(AS AMENDED BY REPUBLIC ACT NO. 8179)

NEDA IMPLEMENTING RULES AND REGULATIONS OF RA 7042, March 03, 1998

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The National Economics and Development Authority (NEDA) hereby issues the following rules and regulations implementing Republic Act No. 7042, otherwise known as the foreign Investments Act of 1991, as amended by Republic Act No. 8179:

RULE I
DEFINITIONS

SECTION 1. DEFINITION OF TERMS. — For the purposes of these Rules and Regulations:

a. Act shall refer to Republic Act 7042 entitled "An Act to Promote Foreign Investments, Prescribed the Procedures for Registering Enterprises Doing Business in the Philippines, and for other Purposes", Also known as the Foreign Investments Act of 1991, as amended.

b. Philippine national shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by the 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 fund will accrue to the benefits of the Philippine nationals; Provided, that where a corporation and its non-Filipino stockholders own stocks in Securities and Exchange Commission (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 corporation must be citizens of the Philippines, in order that the corporation shall be considered a 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.

Individuals or juridical entities not meeting the aforementioned qualifications are considered as non-Philippine nationals.

c. Foreign corporation shall mean one which is formed, organized or existing under laws other than those of the Philippines.

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Branch office of a foreign company carries out the business activities of the head office and derives income from the host country.

Representative or liaison office deals directly with the clients of the parent company but does not derive income from the host country and is fully subsidized by its head office. It undertakes activities such as but not limited to information dissemination and promotion of the company's products as well as quality control of products.

d. Investment shall mean 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 as 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.

e. Foreign investment shall mean 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 only foreign investments in the form of foreign exchange and/or other assets actually transferred to the Philippines and duly registered with the Central Bank (CB) and profits derived therefrom can be repatriated; and Provided, finally, that, for purposes of Section 8 of the Act, and Rule VIII, Section 6 of these Rules and Regulations, Existing Foreign Investments shall mean an equity investments made by a non-Philippine national duly registered with the SEC or the Bureau of Trade Regulation and Consumer Protection (BTRCP) in the form of foreign exchange and/or other assets transferred to the Philippines.

f. Doing Business shall include soliciting orders, service contracts, opening offices, whether liaison offices or branches; appointing representatives or distributors, operating under full control of the foreign corporation, domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that comply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to and in progressive prosecution of commercial gain or of the purpose and object of the business organization. The following acts shall not be deemed "doing business" in the Philippines:

1. Mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor;

2. Having a nominee director or officer to represent its interest in such corporation;

3. Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account;

4. The publication of a general advertisement through any print or broadcast media;

5. Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;

6. Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export;

7. Collecting information in the Philippines; and

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8. Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services.

g. Export enterprise shall mean an enterprise wherein a manufacturer, processor or service (including tourism) enterprise exports sixty percent (60%) or more of its output, or wherein a trader purchases products domestically and exports sixty percent (60%) or more of such purchases.

h. Exports shall mean the volume or the Philippine port F.O.B. peso value, determined from invoices, bills of lading, inward letters of credit, loading certificates, and other commercial documents, of products exported directly by an export enterprise or the value of services including tourism sold by service-oriented enterprise to non-resident foreigners or the net selling price of export products sold by an export enterprise to another export enterprise that subsequently exports the same; Provided, that sales of export products to another export enterprise shall only be deemed exports when actually exported by the latter, as evidenced by loading certificates or similar commercial documents; and Provided, finally, that without actual exportation, the following shall be considered constructively exported for purposes of the Act: (1) sales of products to bonded manufacturing warehouses of export enterprises; (2) sales of products to export processing zone enterprises; (3) sales of products to export enterprises operating bonded trading warehouses supplying raw materials used in the manufacture of export products; and (4) sales of products to foreign military bases, diplomatic missions and other agencies, and/or instrumentalities granted tax immunities of locally manufactured, assembled or repacked products whether paid for in foreign currency or pesos funded from inwardly remitted foreign currency.

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning overseas Filipinos under the Internal Export Program of the Government and paid for in convertible foreign currency inwardly remitted through the Philippine banking system shall also be considered exports.

i. Output shall refer to the export enterprise's total sales in a taxable year. The term sales shall refer to the value in case of heterogeneous products and volume in case of homogeneous products.

Heterogeneous products shall refer to products of different kinds and characteristics as well as to those of the same kind but with various categories using different units of measurement.

Homogeneous products shall refer to products of the same kind or category using a common unit of measurement.

j. Export ratio shall refer to:

1. the percentage share of the volume or peso value of goods exported to the total volume or value of goods sold in any taxable year if the export enterprise is engaged in manufacturing or processing;

2. the percentage share of the peso value of services sold to foreigners to total earnings or receipts from the sale of its services from all sources in any taxable year if the export enterprise is service-oriented; Value of services sold shall refer to the peso value of all services rendered by an export enterprise to foreigners that are paid for in foreign currency and/or pesos funded from inwardly remitted foreign currency as properly documented by the export enterprise; or

3. the percentage share of the volume or peso value of goods exported to the total volume or value of goods purchased domestically in any taxable year if the export enterprise is engaged in merchandise trading.

k. Domestic market enterprise shall mean an enterprise which produces goods for sale, or renders service or otherwise engages in any business in the Philippines.

