

28 November 2019

**SENATOR IMEE MARCOS**

Chairperson  
Committee on Economic Affairs  
Senate of the Philippines  
Roxas Blvd., Pasay City

Dear **Senator Marcos**:

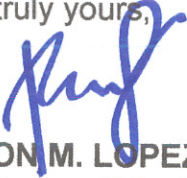

We are pleased to submit the Department's position on Senate Bill No. 1156, entitled:

**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**

This is without prejudice to the Department's submission of additional inputs.

With my best regards.

Very truly yours,

  
**RAMON M. LOPEZ**  
Secretary 



OFFICE OF THE SECRETARY

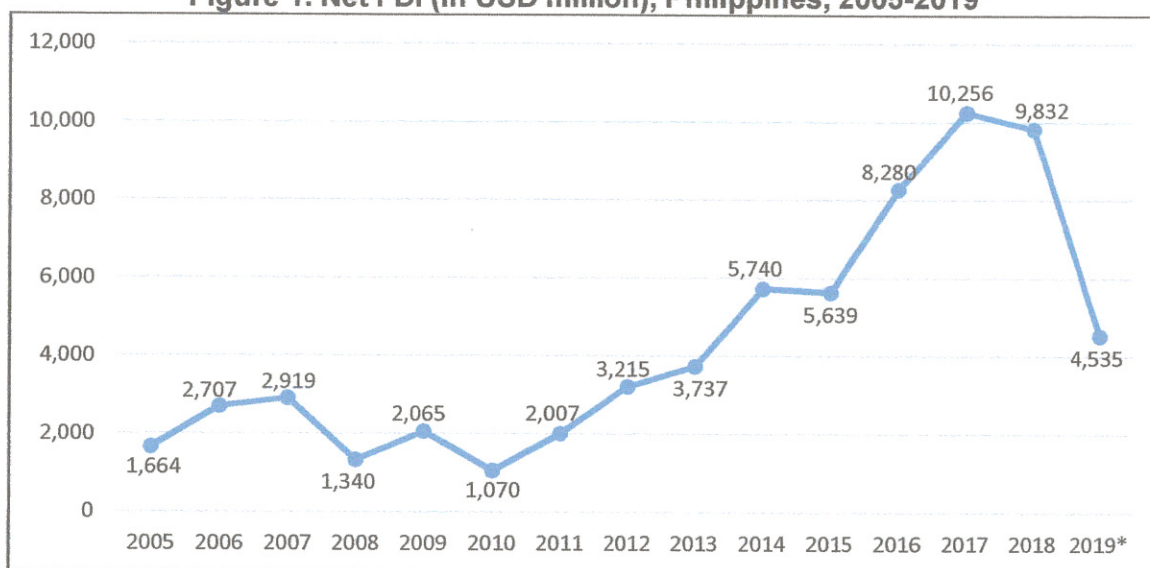
DTI Position on

Senate Bill No. 1156

**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**

The Department acknowledges the intentions of the proposed bill to stimulate foreign direct investment (FDI) inflows by further reforming the existing regime on foreign investment regulation. Although the country’s net FDI<sup>1</sup> performance is growing over the years (see Figure 1), the DTI recognizes that the investment position of the Philippines is quite precarious given the current lagging records vis-à-vis overtaking gains of its fellow Association of Southeast Asian Nations (ASEAN) neighbors in the last four years (See Figures 2 and 3). This is despite optimism that the Philippines would shine and be able to present itself as a viable alternative in the midst of the US-China Trade War. However, diverted economic interests and the relocation of firms mostly went to Vietnam and Thailand due to their better investment policies and business environment.

