

31 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 updated position dated 23 May 2021 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 supplemental position, forwarding our inputs specifically on Section 11 of Senate Bill No. 1156, regarding the insertion of a new Section 18 on national security review of foreign investments. In our previously-submitted updated position, we expressed our reservations and recommended the deletion of the proposed new Section 18, citing that the language of the proposed section is too broad, subject to indiscretion, and can impose on the post-establishment of foreign investments and existing projects, thereby affecting the overall attractiveness of the Philippines as an investment destination. The Department notes that House Bill No. 300, the approved version of the House of Representatives on amendments to the Foreign Investments Act, does not have any proposed provisions on national security review.

However, the DTI is also cognizant of present concerns regarding national security and foreign investments that need to be addressed or at least allayed. As such, the Department recommends the following language to be adopted should a provision on national security review be deemed necessary:

Section 11 of SBN 1156	DTI Recommended Language
<p>“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</p>	<p>“SEC. 18. THE [DEPARTMENT OF NATIONAL DEFENSE (DND)] NATIONAL SECURITY COUNCIL (NSC), <u>IN COORDINATION WITH THE [DEPARTMENT OF FOREIGN AFFAIRS (DFA), DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG),] DEPARTMENT OF TRADE AND INDUSTRY (DTI), [AND SUCH OTHER GOVERNMENT DEPARTMENTS OR AGENCIES WITH SECURITY CONCERNS], SHALL REVIEW FOREIGN</u></p>

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RELATIONS. THE REVIEW MAY INCLUDE THE IMPACT ANALYSIS OF A 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."

~~INVESTMENTS [AND TRANSACTIONS THAT MAY JEOPARDIZE INTERNATIONAL RELATIONS. THE REVIEW MAY INCLUDE THE IMPACT ANALYSIS OF A 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.]~~ AFFECTING NATIONAL SECURITY IF THE FOREIGN INVESTMENTS:

- i) IS MADE BY A FOREIGN GOVERNMENT-CONTROLLED ENTITY OR STATE-OWNED ENTERPRISE; OR
- ii) WILL BE IN GEOGRAPHICAL LOCATIONS CRITICAL TO NATIONAL SECURITY.

ANY RECOMMENDATION TO SUSPEND, PROHIBIT, OR OTHERWISE LIMIT A REVIEWED FOREIGN INVESTMENT SHALL BE TRANSMITTED TO THE OFFICE OF THE PRESIDENT FOR APPROPRIATE ACTION."

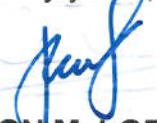
The above recommended language was adopted from the on-going deliberations on Senate Bill No. 2094, which is regarding amendments to Commonwealth Act No. 146, otherwise known as the Public Service Act, as amended. The DTI opines that provisions on national security would be a better fit within the Foreign Investments Act, as a general rule on all foreign investments, rather than applying it within the Public Service Act, which would only cover a specific set of activities or transactions.

Furthermore, the recommended language qualifies the coverage of the national security review to only those that are foreign government-controlled or -owned enterprises, or foreign investments in critical geographical locations.

We hope that this supplemental position merits the Committee's consideration.

With my best regards.

Very truly yours,



RAMON M. LOPEZ
Secretary

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