

24 May 2021

**SENATOR IMEE R. MARCOS**

Chairperson  
 Committee on Economic Affairs  
 Senate of the Philippines  
 Pasay City

Dear **Senator Marcos**:

This is in relation to our previously-submitted position dated 28 November 2019 on **Senate Bill No. 1156**, entitled:

**“An Act Promoting Foreign Investments, Amending Thereby Republic Act No. 7042 Otherwise Known as the ‘Foreign Investments Act of 1991’, as Amended, and for Other Purposes”**

We are pleased to submit the Department’s updated/supplemental position with our suggested language for specific provisions of the bill, to wit:

Provisions of SBN 1156	DTI Comments/Recommendations
<p>Sec. 4. A new Section of R.A. No. 7042, as amended, is inserted as Section 5 to read as follows:</p> <p><b>“SEC. 5. INVESTMENT PROMOTIONS COUNCIL – THERE IS HEREBY CREATED AN “INVESTMENT PROMOTIONS COUNCIL”, HEREINAFTER REFERRED TO AS THE “COUNCIL”, WHICH SHALL BE THE BODY THAT WILL INTEGRATE ALL PROMOTION AND FACILITATION EFFORTS TO ENCOURAGE FOREIGN INVESTMENTS IN THE COUNTRY. THE COUNCIL SHALL BE COMPOSED OF THE:</b></p> <p><b>(1) SECRETARY OF THE DEPARTMENT OF TRADE AND INDUSTRY (DTI), TO PRESIDE AS CHAIRPERSON AND THE DTI TO ACT AS THE COUNCIL’S LEAD AGENCY;</b></p> <p><b>(2) XXX;</b></p>	<p>The Department supports the creation of the Investment Promotions Council, with the DTI as the chair and lead agency. We recommend that the bill include the designation of the Board of Investments (BOI) as the secretariat, as follows:</p> <p><b>“SEC. 5. INVESTMENT PROMOTIONS COUNCIL – THERE IS HEREBY CREATED AN “INVESTMENT PROMOTIONS COUNCIL”, HEREINAFTER REFERRED TO AS THE “COUNCIL”, WHICH SHALL BE THE BODY THAT WILL INTEGRATE ALL PROMOTION AND FACILITATION EFFORTS TO ENCOURAGE FOREIGN INVESTMENTS IN THE COUNTRY. THE COUNCIL SHALL BE COMPOSED OF THE:</b></p> <p>(1) XXX;</p> <p>(2) XXX;</p> <p>(3) XXX;</p>

<p>(3) XXX;  (4) XXX;  (5) XXX;  (6) XXX;  (7) XXX;  (8) XXX; AND  (9) XXX.</p> <p>XXX”</p>	<p>(4) XXX;  (5) XXX;  (6) XXX;  (7) XXX;  (8) XXX; AND  (9) XXX.</p> <p>XXX</p> <p><b>THE BOARD OF INVESTMENTS (BOI) IS DESIGNATED AS THE SECRETARIAT OF THE COUNCIL, IMPLEMENTING ITS POLICIES AND RESOLUTIONS.”</b></p>
<p>Sec. 5. A new Section of R.A. No. 7042, as amended, is inserted as Section 6 to read as follows:</p> <p><b>“SEC. 6. POWERS AND FUNCTIONS OF THE COUNCIL –</b></p> <p>(1) TO ESTABLISH BOTH A MEDIUM- AND LONG-TERM INVESTMENT PRIORITIES PLAN (IPP), COORDINATING ALL EXISTING INVESTMENT DEVELOPMENT PLANS AND PROGRAMS UNDER THE BOI, PEZA, AND VARIOUS INVESTMENT PROMOTION AGENCIES (IPAS), LGUS, AND OTHER AGENCIES, AS DELINEATED IN SECTION 7 OF THIS ACT;</p> <p>(2) TO DESIGN A COMPREHENSIVE MARKETING STRATEGY AND CAMPAIGN, PROMOTING THE COUNTRY AS A DESIRABLE INVESTMENT AREA;</p> <p>(3) TO SUPPORT INBOUND AND OUTBOUND FOREIGN DIRECT AND TRADE MISSIONS FOR NEW INTERNATIONAL MARKETS TO EXPLORE THE COUNTRY AS A POSSIBLE LOCATION TO DO BUSINESS;</p> <p>(4) TO ENCOURAGE AND SUPPORT RESEARCH AND DEVELOPMENT IN PRIORITY AREAS INDICATED BY THE IPP;</p> <p>(5) TO MONITOR ACTUAL PERFORMANCE AGAINST MEASURABLE AND TIMEBOUND TARGETS IN THE IPP;</p> <p>(6) TO SUBMIT ANNUAL EVALUATION AND REPORTS TO THE PRESIDENT OF THE PHILIPPINES AND THE</p>	<p>The Department recommends all references to “Investment Priorities Plan (IPP)” in the bill to be revised to “Philippine Investment Promotion Plan (PIPP)”. This is to avoid confusion with the existing Investment Priorities Plan (IPP) by virtue of Executive Order (EO) No. 226, s.1987, otherwise known as the “Omnibus Investments Code of 1987”, which refers to the list of priority areas for investment that are eligible for incentives.</p> <p>Specific to the bill’s proposed new Section 6, we recommend revising the language as follows:</p> <p><b>“SEC. 6. POWERS AND FUNCTIONS OF THE COUNCIL –</b></p> <p>(1) TO ESTABLISH BOTH A MEDIUM- AND LONG-TERM <b>PHILIPPINE INVESTMENT [PRIORITIES] PROMOTION PLAN (PIPP)</b>, COORDINATING ALL EXISTING INVESTMENT DEVELOPMENT PLANS AND PROGRAMS UNDER THE BOI, PEZA, AND VARIOUS INVESTMENT PROMOTION AGENCIES (IPAS), LGUS, AND OTHER AGENCIES, AS DELINEATED IN SECTION 7 OF THIS ACT;</p> <p>(2) XXX;</p> <p>(3) XXX;</p> <p>(4) TO ENCOURAGE AND SUPPORT RESEARCH AND DEVELOPMENT IN PRIORITY AREAS INDICATED BY THE <b>PIPP</b>;</p> <p>(5) TO MONITOR ACTUAL PERFORMANCE AGAINST MEASURABLE AND TIMEBOUND TARGETS IN THE <b>PIPP</b>;</p> <p>(6) XXX;</p>