**Figure 1. Net FDI (in USD million), Philippines, 2005-2019\***

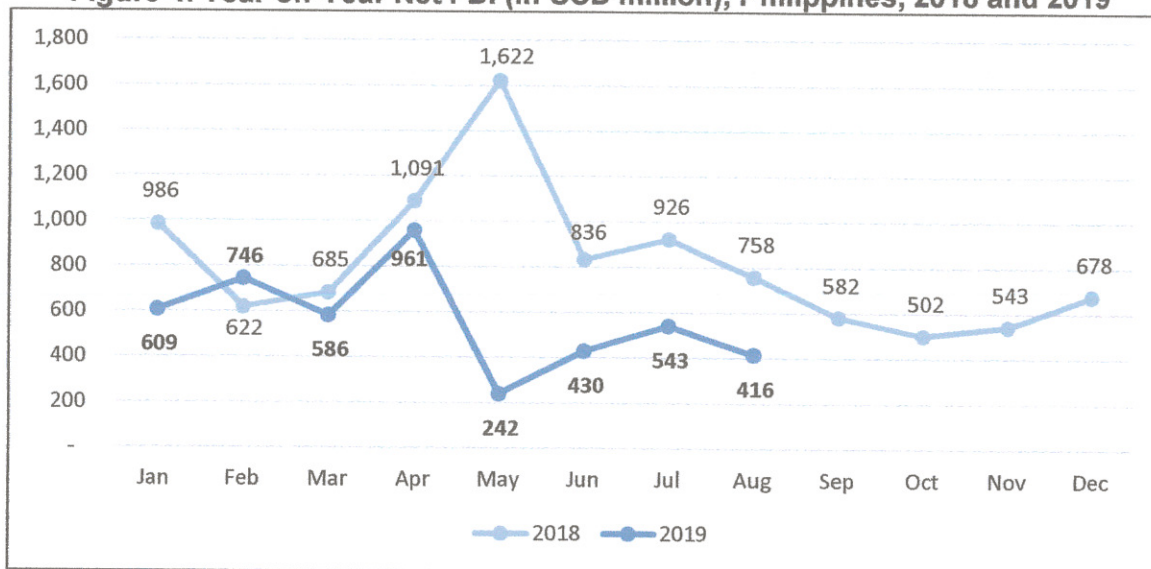


Source: Bangko Sentral ng Pilipinas

\*latest 2019 FDI data covers Jan-Aug only

<sup>1</sup> Net FDI = (Equity Placements – Equity Withdrawals) + Reinvestment of Earnings + Debt instruments