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l. Joint Venture shall mean two or more entities, whether natural or juridical, one of which must be a Philippine national, combining their property, money, efforts, skills or knowledge to carry out a single business enterprise for profit, which is duly registered with the SEC as a corporation or partnership.

m. Substantial Partner shall mean an individual or a firm who owns enough shares to be entitled to at least one (1) seat from the Board of Directors of a corporation, or in the case of a partnership, any partner.

n. Dangerous Drugs as defined under Republic Act 6425 or the Dangerous Drugs Act, as amended, refers to either:

1. "Prohibited drug" which includes opium and its active components and derivatives, such as heroin and morphine; coca leaf and its derivatives, principally cocaine; alpha and beta eucaine; hallucinogenic drugs, such as mescaline, lysergic and dicthlylamide (LSD) and other substances producing similar effects; Indian hemp and its derivatives; all preparations made from any of the foregoing; and other drugs and chemical preparations whether natural or synthetic, with the physiological effects of a narcotic or hallucinogenic drug; or

2. "Regulated drug" which includes, unless authorized by the Department of Health (DOH) and in accordance with the Dangerous Drugs Board, self-inducing sedatives, such as secobarbital, phenobarbital, pentobarbital, barbital, amobarbital or any other drug which contains a salt or a derivative of salt of barbituric acid; any salt, isomer, or salt of an isomer, of amphetamine such as benzedrine or dexedrine, or any drug which produces a physiological action similar to amphetamine; and hypnotic drugs, such as methaqualone, nitrazepan or any other compound producing similar physiological effects.

o. Advanced Technology refers to a higher degree or form of technology than what is domestically available and needed for the development of certain industries as subject to guidelines of the Department of Science and Technology (DOST). Its introduction into the country through foreign investments under the terms and conditions of the Act must be linked to its appropriateness and adaptability to local conditions with a view towards eventual transfer and applicability including the upgrading of the indigenous technology available.

p. Paid-in Equity Capital shall mean the total investment in a business that has been paid-in in a corporation or partnership or invested in a single proprietorship, which may be in cash or in property. It shall also refer to inward remittance or assigned capital in the case of foreign corporations.

q. Foreign Investment Negative List (FINL) or Negative List shall mean a list of areas of economic activity whose foreign ownership is limited to a maximum of forty percent (40%) of the outstanding capital stock in the case of a corporation or capital in the case of a partnership.

r. NEDA Board shall refer to the body constituted as such under Executive Order No. 230 entitled "Reorganizing the National Economic and Development Authority" and in which reside the powers and functions of the Authority.

s. NEDA shall refer to the NEDA Secretariat, which is the body constituted as such under Executive Order No. 230 and which serves as the research and technical support arm and the Secretariat of the NEDA Board.

t. SEC shall refer to the Securities and Exchange Commission.

u. BTRCP shall refer to the Bureau of Trade Regulation and Consumer Protection as represented by the provincial offices of the Department of Trade and Industry (DTI).

v. BOI shall refer to the Board of Investments.

w. Technology Transfer Board shall refer to the Bureau of Patents, Trademarks and Tec

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x. Former natural born Filipinos shall mean those who have lost Philippine citizenship but were previously citizens of the Philippines falling in either of the following categories: (a) from birth without having to perform any act to acquire or perfect their Philippine citizenship; or (b) by having elected Philippine citizenship upon reaching the age of majority, if born before January 17, 1973, of Filipino mothers.

y. Transferee of private land shall mean a person to whom the ownership rights of private land is transferred through either voluntary or involuntary sale, devise or donation. Involuntary sales shall include sales on tax delinquency, foreclosures and executions of judgment.

z. Direct employees shall mean Filipino personnel hired and engaged under the control and supervision of the applicant investor/employer in the production of goods or performance of services. Excluded from this definition are personnel hired as casual, seasonal, learner, apprentice or any employee of subcontractor or those under fixed term employment.

aa. Start of commercial operations shall mean the date when a particular enterprise actually begins production of the product for commercial purposes or commercial harvest in the case of agricultural activities. In the case of service oriented activities, the date when the enterprise begins catering or servicing its clients on a commercial basis. In the case of export traders and service exporters, the date when the initial export shipment in commercial quantity has been made or initial performance of service as borne out by the appropriate supporting documents.

RULE II
SCOPE

SECTION 1. COVERAGE. — The Act covers all investment areas or areas of economic activity except banking and other financial institutions which are governed and regulated by the General Banking Act and other laws under the supervision of the CB.