<p>CONGRESS REGARDING THE ACTIVITIES OF THE COUNCIL;</p> <p>(7) TO UPLOAD ESTABLISH AN EFFECTIVE ONLINE DATABASE INCLUDING A DIRECTORY OF READY LOCAL PARTNERS FROM PRIORITY SECTORS UNDER IPP;</p> <p>(8) TO SET UP A ONE-STOP SHOP TO INFORM AND ASSIST FOREIGN INVESTORS, AS FURTHER EXPLAINED UNDER SECTION 14 OF THIS ACT; AND</p> <p>(9) TO SUPPORT LOCAL GOVERNMENT EFFORTS TO PROMOTE LOCAL FOREIGN DIRECT INVESTMENTS, EXPEDITE COMPLIANCE WITH NATIONAL REQUIREMENTS AND ADDRESS OTHER SAFEGUARDS AND SERVICES REQUESTED BY FOREIGN INVESTORS IN THEIR DIFFERENT LOCALITIES INVOLVED WITH SAID FOREIGN INVESTMENTS.”</p>	<p>(7) TO UPLOAD ESTABLISH AN EFFECTIVE ONLINE DATABASE INCLUDING A DIRECTORY OF READY LOCAL PARTNERS FROM PRIORITY SECTORS UNDER PIPP;</p> <p>(8) TO SET UP, <b>THROUGH THE BOI</b>, A ONE-STOP SHOP TO INFORM AND ASSIST FOREIGN INVESTORS, AS FURTHER EXPLAINED UNDER SECTION 14 OF THIS ACT; AND</p> <p>(9) XXX.”</p>
<p>Sec. 6. A new Section of R.A. No. 7042, as amended, is inserted as Section 7 to read as follows:</p> <p><b>“SEC. 7. DEVELOPMENT OF THE INVESTMENT PRIORITIES PLAN (IPP) – A COMPREHENSIVE AND STRATEGIC INVESTMENT PRIORITIES PLAN (IPP) SHALL BE DEVELOPED BY THE COUNCIL FOR THE MEDIUM FIVE-YEAR AND THE LONG-TERM TEN-YEAR PLAN: PROVIDED, THAT, IT IS BASED ON COMPETITIVE ADVANTAGES, NATURAL RESOURCES, SKILL AND EDUCATIONAL DEVELOPMENT, TRADITIONAL LINKAGES, AND INTERNATIONAL MARKET POTENTIAL: PROVIDED, FURTHER, THAT, AN ONLINE DATABASE CONTAINING THE IPP SHALL THEREAFTER BE UPLOADED, CONTAINING FURTHER DETAILS REGARDING THE COUNCIL’S PROCEDURE, CONTACTS, SCHEDULES, ETC.</b></p> <p><b>SAID DATABASE SHALL ALSO INCLUDE A DIRECTORY OF LOCAL ENTERPRISE CAPABLE AND WILLING TO PARTNER WITH POTENTIAL FOREIGN INVESTORS. THE COUNCIL SHALL CONSULT LOCAL CHAMBERS</b></p>	<p>Similar to the preceding input, the Department recommends for all references to “Investment Priorities Plan (IPP)” in the bill to be revised to “Philippine Investment Promotion Plan (PIPP)”.</p> <p>Specific to the bill’s proposed new Section 7, we recommend revising the language as follows:</p> <p><b>“SEC. 7. DEVELOPMENT OF THE PHILIPPINE INVESTMENT [PRIORITIES] PROMOTION PLAN (PIPP) – A COMPREHENSIVE AND STRATEGIC PHILIPPINE INVESTMENT [PRIORITIES] PROMOTION PLAN (PIPP) SHALL BE DEVELOPED BY THE COUNCIL FOR THE MEDIUM FIVE-YEAR AND THE LONG-TERM TEN-YEAR PLAN: PROVIDED, THAT, IT IS BASED ON COMPETITIVE ADVANTAGES, NATURAL RESOURCES, SKILL AND EDUCATIONAL DEVELOPMENT, TRADITIONAL LINKAGES, AND INTERNATIONAL MARKET POTENTIAL: PROVIDED, FURTHER, THAT, AN ONLINE DATABASE CONTAINING THE PIPP SHALL THEREAFTER BE UPLOADED, CONTAINING FURTHER DETAILS REGARDING THE COUNCIL’S PROCEDURE, CONTACTS, SCHEDULES, ETC.</b></p>