**Figure 4. Year-on-Year Net FDI (in USD million), Philippines, 2018 and 2019**

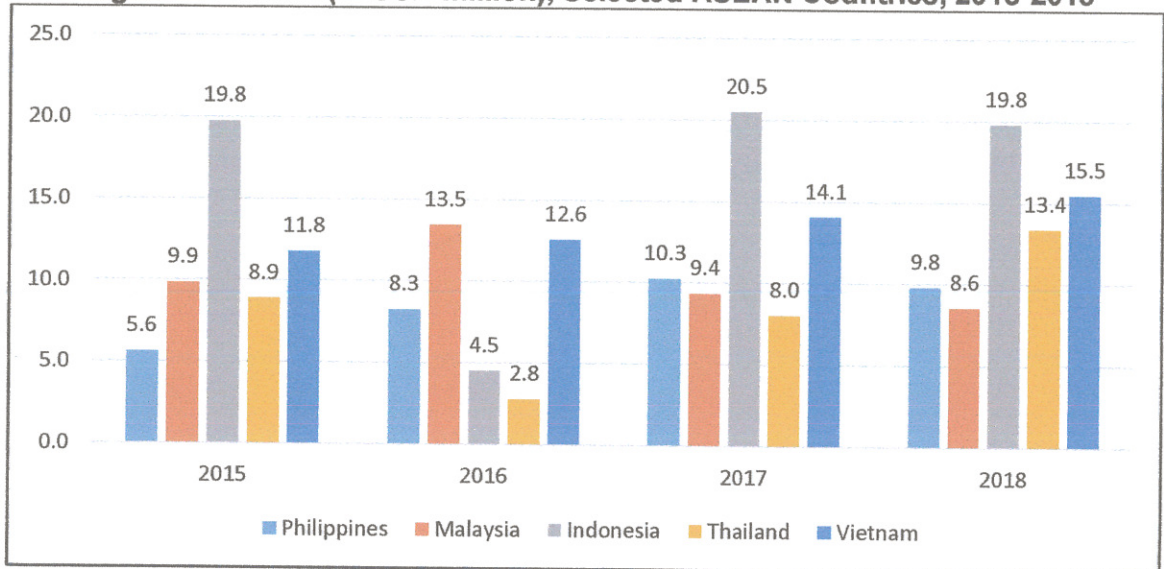


Source: Bangko Sentral ng Pilipinas

In view of the foregoing, the DTI submits the following comments and recommendations vis-à-vis specific provisions of the proposed bill:

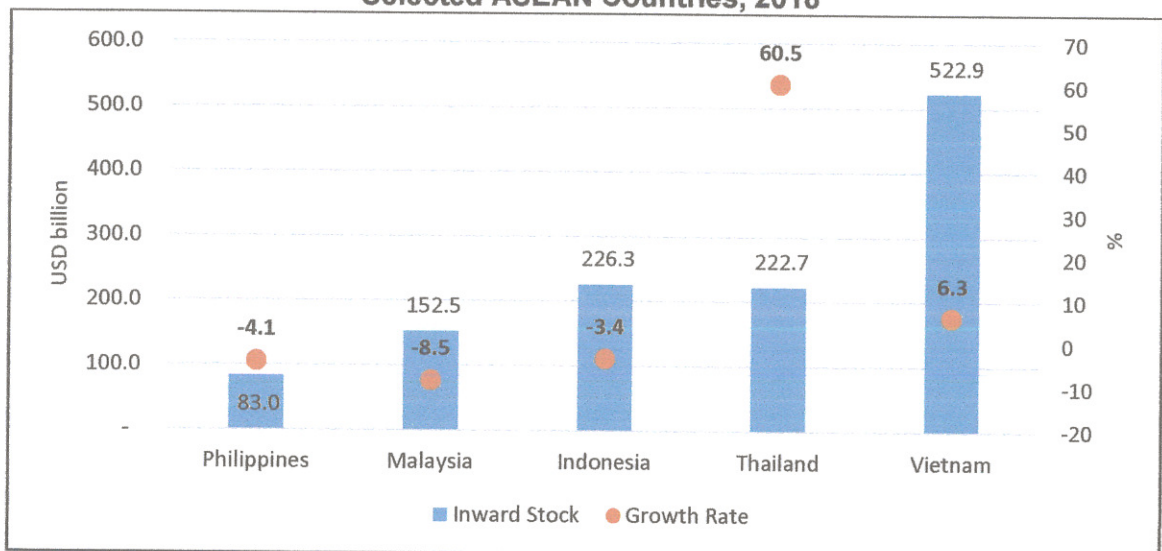
SBN 1156	DTI Position
<p><b>Section 1 – Amendments to FIA</b>  <b>Section 2. Declaration of Policy</b></p> <p>“Sec. 2. Declaration of Policy. – <i>RECOGNIZING THAT INCREASED CAPITAL AND TECHNOLOGY BENEFITS THE PHILIPPINES AND THAT GLOBAL AND REGIONAL ECONOMIES AFFECT THE PHILIPPINE ECONOMY, #it is the policy of the State to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations, and governments, including their political subdivisions, in activities which significantly contribute to <del>national industrialization and socioeconomic development</del> SUSTAINABLE, INCLUSIVE, RESILIENT, SMART AND INNOVATIVE ECONOMIC GROWTH, PRODUCTIVITY, GLOBAL COMPETITIVENESS, EMPLOYMENT CREATION, TECHNOLOGICAL ADVANCEMENT, AND COUNTRYWIDE DEVELOPMENT</i> to</p>	<p>The DTI believes that the Declaration of Policy, which is interpolated for interpretation of the FIA, must be aligned with our present priorities and goals in developing an inclusive, sustainable, and progressive Philippine economy.</p> <p>We <b>express no objections</b> to the proposed amendments on the Declaration of Policy since it already incorporates the vision of the Department for the country.</p>