RULE III
BASIC GUIDELINES

SECTION 1. The Act covers restrictions pertaining to foreign equity participation only. All other regulations governing foreign investments remain in force.

SECTION 2. MONITORING OF COMPLIANCE WITH EQUITY PARTICIPATION REQUIREMENTS. — The SEC or BTRCP, as applicable, shall monitor the compliance with the equity requirements of the Act.

RULE IV
REGISTRATION OF INVESTMENTS OF NON-PHILIPPINE NATIONALS

SECTION 1. QUALIFICATIONS

a. Any non-Philippine national may do business or invest in a domestic enterprise up to one hundred percent (100%) of its capital provided:

1. it is investing in a domestic market enterprise in areas outside the FINL; or

2. it is investing in an export enterprise whose products and services do not fall within Lists A and B (except for defense-related activities, which may be approved pursuant to Section 8(b)(1) of the Act) of the FINL.

Provided further that, as required by existing laws, the country or state of the applicant must also allow Filipino citizens and corporations to do business therein.

b. Non-Philippine nationals qualified to do business per paragraph (a) above, but who will engage in more than

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one investment area, one or more of which is the FINL, may be registered under the Act. However, said non-Philippine national will not be allowed to engage in the investment areas which are in the FINL.

c. Existing enterprises, which are non-Philippine nationals at the time of effectivity of the Act and which intend to increase the percentage of foreign equity participation under the Act, beyond that previously authorized by SEC, shall be governed by the qualifications in item (a) above. Thus, existing enterprises shall be allowed to increase the percentage share of foreign equity participation beyond current equity holdings only if their existing investment area is not in the FINL. Similarly, existing enterprises engaged in more than one (1) investment area shall be allowed to increase percentage of foreign equity participation if none of the investment areas they are engaged in is in the FINL.

Existing foreign corporations shall be allowed to increase capital even if their existing investment area is in the FINL.

Transfer of ownership from one foreign company to another shall be allowed even if the enterprise is engaged in an area in the FINL as long as there is the percentage share of foreign equity.

SECTION 2. APPLICATION FOR REGISTRATION

a. Filing of Application. — Applications for registration shall be filed with the SEC in the case of foreign corporations and domestic corporations or partnerships which are non-Philippine nationals. In the case of single proprietorships, applications for Metro Manila shall be filed with the BTRCP or the DTI-National Capital Region. In the provinces, applications may be filed with the extension offices of the SEC for corporations/partnerships and the provincial offices of the DTI for sole proprietorships.

b. Pre-Processing of Documents. — Pre-processing of documents shall be undertaken to assist the investor in determining the completeness of his documents. All applications are considered officially accepted only upon submission of complete documents to either the SEC or BTRCP. Applications for clearances from the Department of National Defense (DND) or Philippine National Police (PNP) for defense-related activities, or the DOST for investments involving advanced technology shall be decided upon by said agencies within fifteen (15) working days.

c. Approval. — Within fifteen (15) working days from official acceptance of an application, the SEC or BTRCP shall act on the same. Otherwise, the application shall be considered as automatically approved if it is not acted upon within said period for a cause not attributable to the applicant.

SECTION 3. REGISTRATION WITH THE SEC

a. Existing Requirements. — As required by existing laws and regulations, an application form together with the following documents shall be submitted to the SEC:

1. In the case of a new domestic corporation or a partnership:

i. Articles of Incorporation/Partnership

ii. Name Verification Slip

iii.Bank Certificate of Deposit

iv. ACR/ICR, SIRV (Special Investors Resident Visa), Visa #13 of the alien subscribers

v. Proof of Inward Remittance (for non-resident aliens)

2. In the case of a foreign corporation:

i. Name verification slip

ii. Certified Copy of the Board Resolution authorizing the establishment of an office in the Philippines; designating the resident agent to whom summons and other legal processes may be served in behalf of the foreign corporation; and stipulating that in the absence of such agent or upon cessation of its business in the Philippines, the SEC shall receive any summons or legal processes as if the same is made upon the corporation at its home office.

iii.Financial statements for the immediately preceding year at the time of filing of the application, certified by an independent Certified Public Accountant of the home country.

iv. Certified copies of the Articles of Incorporation/Partnership with an English translation thereof if in a foreign language

v. Proof of inward remittance such as a bank certificate of inward remittance or credit advices.

For representative office, the amount remitted initially should be at least US$30,000.

If the paid-in equity/capital is in kind, additional requirements shall be submitted to the SEC pursuant to its existing rules and regulations.

All documents executed abroad should be authenticated by the Philippine Embassy or Consular Office.

3. In the case of an existing corporation intending to increase foreign equity participation, all documents required of the proposed transaction under applicable laws, rules and regulations shall be submitted.

b. Additional Requirements. — As required by the Act, the following shall also be submitted to SEC.

