

AN ACT TO REQUIRE THAT THE MAKING OF INVESTMENTS AND THE DOING OF BUSINESS WITHIN THE PHILIPPINES BY FOREIGNERS OR BUSINESS ORGANIZATIONS OWNED IN WHOLE OR IN PART BY FOREIGNERS...

REPUBLIC ACT NO. 5455, September 30, 1968

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

SECTION 1. Definitions and scope of this Act.— (1) As used in this Act, the term "investment" shall mean equity participation in any enterprise formed, organized or existing under the laws of the Philippines; and the phrase "doing business" shall include soliciting orders, purchases, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totaling one hundred eighty 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 imply 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.

(2) This Act shall not apply to banking institutions which are governed and regulated by the General Banking Act and other laws.

SEC. 2. Permitted Investments.—(1) Without need of prior authority anyone not a Philippine national as that term is denned in Section three of the Investment Incentives Act, and not otherwise disqualified by law, may invest:

(a) In any enterprise registered under the Investment Incentives Act, to the extent that the total investment of non-Philippine nationals therein would not affect its status as a registered enterprise under that law;

(b) In any enterprise not registered under the Investment Incentives Act, to the extent that the total investment of non-Philippine nationals therein shall not exceed thirty percent of the outstanding capital of that enterprise, unless existing law forbids any non-Philippine ownership in the enterprise or limits ownership by non-Philippine nationals to a percentage smaller than thirty percent.

(2) Within thirty days after notice of the investment is received by it, the enterprise in which any investment is made by a non-Philippine national shall register the same with the Board of Investments for purposes of record. Investments made in the form of foreign exchange or other assets actually transferred to the Philippines shall also be registered with the Central Bank. The Board shall assess and appraise the value of such assets other than foreign exchange.

SEC. 3. Permissible Investments.—If an investment by a non-Philippine national in an enterprise not registered under the Investment Incentives Act is such that the tot participation by non-Philippine nationals in the outstanding capital thereof shall exceed thirty percent, the enterprise must obtain prior authority from the Board of Investment' which authority shall be granted unless the propose investment—

- (a) Would conflict with existing constitutional Provisions and laws regulating the degree of required ownership by Philippine nationals in the enterprise; or
- (b) Would pose a clear and present danger of pro-moting monopolies or combinations in restraint of trade; or
- (c) Would be made in an enterprise engaged in an area adequately, being exploited by Philippine nationals; or
- (d) Would conflict or be inconsistent with the Investments Priorities Plan in force at the time the investment is sought to be made; or
- (e) Would not contribute to the sound and balanced development of the national economy on a self-sustaining basis.

Investments made in the form of foreign exchange or other assets actually transferred to the Philippines shall also be registered with the Central Bank. The Board shall assess and appraise the value of such assets other than foreign exchange.

SEC. 4. Licenses to do business.—No alien, and no firm, association, partnership, corporation or any other form of business organization formed, organized, chartered or existing under any laws other than those of the Philippines, or which is not a Philippine national, or more than thirty per cent of the outstanding capital of which is owned or controlled by aliens shall do business or engage in any economic activity in the Philippines or be registered, licensed, or permitted by the Securities and Exchange Commission or by any other bureau, office, agency, political subdivision or instrumentality of the government, to do business, or engage in any economic activity in the Philippines, without first securing a written certificate from the Board of Investments to the effect:

- (1) That the operation or activity of such alien, firm, association, partnership, corporation or other form of business organization is not inconsistent with the Investments Priorities Plan;
- (2) That such business or economic activity will contribute to the sound and balanced development of the national economy on a self-sustaining basis;
- (3) That such business or economic activity by the ap-plicant would not conflict with the Constitution or laws of the Philippines;
- (4) That the field of business or economic activity is not one that is being adequately exploited by Philippine nationals; and
- (5) That the entry of applicant therein will not pose a clear and present danger of promoting monopolies or combinations in restraint of trade.

Upon granting said certificate, the Board shall impose the following requirements on the alien or the firm, association, partnership, corporation or other form of business organization that is not organized or existing under the laws of the Philippines—

- (1) To appoint a citizen of the Philippines, of legal age, good moral character and reputation, and sound financial standing, as resident agent, who shall be authorized to accept summons and other legal process in behalf of the applicant;
- (2) To establish an office in the Philippines and to notify the Securities and Exchange Commission in writing of the applicant's exact address and of every contemplated transfer thereof or of the opening of new offices, at least fifteen days before the same are to be effected; and once effected, not later than ten days afterwards;
- (3) To bring assets into the Philippines to constitute the capital of the office or offices, of such kind and value as the Board may deem necessary to protect those who may deal with the applicant, and to maintain that capital unimpaired during the period it does business in the Philippines;

(4) To present prior proof that citizens of the Philippines and corporations or other business organizations organized or existing under the laws of the Philippines are allowed to do business in the country or individual state within a federal country of which applicant is a citizen or in which it is domiciled: Provided, however, That if the state or country of domicile of the applicant imposes on, or requires of, Philippine nationals other conditions, requirements or restrictions besides those set forth in this Act, the Board of Investments shall impose the said other conditions, requirements or restrictions on the applicant if, in its judgment, the imposition thereof shall foster the sound and balanced development of the national economy on a self-sustaining basis;

