AMENDMENTS TO THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7042 (FOREIGN INVESTMENTS ACT OF 1991), AS AMENDED BY REPUBLIC ACT NO. 8179

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The National Economic and Development Authority (NEDA) hereby issues the following amendments to the 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. Definitions of Terms. — For purposes of these Rules and Regulations.

b. Philippine National shall mean 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 fund will accrue to the benefits of Philippine nationals; Provided, That where a corporation and its Non-Filipino stockholders own stocks in a 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 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 shall be considered a Philippine national. The control test shall be applied for this purpose.

[The term Philippine national shall not include juridical entities organized and existing under the laws of any other country even if wholly owned by Philippine Citizens.]

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.

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 [to the domestic market entirely or, if exporting a portion of its output, continually fails to export at least sixty percent (60%) thereof for a period of

three (3) years without any justifiable reason. A holding company whose principal function is to oversee investments made by its parent company in all kinds of real and personal properly as may be allowed under existing laws and regulations shall not be considered a domestic market enterprise].

Item (p) Depleting Natural Resources is deleted. All other items remain the same and shall be re-lettered, accordingly.

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 OF 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 IV. REGISTRATION OF INVESTMENTS OF NON-PHILIPPINE NATIONALS

SECTION 3. Registration with the SEC.

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 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 [US$500,000, a certificate from the DOST that the investment involves advanced technology] shall be submitted.

THE DOLE, THROUGH ITS REGIONAL OFFICES, SHALL VALIDATE AND MONITOR COMPLIANCE

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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, 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, FOREWARDED, 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 NATIONAL STATISTICS OFFICE; 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.

RULE VI. FOREIGN INVESTMENTS IN EXPORT ENTERPRISES

SECTION 3. Submission of Reports. — All duly registered export enterprises under this Rule shall submit to the BOI [SEC] 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 or the submission of fraudulent reports shall be a ground for the SEC or BTRCP to impose appropriate sanctions as provided for under Rule XVIII, Section 1, of these Rules and Regulations.

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RULE VII. FOREIGN INVESTMENTS IN DOMESTIC MARKET ENTERPRISES

SECTION 2. Change of Status from Domestic Market Enterprise to Export Enterprise. — [At its option,] A domestic market enterprise may change its status to an export enterprise ANY TIME BY NOTIFYING THE SEC OR BTRCP of, over the last three (3) years, it consistently exported in each year thereof sixty percent (60%) or more of its output].

Section 2 of Rule VI shall apply for any change of status from domestic to export enterprise. Such application shall be supported by [the] relevant reports [cited in Rule VI, Section 3 hereof,] as evidence that the applicant enterprise has [consistently] exported sixty percent (60%) or more of its output [for each year during the last three (3) years].

THE NEW EXPORT ENTERPRISE SHALL BE SUBJECT TO THE REPORTORIAL REQUIREMENTS AND SHALL BE MONITORED FOR ITS COMPLIANCE WITH THE EXPORT REQUIREMENT UNDER SECTIONS 3 AND 4, RESPECTIVELY, OF RULE VI OF THESE RULES AND REGULATIONS.

[The new export enterprise shall be subject to the export ratio requirement.]

RULE VIII. THE REGULAR FOREIGN INVESTMENT NEGATIVE LIST

SECTION 1. Description. — The Regular FINL shall have TWO (2) [three (3)] component lists: A AND B [and C] which shall contain areas of economic activities reserved to Philippine nationals. The description and guidelines governing Lists A AND B [and C] are provided for in Rules [X AND 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 [and 9] of the Act and in Rules IX AND X [and XII] 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 (60) 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 List 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 [two (2) newspapers] 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 time of its publication.

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 [regulated] pursuant to law SUCH AS [which are] 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 COMPANIES UNDER R.A. 5960, AND ACTIVITIES LISTED UNDER LIST B INCLUDING

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DEFENSE-RELATED ACTIVITIES, IF SPECIFICALLY AUTHORIZED BY THE SECRETARY OF NATIONAL DEFENSE.

RULE XII. 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 ONLY UPON PRESENTATION OF PROOF BY 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 DTI AND AFFIDAVIT THAT THE LAND SHALL BE USED FOR BUSINESS PURPOSES.

THE PROVISIONS OF B.P. 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

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REGISTRATION AUTHORITY.

THE REGISTER OF DEEDS SHALL ALSO ENSURE THAT THE LIMITS PRESCRIBED BY LAW ARE OBSERVED.

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.

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