1. For enterprises wishing to engage in defense-related activities, clearance from the DND or PNP.

2. For small and medium sized domestic market enterprises with paid-in equity capital less than the equivalent of US$200,000 but not less than the equivalent of US$100,000, a certificate from the Department of Science and Technology (DOST) that the investment involves advanced technology, or a certificate from the appropriate Department of Labor and Employment (DOLE) Regional Office that the enterprise has issued an undertaking to employ at least 50 direct employees shall be submitted.

The DOLE through its Regional Offices, shall validate and monitor compliance by the investor to the undertaking that it will hire at least 50 direct employees within six (6) months from the start of commercial operations. Non-satisfaction of the undertaking shall be reported by the DOLE Regional Office to the SEC, which shall cause the investor to satisfy the appropriate higher investment requirement, with penalty for failure to satisfy the undertaking.

3) For former natural born Filipinos wishing to engage in investment areas allowed to them under this Act, the following documents are required:

i. Copy of birth certificate

i.1 Certified by the local civil registrar or the National Statistics Office (NSO); or

i.2 For those born abroad, certificate of birth from the appropriate government agency of the country where the birth is recorded showing the father or mother to be a Filipino at the time of birth or if the citizenship of the parents is not indicated, additional proof that the parent/s is a Filipino citizen or has not lost his/her Filipino

citizenship at the time of the applicant investor's birth.

ii. Those born before 17 January 1973 of Filipino mothers must additionally submit all of the following: certified true copies of his/her sworn statement of election of Filipino citizenship, oath of allegiance from the civil registrar where the documents were filed and/or forwarded, and identification certificate issued by the Bureau of Immigration;

iii. In case of loss and/or destruction of the record of birth or non-registration of birth

iii.1 Certificate of non-availability of birth certificate on account of loss and/or destruction of birth record from the local civil registrar and/or appropriate government agency if birth was registered abroad;

iii.2 Copy of birth certificate of mother or father certified by the local civil registrar or the NSO; and

iii.3 Affidavit of two (2) disinterested persons attesting to their personal knowledge that at the time of the applicant's birth, the child was born of a Filipino mother or father

Any document executed or issued abroad must be authenticated by the Philippine embassy or consulate having jurisdiction over the place of execution or issuance of the document.

c. Application Fee. — A reasonable application fee to be determined by the SEC shall be collected from each applicant.

d. SEC Action. — Upon fulfillment of all SEC requirements and favorable evaluation by the SEC, the Certificate of Registration under the Act for domestic corporations and partnerships, or license to do business in the case of foreign corporation, shall be issued by the SEC. In case of disapproval, the SEC shall also inform the applicant in writing of the reasons for the disapproval of the registration.

SECTION 4. REGISTRATION WITH THE BTRCP-DEPARTMENT OF TRADE AND INDUSTRY.

a. Existing Requirements. — As required by existing laws and regulations, BTRCP Form No. 17 and accompanying documents shall be submitted to BTRCP.

All documents executed abroad should be authenticated by the Philippine Embassy or Consular Office.

b. Additional Requirements. — The additional requirements for corporations and partnerships provided under Sec. 3(b) hereof shall be complied with.

c. Application Fee. — A reasonable application fee to be determined by BTRCP shall be collected from each applicant.

d. BTRCP-DTI Action. — Upon fulfillment of all BTRCP-DTI requirements and favorable evaluation by DTI, the Certificate of Registration for Sole Proprietorship shall be issued by DTI. In case of disapproval, DTI shall also inform the applicant in writing of the reasons for the disapproval of the registration.

SECTION 5. REGISTRATION OF NON-PHILIPPINE NATIONALS INTENDING TO ENGAGE IN THE SAME LINE OF BUSINESS AS THEIR EXISTING JOINT VENTURE

a. During the transitory period, any applicant who has an investment in an existing joint venture, in which he or his majority shareholder in the existing joint venture is a substantial partner, shall be registered with the SEC or BTRCP in the same line of business if the Filipino partners representing the majority of the Filipino equity in the existing joint venture certify under oath that they are not capable and willing to make the investment needed for the domestic market activities, which is being proposed to be undertaken by the applicant.

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b. If the Filipino partners are willing and able to make the needed investment, the SEC shall not register the applicant, in which case, both joint venture partners may agree to undertake the expansion. Both partners are then required to place the balance of their agreed upon investment shares within six (6) months from the date of agreement. The Filipino partner (s) shall not be compelled to make additional investment for the proposed expansion of domestic market activities, if such will result in a higher Filipino equity share. If the Filipinos partner (s) fails to infuse said capital within said period, per the report of the non-Philippine national applicant to the SEC, the SEC or BTRCP shall then allow the registration of said non-Philippine national applicant as a separate enterprise under the Act.

RULE V
REGISTRATION WITH THE CENTRAL BANK

SECTION 1. CB REQUIREMENTS. — Enterprises seeking to remit foreign exchange abroad for purposes, of remittance of profits and dividends and capital repatriation in connection with the foreign investment made pursuant to the Act shall be deemed registered with the CB after SEC or BTRCP registration. For this purpose, CB rules and regulations covering procedures for registration of foreign investments shall be observed.