**Figure 2. Net FDI (in USD million), Selected ASEAN Countries, 2015-2018**



Source: Bangko Sentral ng Pilipinas

**Figure 3. FDI Inward Stock (in USD billion) and Growth Rate (in %), Selected ASEAN Countries, 2018**



Source: World Investment Report 2019 and Bangko Sentral ng Pilipinas

The Philippines' annual FDI performance is also characterized by a boom-bust cycle wherein certain months would receive generous investment inflows while the rest would only have minimal amounts. The few, "blessed" months compensate for the lagging ones and fuel the aggregate year-on-year growth. The net FDI performance between year-to-date 2019 and the comparable period in 2018 reflects a contraction in generated investments, i.e., negative growth (see Figure 4). From January-August 2019, net FDI was characterized by poor capture of equity placements juxtaposed by substantial withdrawals, plus lower debt instruments. This has aggravated historical sentiments calling for economic reforms in our business setting and the impetus for the DTI's positive position on amending the Foreign Investments Act (FIA) to incorporate further liberalization.

<p>the extent that foreign investment is allowed in such activity by the Constitution and relevant laws, <i>AND CONSISTENT WITH THE PROTECTION OF NATIONAL SECURITY</i>. <i>XXX</i> enhance economic value of <del>farm</del> <i>AGRICULTURAL</i> products; <i>XXX THE STATE SHALL HOLD PUBLIC OFFICERS INVOLVED IN THE PROMOTION OF FOREIGN INVESTMENTS TO THE HIGHEST STANDARDS OF ACCOUNTABILITY AND INTEGRITY METING OUT THE LAW'S MAXIMUM PENALTIES AGAINST INACTION, ABUSE, AND CORRUPTION. XXX</i>"</p>	
<p><b>Section 2 – Amendments to FIA</b>  <b>Section 3. Definitions:</b></p> <p>"<i>XXX</i> b) the term "investment" shall mean equity participation in any enterprise organized and existing under the laws of the Philippines <i>AND DULY RECORDED IN THE STOCK TRANSFER BOOK, OR ITS EQUIVALENT, OF THE ENTERPRISE. XXX</i></p> <p><i>XXX</i> d) the phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; <i>XXX PRACTICING MULTI-LEVEL MARKETING; XXX</i>"</p>	<p>The Department <b>supports the amendment qualifying further the definition of "investment"</b> as it would strengthen business safeguards by limiting the legal recognition of an investment to only that which have been duly documented in accordance with existing laws.</p> <p>On the other hand, the DTI <b>expresses its reservation on the inclusion of multi-level marketing in the definition of "doing business"</b> given that the FIA already provides a broad/general base of legitimate activities. Prescribing specific activities in the FIA should be avoided, instead legal recognition of the same must be left to other enabling laws that would better suit the subject, e.g., Retail Trade Liberalization Law, Consumer Act, or an entirely new law.</p>
<p><b>Section 3 – Amendments to FIA</b>  <b>Section 4. Scope:</b></p> <p>"Sec. 4. Scope. – This Act shall not apply to banking and other financial institutions which are governed and regulated by the General Banking Act and other laws under the supervision of the <del>Central Bank</del> <i>BANGKO SENTRAL NG PILIPINAS.</i>"</p>	<p>The Department <b>supports this amendment</b> as it merely updates the appellation of the affected entity.</p>