<p><b>OF COMMERCE, SECTORAL, BUSINESS GROUPS, AND OTHER INDIVIDUAL PARTNERS WHENEVER FOREIGN APPLICANTS SEEK PARTNERS, SUBCONTRACTORS, SUPPLERS, AND OTHER LOCAL BUSINESS COUNTERPARTS.</b></p> <p><b>FURTHER, IN SUPPORT OF THE IPP, THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), DEPARTMENT OF TRANSPORTATION (DOTR), DICT, AND OTHER RELATED AGENCIES SHALL PRIORITIZE CRITICAL INFRASTRUCTURE AND OTHER REQUIREMENTS OF THE FOREIGN INVESTORS. SIMILARLY, DEPED, CHED, TESDA, DOLE AND OTHER TRAINING AGENCIES INVOLVED IN EDUCATION AND SKILLS DEVELOPMENT SHALL LIKEWISE DIRECT CURRICULUM AND TRAINING EFFORTS TOWARD MANPOWER REQUIREMENTS OF THE IPP.”</b></p>	<p>XXX</p> <p>FURTHER, IN SUPPORT OF THE PIPP, THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), DEPARTMENT OF TRANSPORTATION (DOTR), DICT, AND OTHER RELATED AGENCIES SHALL PRIORITIZE CRITICAL INFRASTRUCTURE AND OTHER REQUIREMENTS OF THE FOREIGN INVESTORS. SIMILARLY, DEPED, CHED, TESDA, DOLE AND OTHER TRAINING AGENCIES INVOLVED IN EDUCATION AND SKILLS DEVELOPMENT SHALL LIKEWISE DIRECT CURRICULUM AND TRAINING EFFORTS TOWARD MANPOWER REQUIREMENTS OF THE PIPP.”</p>
<p>Sec. 8. A new Section of R.A. No. 7042, as amended, is inserted as Section 11 to read as follows:</p> <p><b>“SEC. 11. FOREIGN ONLINE BUSINESS – BUSINESS ENTITIES, REGARDLESS OF REGISTRY AND INCORPORATION, CONDUCTING ECONOMIC ACTIVITIES AND CONSUMMATING BUSINESS TRANSACTIONS IN THE PHILIPPINES, THROUGH ONLINE, DIGITAL, OR ELECTRONIC COMMERCE (E-COMMERCE), MAY BE CONSIDERED DOMESTIC MARKET ENTERPRISES TO BE REGULATED UNDER THIS ACT AND OTHER RELEVANT TAX, CORPORATE, AND OTHER LAWS. HOWEVER, SUCH FOREIGN INVESTMENT ENGAGED IN E-COMMERCE SHALL NOT FALL UNDER THE PROHIBITIONS ON MEDIA AND EDUCATION UNLESS THE GREATER PART OF THEIR BUSINESS TRANSACTIONS IS CONDUCTED IN THE PHILIPPINES.”</b></p>	<p>The Department acknowledges that the 1987 Philippine Constitution stipulates a 100% national reservation on mass media<sup>1</sup> and 60% national reservation on education<sup>2</sup>. Following this, we opine that the language of the proposed new Section 11 challenges these constitutional restrictions on foreign equity and participation as any degree of engagement of a foreign online business into the domestic market would be within the purview of Philippine laws and legal systems.</p> <p>Furthermore, the proposed language of “unless the greater part of their business transacted is conducted in the Philippines” does not explain how this will be quantified and measured for purposes of determining whether a foreign online business will be allowed to engage in these restricted economic activities or whether the constitutional restriction will kick in. For purposes of enforcement, an additional problem exists in the capability and accuracy of the implementing agency in determining and/or measuring just how much business is done in the Philippines versus in other jurisdictions. This could lead to the risk of foreign online businesses gaming the system and taking</p>