RULE VI
FOREIGN INVESTMENTS IN EXPORT ENTERPRISES

SECTION 1. ALLOWABLE FOREIGN EQUITY PARTICIPATION. — Foreign equity participation in export enterprises shall be allowed up to one hundred percent (100%) provided that the products and services of such enterprises do not fall within Lists A and B of the FINL.

SECTION 2. REGISTRATION OF EXPORT ENTERPRISES. — Export enterprises shall be deemed registered with the BOI pursuant to Section 6 of the Act upon registration with the SEC or BTRCP.

Enterprises registered under the Act seeking to avail of incentives under EO 226 must apply for registration with the BOI. Rules and regulations on EO 226 shall be observed for this purpose.

Within ten (10) working days from the issuance of the certificate of registration, the SEC or BTRCP shall transmit to BOI copies of the Certificate of Registration together with the application form duly accomplished by the export enterprises.

SECTION 3. SUBMISSION OF REPORTS. — All duly registered export enterprises under this Rule shall submit to the Board of Investments a duly accomplished form within six (6) months after the end of each taxable year.

Failure of export enterprises to submit the required reports within the prescribed period of time of the submission of fraudulent reports shall be a ground for the SEC or BTRCP to impose appropriate sanctions as provided for under Rule XVII, Section 1, of these Rules and Regulations.

SECTION 4. MONITORING OF COMPLIANCE WITH THE EXPORT REQUIREMENT. — Upon receipt of the reports submitted by the export enterprise, the BOI shall determine compliance of the enterprise with the export requirement. If the enterprise fails to comply with the export requirement, the BOI shall advise the SEC or BTRCP of said failure. The SEC or BTRCP shall require the firm to immediately increase its export to at least sixty percent (60%) of total sales. If the firm fails to comply with the order of the SEC or BTRCP without any justifiable reason, it shall be penalized in accordance with the provisions of Rule XVIII, Section 1, of these Implementing Rules and Regulations. The BOI, in consultation with the SEC and BTRCP shall issue guidelines for this purpose.

RULE VII

FOREIGN INVESTMENTS IN DOMESTIC MARKET ENTERPRISES

SECTION 1. ALLOWABLE FOREIGN EQUITY PARTICIPATION. — Foreign equity participation in domestic market enterprises shall be allowed up to one hundred percent (100%) unless such participation is prohibited or limited by existing laws or the FINL.

SECTION 2. CHANGE OF STATUS FROM DOMESTIC MARKET ENTERPRISE TO EXPORT ENTERPRISE. — A domestic market enterprise may change its status to an export enterprise any time by notifying the SEC or BTRCP.

Section 2 of Rule VI shall apply for any change of status from domestic to export enterprise. Such application shall be supported by relevant reports as evidence that the applicant enterprise has exported sixty percent (60%) or more of its output.

The new export enterprise shall be subject to the reportorial requirements and shall be monitored for its compliance with the export requirements under Sections 3 and 4, respectively, of Rule VI of these Rules and Regulations.

RULE VIII
THE REGULAR FOREIGN INVESTMENT NEGATIVE LIST

SECTION 1. DESCRIPTION. — The Regular FINL shall have two component lists: A and B, which shall contain areas of economic activities reserved to Philippine nationals. The description and guidelines governing Lists A and B are provided for in Rules IX, X and XI hereof, respectively.

SECTION 2. FORMULATION. — The NEDA shall be responsible for the formulation of the Regular FINL, following the process and criteria provided in Section 8 of the Act and in Rules IX and X hereof.

SECTION 3. APPROVAL. — The NEDA shall submit the proposed Regular FINL to the President for approval and promulgation. The NEDA shall submit the first Regular FINL and subsequent proposed Regular FINLs to the President at least forty five (45) days before the scheduled date of publication.

SECTION 4. PUBLICATION. — The NEDA shall publish the first Regular Negative List not later than sixty days before the end of the transitory period. Subsequent Negative Lists shall be published not later than fifteen (15) days before the end of the effectivity of the current Negative List.

SECTION 5. EFFECTIVITY. — The first Regular Negative shall become immediately effective at the end of the transitory period. Subsequent Regular FINLs shall become effective fifteen (15) days after publication in a newspaper of general circulation in the Philippines. Except for List A, each Regular FINL shall remain in force for two (2) years from the date of its effectivity.

SECTION 6. COVERAGE OF OPERATION. — Each Regular FINL shall apply only to new foreign investments and shall not affect existing foreign investments at the same time of its publication.

RULE IX
GUIDELINES FOR LIST OF THE REGULAR FOREIGN INVESTMENT NEGATIVE LIST

SECTION 1. COVERAGE. — List A of the FINL shall consist of the areas of activities reserved to Philippine nationals where foreign equity participation in any domestic or export enterprise engaged in any activity listed therein shall be limited to a maximum of forty percent (40%) as prescribed by the Constitution and other specific laws.

