Section 4. *Separability Clause.* – If any provision of this Act is declared invalid or unconstitutional, the other provisions not affected thereby shall remain in full force and effect.

Section 5. *Repealing Clause.* – All laws, decrees, executive orders, rules, and regulations or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 6. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,