<sup>1</sup> Article 16, Section 11(1) of the 1987 Philippine Constitution

<sup>2</sup> Article 14, Section 4(2) of the 1987 Philippine Constitution

	<p>advantage of the proposed language to evade the constitutional restrictions.</p> <p>In view of the foregoing, the Department recommends the deletion of the aforementioned proposed language, thereby revising the proposed new Section 11, to wit:</p> <p>“SEC. 11. FOREIGN ONLINE BUSINESS – BUSINESS ENTITIES, REGARDLESS OF REGISTRY AND INCORPORATION, CONDUCTING ECONOMIC ACTIVITIES AND CONSUMMATING BUSINESS TRANSACTIONS IN THE PHILIPPINES, THROUGH ONLINE, DIGITAL, OR ELECTRONIC COMMERCE (E-COMMERCE), MAY BE CONSIDERED DOMESTIC MARKET ENTERPRISES TO BE REGULATED UNDER THIS ACT AND OTHER RELEVANT TAX, CORPORATE, AND OTHER LAWS. <del>[HOWEVER, SUCH FOREIGN INVESTMENT ENGAGED IN E-COMMERCE SHALL NOT FALL UNDER THE PROHIBITIONS ON MEDIA AND EDUCATION UNLESS THE GREATER PART OF THEIR BUSINESS TRANSACTIONS IS CONDUCTED IN THE PHILIPPINES.]</del>”</p>
<p>Sec. 9. Section 8 of R.A. No. 7042, as amended, is hereby further amended to read as follows:</p> <p>“Section. <del>[8]</del> <b>12.</b> <del>[Consistent Government Action]</del> List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List. – XXX</p> <p>a) XXX</p> <p>b) XXX</p> <p>1) XXX</p> <p>2) XXX</p> <p>Small and medium-sized domestic market enterprises with paid-in equity capital less than the equivalent of Two hundred thousand US dollars (US\$200,000.00), are reserved to Philippine nationals: Provided, That if: (1) they involve advanced technology as determined by the Department of Science and Technology, or (2) they employ at least <del>[fifty (50)]</del> <b>FIFTEEN (15)</b> direct employees then a minimum paid-in capital of One hundred thousand US dollars (US\$100,000.00) shall be allowed to non-Philippine</p>	<p>The Department acknowledges that RA 7042, as amended, otherwise known as the Foreign Investments Act (FIA), currently restricts foreign equity or participation through a minimum capital requirement of USD200,000.00. However, if the enterprise involves advanced technology or employs at least 50 direct employees, the minimum capital requirement for foreigners is lowered to USD100,000.00.</p> <p>The Department reiterates its support to amendments lowering the direct employment condition threshold from 50 to 15. Moreover, we also support maintaining the existing minimum capital requirements of USD200,000.00 (normal/regular), and USD100,000.00 (if qualified with advanced technology or 15 direct employees) for foreign equity and participation.</p> <p>We opine that these are general safeguards applicable in all economic activities/sectors in the Philippines. On the other hand, sensitive activities/sectors, such as retail trade, can have their own specific restrictions appropriate to them.</p>

<p>nationals. XXX XXX Amendments to <b>FOREIGN INVESTMENT NEGATIVE LIST</b> [<del>List B after promulgation and publication of the first Regular Foreign Investment Negative List at the end of the transitory period shall not be made more often than once every two (2) years]</del> <b>SHALL BE SUBMITTED ANNUALLY BY THE NEDA, A COPY OF WHICH SHALL BE SUBMITTED TO CONGRESS AT THE END OF MARCH PROVIDING THEREWITH AN ANALYSIS OF FOREIGN INVESTMENT PERFORMANCE ECONOMIC ACTIVITIES AND THE REASONS FOR THE RECOMMENDED AMENDMENTS, IF ANY.</b>"</p>	
<p>Sec. 10. Section 12 of R.A. No. 7042, as amended, is hereby further amended to read as follows:</p> <p>"Section. [42] 16. [<del>Consistent Government Action]</del> <b>WHOLE-OF-GOVERNMENT APPROACH OF THE IPP.</b> – No agency, instrumentality or political subdivision of the Government shall take any action on conflict with or which will nullify the provisions of this Act, or any certificate or authority granted hereunder."</p>	<p>The Department reiterates its recommendation for all references to "Investment Priorities Plan (IPP)" in the bill to be revised to "Philippine Investment Promotion Plan (PIPP)". As such, we recommend revising this provision as follows:</p> <p>"Section. [42] 16. [<del>Consistent Government Action]</del> <b>WHOLE-OF-GOVERNMENT APPROACH OF THE PIPP.</b> – No agency, instrumentality or political subdivision of the Government shall take any action on conflict with or which will nullify the provisions of this Act, or any certificate or authority granted hereunder."</p>
<p>Sec. 11. A new Section of R.A. No. 7042, as amended, is inserted as Section 18 to read as follows:</p> <p><b>"SEC. 18. THE DEPARTMENT OF NATIONAL DEFENSE (DND), NATIONAL SECURITY COUNCIL (NSC), DEPARTMENT OF FOREIGN AFFAIRS (DFA), DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), AND SUCH OTHER GOVERNMENT DEPARTMENTS OR AGENCIES WITH SECURITY CONCERNS, SHALL REVIEW FOREIGN INVESTMENTS AND TRANSACTIONS THAT MAY JEOPARDIZE INTERNATIONAL RELATIONS. THE REVIEW MAY INCLUDE THE IMPACT ANALYSIS OF A</b></p>	<p>The Department expresses its reservations and recommends for the deletion of this proposed new Section 18. We opine that the proposal would affect the post-establishment phase of an investment, whereby those that could be the subject of review are the ones that are already established in the Philippines and are already operating or doing business in the country.</p> <p>Furthermore, this proposed section, if not well defined, might be too broad to cover anything and might be subject to indiscretion in its implementation. In which case, it could be very discouraging for investors, as it creates uncertainty and unpredictability because of the impending</p>