The NEDA shall make an enumeration of said activities reserved to Philippine nationals by the Constitution and

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other specific laws.

SECTION 2. AMENDMENTS. — Amendments to List A may be made by the NEDA anytime to reflect changes made by law regarding the extent of foreign equity participation in any specific area of economic activity.

RULE X
GUIDELINES FOR LIST B OF THE REGULAR FOREIGN INVESTMENT NEGATIVE LIST

SECTION 1. COVERAGE. — List B shall consist of the following:

a. Activities where foreign ownership is limited pursuant to law such as defense or law enforcement-related, requiring prior clearance and authorization from the DND or PNP, to engage in such activity as the manufacture, repair, storage and/or distribution of firearms, ammunition, armored vests and other bullet proof attires, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials.

However, the manufacture and repair of said items may be specifically authorized by the Secretary of National Defense or Chief of the PNP, to non-Philippine nationals, provided a substantial percentage of output as determined by said agencies is exported.

Compliance with the export requirement shall be monitored by the DND or PNP, as the case may be.

b. Activities which have negative implications on public health and morals, such as the manufacture and distribution of dangerous drugs; all forms of gambling, sauna and steam bathhouses and massage clinics.

c. Small and medium-sized domestic market enterprises with paid-in equity capital of less than US$200,000, or its equivalent; However, small and medium sized domestic market enterprises which involve advanced technology or which issue an undertaking to employ at least fifty (50) direct employees are allowed a minimum paid-in capital of US$100,000, or its equivalent.

SECTION 2. PROCESS FOR DETERMINATION OF LIST B.

a. Activities (a) and (b) above shall be determined upon recommendation of the Secretary of National Defense, Chief of the PNP, Secretaries of Health or Education, Culture and Sports and endorsed by the NEDA or upon recommendation motu propio of NEDA, approved and promulgated by the President. List B shall be submitted for Presidential action together with List A. The NEDA shall inform said agencies of the deadline for the submission of their recommendations.

b. Enterprises which are covered by Section 1(c) above are automatically reserved to Philippine nationals.

SECTION 3. AMENDMENTS. — Amendments to List B shall be made only after two years, upon the recommendation of the Secretary of National Defense, Chief of the PNP, Secretaries of Health and Education, Culture and Sports, endorsed by the NEDA, or upon recommendation motu propio of NEDA, approved and promulgated by the President. List B shall be submitted for Presidential action together with List A.

RULE XI
INVESTMENT RIGHTS OF FORMER NATURAL BORN FILIPINOS

SECTION 1. Former natural born citizens of the Philippines shall have the same investment rights of a Philippine citizen in cooperatives under RA 6938, rural banks under RA 7353, thrift banks and private development banks under RA 7906, financing companies under RA 5980, and activities listed under list B including defense-related activities, if specifically authorized by the Secretary of National Defense.

RULE XII

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RIGHTS OF FORMER NATURAL BORN FILIPINOS TO OWN PRIVATE LAND

SECTION 1. Any natural born citizen who has lost his Philippine citizenship and who has the legal capacity to enter into a contract under Philippine laws may be a transferee of a private land up to a maximum area of 5,000 square meters in the case of urban land or three (3) hectares in the case of rural land to be used by him for business or other purposes.

SECTION 2. In case where both spouses are qualified under the law, one of them may avail of the said privilege. However, if both shall avail of the privilege, the total area acquired shall not exceed the maximum allowed.

SECTION 3. In case the transferee already owns urban or rural land for business or other purposes, he shall still be entitled to be a transferee of additional urban or rural land for business or other purposes, which when added to those already owned by him shall not exceed the maximum areas allowed.

SECTION 4. A transferee may acquire not more than two (2) lots which should be situated in different municipalities or cities anywhere in the Philippines. The total land area acquired shall not exceed 5,000 square meters in the case of urban land or three (3) hectares in the case of rural land for use by him for business or other purposes. A transferee who has already acquired urban land shall be disqualified from acquiring rural land and vice versa. However, if the transferee has disposed of his urban land, he may still acquire rural land and vice versa, provided that the same shall be used for business or other purposes.

SECTION 5. Land acquired under this Act shall be primarily, directly and actually used by the transferee in the performance or conduct of his business or commercial activities in the broad areas of agriculture, industry and services, including the lease of land, but excluding the buying and selling thereof. A transferee shall use his land to engage in activities that are not included in the Negative List or in those areas wherein investment rights have been granted to him under this Act.

SECTION 6. Registration of Land. — The Register of Deeds in the province or city where the land is located shall register the land in the name of the transferee that it will be used for any of the purposes mentioned in Section 5 above, i.e., certification of business registration issued by the BTRCP/Department of Trade and Industry and affidavit that the land shall be used for business purposes.