<p><b>Section 4 – Insertion of new section on establishing an Investment Promotions Council:</b></p> <p>“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:</p> <ol style="list-style-type: none"> <li>(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;</li> <li>(2) One (1) representative from the Department of Trade and Industry (DTI) – Board of Investments (BOI)</li> <li>(3) One (1) representative from the Department of Trade and Industry (DTI) – Philippine Economic Zone Authority (PEZA)</li> </ol> <p>XXX”</p>	<p>The DTI does not object to the creation of the Investment Promotions Council as it institutionalizes a whole-of-government approach and provides a platform to consolidate initiatives among the various investment promotion agencies (IPAs), and other such offices providing relevant services.</p> <p>Our ASEAN neighbors would either have a single organization tasked to facilitate and promote investments (whether inwards or outwards); or have a clearly defined top-down structure with a national IPA designated as the chief coordinator/planner granted with supervisory powers over other IPAs (treated as regional subsidiaries).</p> <p>We note that the Council would parallel House Bill No. 4157 (CITIRA bill)’s proposed Fiscal Incentives Review Board (FIRB), chaired by the Department of Finance, which would approve and monitor the grant of incentives.</p>
<p><b>Section 5 – Insertion of new section on powers of the Investment Promotions Council</b></p> <p>“Sec. 6. Powers and Functions of the Council. –</p> <ol style="list-style-type: none"> <li>(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;</li> <li>(2) To design a comprehensive marketing strategy and</li> </ol>	<p>The Department supports this amendment insofar as this is connected with the creation of the Investment Promotions Council.</p> <p>Nonetheless, we forward the following recommendations:</p> <ul style="list-style-type: none"> <li>• The Council to explicitly be the principal policy-making body on matters concerning investments, to wit: <p>“(10) To set general policies relating to investments upon consultation with existing IPAs”</p> </li> <li>• The Council’s powers and functions to also include the development and amendment of the Foreign</li> </ul>

<p>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 Congress regarding the activities if 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>Investment Negative List (FINL) given its mandate over investments, to wit:</p> <p>“(11) To develop and amend the Foreign Investment Negative List (FINL) in conjunction with the development and publication of the IPP”</p> <p>Despite having different functions and mandates, we note that the creation of separate bodies for fiscal incentives (FIRB) and investment promotions (the Council) may be inefficient given that they are both regulating policy matters over the Philippines’ investment structural framework. Therefore we recommend for homogenization of the provisions between the CITIRA bill and SBN 1156, so as to consolidate the FIRB and the Investment Promotion Council into one overarching body.</p>
<p><b>Section 6. – Insertion of new section on the Investment Priorities Plan</b></p> <p>“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</p>	<p>The Department supports this amendment insofar as this is connected with the creation of the Investment Promotions Council. It must be understood that the IPP would be published every five and ten years to reflect updates in the medium- and long-term planning, respectively.</p>

<p>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. XXX”</p>	<p>However, we note that there are conflicting provisions on the IPP structure within the CITIRA bill since the latter proposes to mandate the BOI to formulate the IPP with a validity period of 3 years, subject to review and amendment as the need arises. The DTI recommends a homogenization of the different structures.</p>
<p><b>Section 8 – Insertion of new section on Foreign Online Business</b></p> <p>“Sec. 11. Foreign Online Business. – Business entities, regardless of registry and incorporation, conducting economic activities and consummating business transactions in the Philippines, though 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 transacted is conducted in the Philippines.”</p>	<p>The DTI <b>expresses caution and reservations on this amendment, as well as recommends careful study and consultations with relevant agencies to determine feasibility of its implementation.</b> There is real concern that foreign online business entities, platforms, and websites may disable the use of their services to internet users in the Philippines, thereby restricting the market choices and consumer utility of Filipinos. The same may also incentivize the proliferation of “under the radar” businesses.</p> <p>We note that the difficulty in regulating online transactions is symptomatic of the muddled national jurisdiction in online spaces. The most feasible regime available, as of now, may be by coupling the “nationality” of the online service with the physical location of its origin/main server, and then applying the respective national laws wherever located.</p>
	<p>We emphasize the need for careful review and further study on establishing regulations for online businesses, especially those with cross-border transactions.</p>
<p><b>Section 9 – Amendments to FIA Section 8. Foreign Investment Negative List</b></p>	<p>The DTI <b>supports the reduction of minimum direct employees from 50 to 15,</b> as a condition for foreign entry to small and medium-sized domestic market enterprises alongside the</p>