<p><b>FOREIGN INVESTMENT UPON DIPLOMATIC AND TRADE NEGOTIATIONS, THE SAFETY AND PROTECTION OF FILIPINO NATIONALS OVERSEAS, EFFECTS ON ONGOING NEGOTIATIONS OF ANY TREATIES, TRADE OR MITIGATION AGREEMENTS, AND OTHER SIMILAR ISSUES. ANY RECOMMENDATION TO SUSPEND, PROHIBIT, OR OTHERWISE LIMIT A REVIEWED FOREIGN SHALL BE TRANSMITTED TO THE OFFICE OF THE PRESIDENT FOR APPROPRIATE ACTION.”</b></p>	<p>review or investigation at any time while they are already operating in the country and the lack of definite parameters in the exercise thereof. This impairs any promotion effort to facilitate and expedite foreign investment inflows in the country, which is contrary to the aim of the bill.</p> <p>The Department notes that the existing general requirement for companies to comply with domestic laws, legal processes and systems are already sufficient safeguards for the Philippine government that could be invoked or exercised whenever some financial transactions are seen to threaten or impair national security.</p> <p>Moreover, the powers of the NSC are already broad enough to cover such areas relating to national security under Book IV, Title VIII, Subtitle I, Chapter 2 of EO 292, s.1987, otherwise known as the Administrative Code of 1987. The aforementioned citation provides that the NSC shall serve as the lead agency of the government for coordinating the formulation of policies, relating to or with implications on the national security and the same is chaired by the President. Finally, under the said law, the President may direct the NSC to perform specific duties and responsibilities.</p>
<p>Sec. 12. A new Section of R.A. No. 7042, as amended, is inserted as Section 19 to read as follows:</p> <p><b>“SEC. 19. ONE STOP SHOP – UPON EFFECTIVITY OF THIS ACT, A “ONE-STOP SHOP” SHALL IMMEDIATELY BE ESTABLISHED BY THE COUNCIL, TO FACILITATE AND EXPEDITE FOREIGN INVESTMENTS INTO THE PHILIPPINES. IN ADDITION TO AN ONLINE DATABASE AND PRE-REGISTRATION FACILITY, SAID ONE-STOP SHOP SHALL RESPOND TO SPECIFIC INVESTORS’ QUERRIES, ASSIGNING SUCH INVESTORS AN INVESTMENT SPECIALIST TO HANDLE THEIR CONCERNS, ADDRESS SPECIAL CONCERNS, AND LINK THEM, AS NECESSARY, TO CONCERNED GOVERNMENT DEPARTMENTS AND AGENCIES.</b></p> <p><b>REPUBLIC ACT NO. 11032 OTHERWISE KNOWN AS THE “EASE OF DOING BUSINESS AND EFFICIENT</b></p>	<p>The Department supports this provision but recommends the below revision to ensure that the proposed one-stop shops functions effectively as desired, to wit:</p> <p><b>“SEC. 19. ONE STOP SHOP – UPON EFFECTIVITY OF THIS ACT, A “ONE-STOP SHOP” SHALL IMMEDIATELY BE ESTABLISHED BY THE COUNCIL, THROUGH THE BOI, TO FACILITATE AND EXPEDITE FOREIGN INVESTMENTS INTO THE PHILIPPINES COMPOSED OF ALL GOVERNMENT AGENCIES INVOLVED IN THE ESTABLISHMENT OR OPERATION OF BUSINESS. THE GOVERNMENT AGENCIES INVOLVED SHALL DESIGNATE REPRESENTATIVES TO THE ONE-STOP SHOP THAT ARE CLOTHED WITH AUTHORITY TO ACT AND APPROVE/DENY ANY MATTER RELATIVE TO THEIR RESPECTIVE AGENCIES.</b> IN ADDITION TO AN ONLINE DATABASE AND PRE-REGISTRATION FACILITY, SAID ONE-STOP SHOP SHALL RESPOND TO</p>