(5) To submit to the Securities and Exchange Commission certified copies of applicant's charter and by-laws and all amendments thereto, if any, with their translation into an official language within twenty days after their adoption or after the grant of the prescribed certificate by the Board of Investments; and annually, of applicant's financial statements showing all assets, liabilities, and networth and results of operations, setting out separately those pertaining to the branch office;

(6) To keep a complete set of accounting records with the resident agent, which shall fully and faithfully reflect all transactions within the Philippines, and to permit inspection thereof by the Securities and Exchange Commission, the Bureau of Internal Revenue, the Board of Investments and, if a corporation, by the officers mentioned in Section fifty-four of the Corporation Law;

(7) To give priority to resident creditors as against non-resident creditors and owners or stockholders in the distribution of assets within the Philippines upon insolvency, dissolution or revocation of the license;

(8) To give the Securities and Exchange Commission at least six months advance notice in writing of applicant's intention to stop doing business within the Philippines; and to give such public notice thereof as the Securities and Exchange Commission may require for the protection of resident creditors and others dealing with the applicant; and

(9) Not to terminate any franchise, licensing or other agreement that applicant may have with a resident of the Philippines, authorizing the latter to assemble, manufacture or sell within the Philippines the products of the applicant, except for violation thereof or other just cause and upon payment of compensation and reimbursement of investment and other expenses incurred by the licensee in developing a market for the said products: Provided, however, That in case of disagreement, the amount of compensation or reimbursement shall be determined by the court where the licensee is domiciled or has its principal office who shall require the applicant to file a bond in such amount as, in its opinion, is sufficient for this purpose.

The above requirements shall be in addition to those set forth in the Corporation Law, as amended, for licensing foreign corporations and a violation of any of these requirements shall be sufficient cause to cancel a license or permit issued pursuant to this Act: Provided, however, That this section shall not apply to aliens or foreign firms, associations, partnerships, corporations or other forms of business organization not organized or existing under the laws of the Philippines who may lawfully have been licensed to do business in the Philippines prior to the effectivity of this Act: Provided, further, That where the issuance of said license has been irregular or contrary to law, any person adversely affected thereby may file an action with the Court of First Instance where said alien or foreign business organization resides Or has its principal office to cancel the said license. In such cases, no injunction shall issue without notice and hearing; and appeals and other proceedings for review shall be filed directly with the Supreme Court.

SEC. 5. Mergers and Consolidations.—The provisions of this Act shall apply to any merger, consolidation, syndicate or any other combination of firms, associations, partnerships or other forms of business organization that will result in ownership or control by persons or entities that are not Philippine nationals of more than thirty percent of the capital of whatever organization results from the merger, consolidation, syndicate or other

combination.

SEC. 6. Local Government Action.—No agency, instrumentality or political subdivision of the Government shall take any action in conflict with or which will nullify the provisions of this Act, or any certificate or authority granted thereunder.

SEC. 7. Publication and Posting of Notices.—Immediately after the filing of any application under this Act, the Secretary of the Board of Investments shall publish the same at the expense of the applicant once a week for three consecutive weeks in the Official Gazette and in one of the newspapers of general circulation in the province or city where the applicant has its principal office, and post copies of said application in conspicuous places, in the office of the Board of Investments or in the building where said office is located, setting forth in such copies the name of the applicant, the business in which it is engaged or proposes to engage or invest, and such other data and information as may be required by the Board of Investments. No approval or certificate shall be valid without the publication and posting of notices as herein provided.

SEC. 8. Judicial Relief.—From any decision of the Board of Investments under this Act, or from the failure of the Board of Investments to act on any application within sixty days from the date of final publication of the application, the applicant or any person adversely affected thereby may seek judicial relief in the Court of First Instance of Manila.

SEC. 9. Rules and Regulations.—The Board of Investments shall promulgate such rules and regulations as may be necessary to enforce the intent and provisions of this Act. The rules and regulations shall take effect thirty days after their publication in the Official Gazette and in two (2) newspapers of general circulation in the Philippines.

SEC 10. Penal Clause.—Any violation of this Act or of the requirements for a license to do business within the Philippines shall be punished with a fine of not less than ten thousand pesos and not more than twenty-five thousand pesos and imprisonment of not less than five years and not more than ten years. If the violation is committed by a corporation or association, the penalty shall be imposed upon the president, director or directors, manager, managing partner, or other official thereof responsible for such violation. Any alien violating or responsible for the violation of this Act shall, upon completion of the service of sentence, be deported without any further proceedings on the part of the Deportation Board. Any government official or employee who aids, abets or connives with any person in violating this Act shall, in addition to the penalty which may be imposed upon him as a principal, be perpetually disqualified from holding any public office.

SEC 11. Separability Clause.—If any part or section of this Act is declared unconstitutional for any reason, whatsoever, such declaration shall not in any way affect the other parts or sections of this Act.

SEC. 12. Repealing Clause.—All laws or parts of laws inconsistent herewith are hereby repealed or modified accordingly.

SEC. 13. Appropriation.—The sum of one million pesos or so much thereof as may be necessary, out of any funds in the National Treasury not otherwise appropriated, is hereby authorized to be appropriated to carry out the provisions of this Act.

SEC. 14. Effectivity.—This Act shall take effect upon approval.

Enacted without Executive approval, September 30, 1968.

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