VIOLATION OF PHILIPPINE RETAIL TRADE LAW

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It has been observed that a swift increase on the number of cases involving holders of permanent residents visa either under the Philippine Immigration Act of 1940 or under Republic Act 7919 (otherwise known as The Alien Social Integration Act of 1995), as well as holders of Temporary Residents Visa (TRV) under Letter of Instructions No. 33 are now engaged in retail trade business.

Foreign nationals regardless of their immigration status are prohibited to engage in retail trade as provided in Republic Act No. 8762 (otherwise known as Retail Trade Liberalization Act of 2000):

> "Section 5. Foreign Equity Participation — Foreign-owned partnerships, associations and corporations formed and organized under the law of the Philippines may, upon registration with the Securities and Exchange Commission (SEC) and the Department of Trade and Industry (DTI) or in case of foreign-owned single proprietorship, with the DTI, engaged or invest in the retail trade business, subject to the following categories:
>
> Category A — Enterprises with paid-up capital of the equivalent in Philippine Pesos of less than Two Million Five Hundred Thousand US Dollars ($2,500,000.00) shall be reserved exclusively for Filipino citizens and corporations wholly-owned by Filipino citizens.
>
> Category B — Enterprises with a minimum paid-up capital of the equivalent in Philippine Pesos of Two Million Five Hundred Thousand US Dollars ($2,500,000.00) may be wholly owned by foreigners except for the first two (2) years after the effectivity of this Act wherein foreign participation shall be limited to not more than (60%) of total equity.
>
> Category C — Enterprises with a minimum paid-up capital of the equivalent in Philippine Pesos of Seven Million Five Hundred Thousand US Dollars ($7,500,000.00) or more maybe wholly owned by foreigners: Provided, however, that in no case shall the investments for establishing a store in categories B and C be less than the equivalent in Philippine Pesos of Eight Hundred Thirty Thousand US Dollars (US$830,000.00).
>
> Category D — Enterprises specializing in high-end or luxury products with a paid-up capital of equivalent in Philippine Pesos of Two Hundred Fifty Thousand US Dollars ($250,000.00) per store may be wholly owned by foreigners.
>
> The foreign investor shall be required to maintain in the Philippines, the full amount of the prescribed minimum capital. Unless the foreign investor has notified the SEC and the DTI of its intention to repatriate its capital and cease operations in the Philippines. The actual use in the Philippine operations of the inwardly remitted minimum capital requirements shall be monitored by the SEC.
>
> Future retail stores shall secure a certification from the Bangko Sentral ng Pilipinas (BSP) and the DTI, which will verify or confirm inward remittance of the minimum required capital investment.

SECTION 6. Foreign Investors Acquiring Shares of Stock of Local Retailers — Foreign investors acquiring shares from existing retail stores whether or not publicly listed whose net worth is in excess of the peso equivalent to Two Million Five Hundred Thousand US Dollars (US$2,500,000.00) may purchase only up to a minimum of sixty (60%) per cent of the equity thereof within the first two (2) years from the effectivity of this Act and thereafter, they may acquire the remaining percentage consistent with the allowable foreign participation as herein

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provided.

SECTION 7. Public Offering of the Shares of Stock — All retail trade enterprises under Categories B and C in which foreign ownership exceeds eighty percent (80%) of equity shall offer a minimum of thirty (30%) percent of their equity to the public through any stock exchange in the Philippines within eight (8) years from their start of operations.

SECTION 8. Qualification of foreign retailers — No foreign retailer shall be allowed to engage in retail trade in the Philippines unless all the following qualifications are met:

> a. a minimum of Two Hundred Million US Dollars ($US200,000,000.00) net worth in its parents corporation for Categories B and C, and Fifty Million US Dollars ($US50,000,000.00) net worth in its parent corporation for Category D;
>
> b. Five (5) retailing branches or franchises in operation anywhere around the world unless such retailers has at least one (1) store capitalized at a minimum of Twenty-Five Million US Dollars (US$25,000,000.00)
>
> c. Five (5) year track record in retailing; and
>
> d. Only nationals from or judicial entities formed or incorporated in, countries which allow the entry of Filipino retailers, shall be allowed to engage in retail trade in the Philippines.

The DTI is hereby authorized to pre-qualify all foreign retailers, subject to the provisions of this Act, before they are allowed to conduct business in the Philippines x x x "

Any violation of the above-mentioned provisions shall be punished in accordance with Section 12 of the same law:

> "Any person who shall be found guilty of violation of any provision of this Act shall be punished by imprisonment of not less than six (6) years and one (1) day, but not more than eight (8) years, and a fine of not less than One Million Pesos (Php1,000,000.00) but not more than Twenty Million Pesos (Php20,000,000.00)
>
> In the case of Associations, partnerships or corporations, the penalty shall be imposed upon its partners, presidents, directors, managers and other officers responsible for the violation. If the offender is not a citizen of the Philippines, he shall be deported immediately after the service of sentence x x x "

The Bureau of Immigration, adhering to the mandate provided by law, will not in any manner tolerate, much less allow foreign nationals, even if holders of resident visas, to engage in retail trade business in violation of the Philippine Retail Trade Law. Thus we will continue with our mission to go after those foreign nationals who violate the Philippine Immigration Act in particular and other internal laws of the Philippines in general.

In view hereof, Stern warning is given to all alien residents who are engaged in retailing. This Bureau is committed to strictly implement the retail trade law and any foreign national caught in the act of retailing shall be arrested, charged and deported for violation of Republic Act 6785 and Section 37(a)(7) of the Philippine Immigration Act of 1940 as amended.

For strict compliance.

Adopted: 30 March 2003

(SGD.) ANDREA D. DOMINGO
Commissioner

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