<p><b>GOVERNMENT SERVICE DELIVERY ACT OF 2018” AND R.A. NO. 9485 OTHERWISE KNOWN AS THE “ANTI-RED TAPE ACT OF 2007,” AMONG OTHERS, SHALL BE ENFORCED FULLY TO ASSIST AND EXPEDITE FOREIGN INVESTORS’ APPLICATIONS.”</b></p>	<p>SPECIFIC INVESTORS’ QUERRIES, ASSIGNING SUCH INVESTORS AN INVESTMENT SPECIALIST TO HANDLE THEIR CONCERNS, ADDRESS SPECIAL CONCERNS, AND LINK THEM, AS NECESSARY, TO CONCERNED GOVERNMENT DEPARTMENTS AND AGENCIES.</p> <p>XXX”</p>
<p>Sec. 13. A new Section of R.A. No. 7042, as amended, is inserted as Section 20 to read as follows:</p> <p><b>“SEC. 20. ANTI-GRAFT PRACTICES IN FOREIGN INVESTMENT PROMOTIONS – PUBLIC OFFICIALS AND EMPLOYEES INVOLVED IN FOREIGN INVESTMENT PROMOTIONS SHALL UPHOLD THE HIGHEST STANDARDS OF PUBLIC SERVICE, ACCOUNTABILITY, AND INTEGRITY. THE MAXIMUM PENALTIES SHALL BE IMPOSED UPON ERRING OFFICIALS AND EMPLOYEES INVOLVED IN FOREIGN INVESTMENT PROMOTIONS, AS FOLLOWS:</b></p> <p><b>(1) ANY PUBLIC OFFICIAL OR EMPLOYEE WHO VIOLATES THE FOLLOWING ACTS SHALL BE PUNISHED BY A FINE OF NOT LESS THAN ONE MILLION PESOS (P1,000,000.00) BUT NOT MORE THAN FIVE MILLION PESOS (P5,000,000.00) OR IMPRISONMENT OF SIX (6) YEARS AND ONE (1) DAY TO TWELVE YEARS, OR BOTH, AT THE DISCRETION OF THE COURT, AND PERPETUAL ABSOLUTE DISQUALIFICATION:</b></p> <p><b>a. REFUSAL TO ACCEPT APPLICATION OR REQUEST WITH COMPLETE REQUIREMENTS BEING SUBMITTED BY A FOREIGN INVESTOR OR REQUESTING PARTY WITHOUT DUE CAUSE;</b></p> <p><b>b. IMPOSITION OF ADDITIONAL REQUIREMENTS OR COSTS OTHER THAN THOSE PROVIDED BY LAW;</b></p> <p><b>c. FAILURE TO GIVE THE FOREIGN INVESTOR OR REQUESTING PARTY A</b></p>	<p>The Department notes that Republic Act (RA) No. 11032, otherwise known as the Ease of Doing Business and Efficient Government Service Delivery Act of 2018, and RA 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, already cover the violations listed under items 1 and 2 of the proposed new Section 20, respectively. However, the proposal differs in that it reflects steeper penalties for the same violations if relating to foreign investment.</p> <p>We suggest that for violations in relation to foreign investments, RA 11032 and RA 3019 shall apply, and the higher penalty shall be imposed under this provision. We then recommend the proposed new Section 20 to be read as follows:</p> <p><b>“SEC. 20. ANTI-GRAFT PRACTICES IN FOREIGN INVESTMENT PROMOTIONS – PUBLIC OFFICIALS AND EMPLOYEES INVOLVED IN FOREIGN INVESTMENT PROMOTIONS SHALL UPHOLD THE HIGHEST STANDARDS OF PUBLIC SERVICE, ACCOUNTABILITY, AND INTEGRITY. THE MAXIMUM PENALTIES SHALL BE IMPOSED UPON ERRING OFFICIALS AND EMPLOYEES INVOLVED IN FOREIGN INVESTMENT PROMOTIONS, AS FOLLOWS:</b></p> <p><b>(1) ANY PUBLIC OFFICIAL OR EMPLOYEE WHO VIOLATES [THE FOLLOWING ACTS] SECTION 21 OF REPUBLIC ACT NO. 11032 SHALL BE PUNISHED BY A FINE OF NOT LESS THAN ONE MILLION PESOS (P1,000,000.00) BUT NOT MORE THAN FIVE MILLION PESOS (P5,000,000.00) OR IMPRISONMENT OF SIX (6) YEARS AND ONE (1) DAY TO TWELVE YEARS, OR BOTH, AT THE DISCRETION OF THE COURT, AND PERPETUAL ABSOLUTE DISQUALIFICATION[;]. [</b></p>



WRITTEN NOTICE ON THE DISAPPROVAL OF AN APPLICATION OR REQUEST;

- d. FAILURE TO RENDER GOVERNMENT SERVICES WITHIN THE PRESCRIBED PROCESSING TIME ON ANY APPLICATION OR REQUEST WITHOUT DUE CAUSE;
- e. FAILURE TO ATTEND TO FOREIGN INVESTORS OR REQUESTING PARTIES WHO ARE WITHIN THE PREMISES OF THE OFFICE OR AGENCY CONCERNED PRIOR TO THE END OF OFFICIAL WORKING HOURS AND DURING LUNCH BREAK; AND
- f. FAILURE OR REFUSAL TO ISSUE ACKNOWLEDGEMENTS AND/OR RECEIPTS.

(2) ANY PUBLIC OFFICIAL OR EMPLOYEE WHO VIOLATES THE FOLLOWING ACTS SHALL BE PUNISHED BY A FINE OF NOT LESS THAN TEN MILLION PESOS (P10,000,000.00) BUT NOT MORE THAN TWENTY MILLION PESOS (P20,000,000.00) OR IMPRISONMENT OF TWENTY (20) YEARS AND ONE (1) DAY TO THIRTY YEARS, OR BOTH, AT THE DISCRETION OF THE COURT, AND PERPETUAL ABSOLUTE DISQUALIFICATION:

- a. ANY PUBLIC OFFICIAL OR EMPLOYEE WHO MISAPPROPRIATES FEES AND CHARGES PAID BY FOREIGN INVESTORS;
- b. PERSUADING, INDUCING, OR INFLUENCING ANOTHER PUBLIC OFFICER OR EMPLOYEE TO PERFORM AN ACT CONSTITUTING A VIOLATION OF THIS ACT OR RULES AND REGULATIONS DULY PROMULGATED BY THE