The provision of BP 185 (An Act to Implement Section 15 of Article XIV of the Constitution and for Other Purposes Pertaining to the Ownership of Private Lands for Residential Purposes by Former Natural Born Filipinos) and its implementing Rules and Regulations shall be adopted, where applicable, in the implementation of this Act through a Circular to be issued by the Land Registration Authority.

The Register of Deeds shall also ensure that the limits prescribed by law are observed.

RULE XIII
TRANSITORY PROVISIONS

SECTION 1. Prior to effectivity of these Implementing Rules and Regulations, the provision of Book II of EO 226 and its implementing rules and regulations shall govern the registration of foreign investments without incentives.

SECTION 2. There shall be a transitory period of thirty-six (36) months after issuance of these Implementing Rules and Regulations to implement the Act.

SECTION 3. During the transitory period, the Transitory FINL describe in Rule XIV, Section 1 hereof shall take effect.

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RULE XIV
TRANSITORY FOREIGN INVESTMENT NEGATIVE LIST

SECTION 1. DESCRIPTION. — The Transitory FINL shall consist of the following

a. List A

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

b. List B

1. Manufacture, repair, storage and/or distribution of firearms, ammunition, armored vests and other bullet proof attires, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials required by law to be licensed by and under the continuing regulation of the DND or the PNP, as the case may be.

However, the manufacture or repair of these items may be specifically authorized by the Secretary of National Defense or the Chief of the PNP to non-Philippine nationals, provided a substantial percentage of output, as determined by the said agencies, is exported.

The extent of foreign equity ownership allowed shall be specified in the said authority/clearance.

Compliance with the export requirement shall be monitored by the DND or PNP, as the case may be.

2. Manufacture and distribution of dangerous drugs; all forms of gambling, sauna and steam bath houses, 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 less than the equivalent of US$500,000, unless they involved advanced technology as determined by the DOST; and

4. Export enterprises which utilize raw materials from depleting natural resources, and with paid-in equity capital of less than the equivalent of US$500,000.

c. List C

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

Import and wholesales activities which are considered to be not integrated with production or manufacture of goods are those carried out separately from or independently of any production activity.

2. Services requiring a license or specific authorization, and subject to continuing regulation by national government agencies other than the BOI and SEC which at the time of effectivity of the Act are restricted to Philippine nationals by existing administrative regulations and practice of the regulatory agencies concerned: Provided, That after effectivity of the Act, no other services shall be additionally subjected to such restrictions on nationality of ownership by the corresponding regulatory agencies through administrative regulations, and such restrictions once removed shall not be imposed except through legislation or inclusion in the regular Negative List.

3. Enterprises owned in the majority by non-Philippine nationals which, as of the date of effectivity of the Act, have subsisting and operatively in force technology transfer and/or brand name licensing agreements with Philippine nationals for the assembly, processing or manufacture of goods for the domestic market: Provided, That, the said licensing agreements are duly registered with the BPTTT and/or the CB as of the date of effectivity of the Act.

The types of agreements covered by the Act are the following:

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i. Licensing agreements involving the right to use industrial property right, such as patents or trademarks/ service marks;

ii. Know-how agreements for the grant of a license to use know-how; and

iii.Franchise agreements involving the use of the franchisor's system.

Expired license agreements with notification or application for newel with BPTTT as of the date of effectivity of the Act are deemed operatively in force.

If the licensing agreement expires and/or rendered inoperative during the transitory period, the foreign licensor ad/or its affiliates may invest in the same line of business covered by the agreement.

SECTION 2. FORMULATION OF THE TRANSITORY FOREIGN INVESTMENT NEGATIVE LIST.

a. NEDA, in consultation with relevant agencies, shall enumerate, as appropriate, the areas of investment covered in this Transitory FINL.

b. The Transitory FINL shall be published in full at the same time as, or prior to, the publication of these Implementing Rules and Regulations to implement the Act.

c. The areas of investment contained in list C above shall be reserved to Philippine national only during the transitory period. Their inclusion in the regular Negative List will require determination by the NEDA following the procedures and criteria for formulation List C.

RULE XV
OPTIONS FOR EXISTING BOI-REGISTERED ENTERPRISES

SECTION 1. Existing enterprises which have been issued Certificates of Authority to do Business or to Accept Permissible Investments under Book 11 of EO 226, Book II of PD 1789 and RA 5455, whose activities are included in the Transitory FINL or in Subsequent Negative List, are allowed to continue to undertake the same activities which they have been authorized to do subject to the same terms and conditions stipulated in their certificates of registration.

Those whose activities have been previously authorized under Book II of EO 226, Book II of PD 1789, and RA 5455, and whose activities are not in the Transitory FINL or in subsequent Negative Lists may opt to be governed by the provision of the Act. Said enterprises shall be considered automatically registered with the SEC upon surrender of their certificates of authority to the BOI. The SEC shall issue a new certificate of authority upon advise of the BOI.