~~a. REFUSAL TO ACCEPT APPLICATION OR REQUEST WITH COMPLETE REQUIREMENTS BEING SUBMITTED BY A FOREIGN INVESTOR OR REQUESTING PARTY WITHOUT DUE CAUSE;~~

~~b. IMPOSITION OF ADDITIONAL REQUIREMENTS OR COSTS OTHER THAN THOSE PROVIDED BY LAW;~~

~~c. FAILURE TO GIVE THE FOREIGN INVESTOR OR REQUESTING PARTY A WRITTEN NOTICE ON THE DISAPPROVAL OF AN APPLICATION OR REQUEST;~~

~~d. FAILURE TO RENDER GOVERNMENT SERVICES WITHIN THE PRESCRIBED PROCESSING TIME ON ANY APPLICATION OR REQUEST WITHOUT DUE CAUSE;~~

~~e. FAILURE TO ATTEND TO FOREIGN INVESTORS OR REQUESTING PARTIES WHO ARE WITHIN THE PREMISES OF THE OFFICE OR AGENCY CONCERNED PRIOR TO THE END OF OFFICIAL WORKING HOURS AND DURING LUNCH BREAK; AND~~

~~f. FAILURE OR REFUSAL TO ISSUE ACKNOWLEDGEMENTS AND/OR RECEIPTS. ]~~

(2) ANY PUBLIC OFFICIAL OR EMPLOYEE WHO VIOLATES [THE FOLLOWING ACTS] **SECTION 3 OF REPUBLIC ACT NO. 3019** SHALL BE PUNISHED BY A FINE OF NOT LESS THAN TEN MILLION PESOS (P10,000,000.00) BUT NOT MORE THAN TWENTY MILLION PESOS (P20,000,000.00) OR IMPRISONMENT OF TWENTY (20) YEARS AND ONE (1) DAY TO THIRTY YEARS, OR BOTH, AT THE DISCRETION OF THE

- COUNCIL;
- c. DIRECTLY OR INDIRECTLY REQUESTING ANY GIFT, PRESENT, SHARE, PERCENTAGE, OR BENEFIT, FOR HIMSELF/HERSELF OR FOR ANY OTHER PERSON, IN CONNECTION WITH ANY CONTRACT OR TRANSACTION BETWEEN THE COUNCIL AND OTHER DEPARTMENT OR AGENCY, WHEREIN THE PUBLIC OFFICER OR EMPLOYEE, IN HIS OFFICIAL CAPACITY, HAS TO INTERVENE UNDER THE LAW;
- d. DIRECTLY OR INDIRECTLY REQUESTING OR RECEIVING ANY GIFT, PRESENT, OR OTHER PECUNIARY BENEFIT FOR HIMSELF/HERSELF OR FOR ANOTHER, FROM ANY FOREIGN INVESTOR FOR WHOM THE PUBLIC OFFICER OR EMPLOYEE, IN ANY MANNER OR CAPACITY, WILL SECURE OR OBTAIN ANY PERMIT OR LICENSE;
- e. ACCEPTING OR HAVING ANY MEMBER OF HIS OR HER FAMILY ACCEPT EMPLOYMENT IN ANY FOREIGN INVESTOR WHICH HAS PENDING OFFICIAL BUSINESS WITH HIM OR HER DURING THE PENDENCY THEREOF OR WITHIN ONE (1) YEAR AFTER ITS TERMINATION;
- f. CAUSING ANY UNDUE INJURY TO ANY PARTY OR GIVING ANY FOREIGN INVESTOR ANY UNWARRANTED BENEFIT, ADVANTAGE, OR PREFERENCE IN THE DISCHARGE OF HIS OR HER OFFICIAL

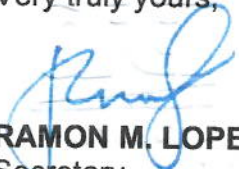
- COURT, AND PERPETUAL ABSOLUTE DISQUALIFICATION[:]. [
- a. ANY PUBLIC OFFICIAL OR EMPLOYEE WHO MISAPPROPRIATES FEES AND CHARGES PAID BY FOREIGN INVESTORS;
- b. PERSUADING, INDUCING, OR INFLUENCING ANOTHER PUBLIC OFFICER OR EMPLOYEE TO PERFORM AN ACT CONSTITUTING A VIOLATION OF THIS ACT OR RULES AND REGULATIONS DULY PROMULGATED BY THE COUNCIL;
- c. DIRECTLY OR INDIRECTLY REQUESTING ANY GIFT, PRESENT, SHARE, PERCENTAGE, OR BENEFIT, FOR HIMSELF/HERSELF OR FOR ANY OTHER PERSON, IN CONNECTION WITH ANY CONTRACT OR TRANSACTION BETWEEN THE COUNCIL AND OTHER DEPARTMENT OR AGENCY, WHEREIN THE PUBLIC OFFICER OR EMPLOYEE, IN HIS OFFICIAL CAPACITY, HAS TO INTERVENE UNDER THE LAW;
- d. DIRECTLY OR INDIRECTLY REQUESTING OR RECEIVING ANY GIFT, PRESENT, OR OTHER PECUNIARY BENEFIT FOR HIMSELF/HERSELF OR FOR ANOTHER, FROM ANY FOREIGN INVESTOR FOR WHOM THE PUBLIC OFFICER OR EMPLOYEE, IN ANY MANNER OR CAPACITY, WILL SECURE OR OBTAIN ANY PERMIT OR LICENSE;
- e. ACCEPTING OR HAVING

<p>FUNCTIONS THROUGH MANIFEST PARTIALITY, EVIDENT BAD FAITH, OR GROSS INEXCUSABLE NEGLIGENCE;</p> <p>g. DIRECTLY OR INDIRECTLY HAVING PECUNIARY INTEREST IN ANY BUSINESS, CONTRACT, OR TRANSACTION IN CONNECTION WITH WHICH HE OR SHE INTERVENES, IN HIS OR HER OFFICIAL CAPACITY, IN CONTRAVENTION OF THE LAW;</p> <p>h. KNOWINGLY APPROVING OR GRANTING ANY LICENSE, PERMIT, OR BENEFIT IN FAVOR OF ANY FOREIGN INVESTOR NOT QUALIFIED OR ENTITLED TO SUCH; AND</p> <p>i. DIVULGING CONFIDENTIAL INFORMATION ACQUIRED THROUGH HIS OR HER OFFICE.”</p>	<p>ANY MEMBER OF HIS OR HER FAMILY ACCEPT EMPLOYMENT IN ANY FOREIGN INVESTOR WHICH HAS PENDING OFFICIAL BUSINESS WITH HIM OR HER DURING THE PENDENCY THEREOF OR WITHIN ONE (1) YEAR AFTER ITS TERMINATION;</p> <p>f. CAUSING ANY UNDUE INJURY TO ANY PARTY OR GIVING ANY FOREIGN INVESTOR ANY UNWARRANTED BENEFIT, ADVANTAGE, OR PREFERENCE IN THE DISCHARGE OF HIS OR HER OFFICIAL FUNCTIONS THROUGH MANIFEST PARTIALITY, EVIDENT BAD FAITH, OR GROSS INEXCUSABLE NEGLIGENCE;</p> <p>g. DIRECTLY OR INDIRECTLY HAVING PECUNIARY INTEREST IN ANY BUSINESS, CONTRACT, OR TRANSACTION IN CONNECTION WITH WHICH HE OR SHE INTERVENES, IN HIS OR HER OFFICIAL CAPACITY, IN CONTRAVENTION OF THE LAW;</p> <p>h. KNOWINGLY APPROVING OR GRANTING ANY LICENSE, PERMIT, OR BENEFIT IN FAVOR OF ANY FOREIGN INVESTOR NOT QUALIFIED OR ENTITLED TO SUCH; AND</p> <p>i. DIVULGING CONFIDENTIAL INFORMATION ACQUIRED THROUGH HIS OR HER OFFICE. J”</p>
<p><i>None in the bill; Additional amendments recommended by DTI:</i></p> <p>“SEC. 5. Registration of Investments of Non-Philippine Nationals – Without need of prior approval, a non-Philippine national, as that term is defined in Section 3 a), and not otherwise disqualified by law may, upon registration with the Securities</p>	<p>The Department recommends the bill to further amend Sections 5 and 6 of R.A. No. 7042, as amended, to delete mention of the “Bureau of Trade Regulation and Consumer Protection (BTRCP)” in the provision and replace it with “DTI”. The BTRCP no longer exists in the current organizational structure of the Department but its functions, such as business name</p>

<p>and Exchange Commission (SEC), or with <del>[the Bureau of Trade Regulation and Consumer Protection (BTRCP) of]</del> the Department of Trade and Industry in the case of single proprietorships, XXX The SEC or <del>[BTRCP]</del> <b>DTI</b>, as the case may be, shall not impose any limitations on the extent of foreign ownership in an enterprise additional to those provided in this Act: Provided XXX"</p> <p>"SEC. 6. Foreign Investment in Export Enterprises – XXX</p> <p>XXX. BOI shall advise SEC or <del>[BTRCP]</del> <b>DTI</b>, as the case may be, of any export enterprise that fails to meet the export ratio requirement. The SEC or <del>[BTRCP]</del> <b>DTI</b> shall thereupon order the non-complying export enterprise to reduce its sales to the domestic market to not more than forty percent (40%) of its total production; failure to comply with such SEC or <del>[BTRCP]</del> <b>DTI</b> order, without justifiable reason, shall subject the enterprise to cancellation of SEC or <del>[BTRCP]</del> <b>DTI</b> registration, and/or the penalties provided in Section 14 hereof."</p>	<p>registration for single proprietorships, are continued by succeeding bureaus. We recommend removing any mention of specific bureaus of the Department and instead refer to the DTI, in general, for future-proofing of the bill.</p> <p>We also reiterate that the DTI handles and issues certificates of business name registration for single proprietorships.</p>
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We hope that our comments and recommendations merit the Committee's consideration.

With my best regards.

Very truly yours,  
  
**RAMON M. LOPEZ**  
 Secretary