SECTION 2. Existing enterprise with more than forty percent (40%) foreign equity which have availed of incentives under any of the investment incentives laws implemented by the BOI may opt to be governed by the Act. In such cases, said enterprises shall be required to surrender their certificates of registration, which shall be deemed as an express waiver of their privilege to apply for and avail of incentives under the incentives law under which they were previously registered. Subject to BOI rules and regulations, said enterprises may be required to refund all capital equipment incentives availed of.

RULE XVI
CONSISTENT GOVERNMENT ACTION

SECTION 1. No agency, instrumentality or political subdivision of the Government shall take any action in conflict with or which will nullify the provisions of the Act, of any certificate or authority granted hereunder.

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RULE XVII
COMPLIANCE WITH ENVIRONMENTAL STANDARDS

SECTION 1. All industrial enterprises, regardless of nationality or ownership, shall comply with existing rules and regulations, and applicable environmental standards set by the Department of Environment and Natural Resources (DENR) to protect and conserve the environment.

The DENR shall provide the SEC with a list of environmentally critical activities/projects and area. Necessary clearances may be secured after registration with the SEC.

RULE XVIII
ADMINISTRATIVE SANCTIONS

SECTION 1. Foreign Investments in Export Enterprises. — Non-compliance by any duly-registered export enterprise with Rule VI, Section 3 and 4 above shall be subject to the following sanctions:

a. For late submission of the required annual report —

1st violation — written warning
2nd violation — basic fine of P 1,000.00 and a daily fine of P 50.00
3rd violation — basic fine of P 2,000.00 and a daily fine of P 100.00
Subsequent violation — basic fine of P 5,000.00

b. For the submission of fraudulent reports —

FINE

Partnership/Corporation Sole Proprietorship

1st violation P 100,000.00 P 50,000.00

2nd violation P 150,000.00 P 70,000.00

3rd violation fine in an amount not exceeding ½ of 1% of total paid-in capital but not more than P 5 Million Pesos P 100,000.00

Subsequent : cancellation of registration violations granted under this Act

The President and/or official/personnel of the partnership/corporation responsible for the submission of fraudulent reports shall be subject to the following sanction:

1st violation -a fine of P 50,000.00
2nd violation -a fine of P 100,000.00
3rd violation -a fine of P 200,000.00

c.For non-submission of the required reports within twelve (12) months after the taxable year, cancellation of the certificate of registration granted under the Act.

d.For failure of any duly-registered export enterprise to comply, without justifiable reason, with the SEC or BTRCP order to increase its export to at least sixty percent (60%) of total sales -

FINE

Partnership/Corporation Sole Proprietorship

1st violation P 100,000.00 P 50,000.00

2nd violation P 150,000.00 P 70,000.00

3rd violation fine in an amount not exceeding ½ of 1% of total paid-in capital but not more than P 5 Million Pesos P 100,000.00

Subsequent violations : Cancellation of registrastion granted under the Act.

The President and/or official of the partnership/corporation responsible in the failure to comply with the said SEC or BTRCP order shall be subject to the following sanctions:

1st violation — a fine of P 50,000.00
2nd violation — a fine of P 100,000.00
3rd violation — a fine of P 200,000.00

SECTION 2. COMPLIANCE WITH ENVIRONMENTAL STANDARDS. — Any industrial enterprise, regardless of nationality of ownership which fails to comply with existing rules and regulations to protect and conserve the environment and meet applicable environmental standards shall be subject to the sanctions as may be provided for in the rules and regulations of the DENR.

SECTION 3. HEARING OF VIOLATIONS OF THE ACT. — The SEC or BTRCP shall adopt their respective rules and regulations for the purpose of conducting hearings and investigations involving violations of the provision of the Act and these Implementing Rules and Regulations.

SECTION 4. OTHER GROUNDS FOR CANCELLATION. — The following are other grounds for the cancellation of the certificate of registration granted under the act:

a. Failure of a non-Philippine national intending to engage in the same line of business as an existing joint venture, in which he or his majority shareholder is a substantial partner, to disclose such fact and the names and addresses of the partners in the existing joint venture in his application for registration with the SEC; or

b. Commission of any other fraudulent act.

SECTION 5. OTHER VIOLATIONS. — Any other violations of the Act and these Implementing Rules and Regulations shall be penalized in accordance with Section 14 of the Act.

RULE XIX
EFFECTIVITY

SECTION 1. These amended Implementing Rules and Regulations shall take effect fifteen (15) days after publication in a newspaper of general circulation in the Philippines.

Notes:

1. R.A. 7042 was signed into law on 13 June 1991 and became effective on 30 June 1991. Its IRR took effect on 12 November 1991

2. R.A. 8179 was signed into law on 28 March 1996 and became effective on 15 April 1996. Its IRR took effect on 30 July 1996.

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[1] Text in bold and italics reflect change under R.A. 8179

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