"Sec. ~~[8]~~ 12. List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List) –  
XXX

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 ~~[fifty (50)]~~ FIFTEEN (15) direct employees then a minimum paid-in capital of One hundred thousand US dollars (US\$100,000.00) shall be allowed to non-Philippine nationals.

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Amendments to FOREIGN INVESTMENT NEGATIVE LIST ~~[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]~~ 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."

minimum paid-in capital of USD100,000.00.

The DTI also opines that **the FINL should not be amended on an annual basis** as this would introduce uncertainty and risks to investors since the regulated areas are open to changes every year. Instead, **the regularity of FINL amendments is supposed to be aligned with the IPP's updating period** so as to ensure streamlined planning and strategizing of investment policies.

Moreover, we recommend the **formulation and amendment of the FINL to be undertaken by the Council in lieu of NEDA** due to the former's mandate.

The proposed language for our recommendations on this amendment are, to wit:

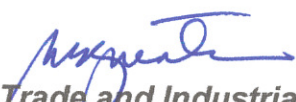
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Amendments to FOREIGN INVESTMENT NEGATIVE LIST ~~[List B after promulgation and publication of the first Regular Foreign Investment Negative List at the end of the transitory period shall not be made more often than once every two (2) years]~~ SHALL BE SUBMITTED BY THE COUNCIL TO THE PRESIDENT, A COPY OF WHICH SHALL BE SUBMITTED TO CONGRESS, PROVIDING THEREWITH AN ANALYSIS OF FOREIGN INVESTMENT PERFORMANCE, ECONOMIC ACTIVITIES, AND THE REASONS FOR THE RECOMMENDED AMENDMENTS, IF ANY. SUBMISSIONS OF THE NEGATIVE LIST MUST BE SIMULTANEOUS WITH THE PUBLICATION OF THE IPP."

<p><b>Section 10 – Amendments to FIA</b> <b>Section 12. Consistent Government Action</b></p> <p>“Section <del>[12]</del> 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 DTI <b>supports this amendment and recommends for the explicit inclusion of the IPP and FINL in the language</b>, to wit:</p> <p>“Section <del>[12]</del> 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, <i>the IPP, FINL</i>, or any certificate or authority granted hereunder.”</p>
<p><b>Section 11 – Insertion of new section on national security</b></p> <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 threaten national security or 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. Any recommendation to suspend, prohibit, or otherwise limit a reviewed foreign shall be transmitted to the Office of the President for appropriate action.”</p>	<p>Although cognizant of the use of economic means as a form of warfare, sabotage, and take-over, the DTI <b>expresses caution on this amendment</b> because it introduces a new factor of uncertainty/risks for investors and their projects – factors that are external to the market. Moreover, it may delay the approval of investment applications within IPAs.</p>
<p><b>Section 12 – Insertion of new section on One-Stop Shop</b></p> <p>“Sec. 19. One-Stop Shop. – upon the effectivity of this act, a “one-stop shop” shall immediately be established by the Council, to facilitate and expedite foreign investments into the</p>	<p>The Department <b>supports this amendment</b> given that it institutionalizes the one-stop shop approach to aid investors interested in entering the Philippine economy.</p>

<p>Philippines. In addition to an online database and pre-registration facility, said one-stop shop shall respond to specific investors' queries, assigning such investors an investment specialist to handle their concerns, address special concerns, and link them, as necessary, to concerned government departments and agencies. XXX"</p>	
<p><b>Section 13 – Insertion of new section on Anti-Graft Practices</b></p> <p>“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:  (1) XXX”</p>	<p>The DTI expresses caution and reservations on the stipulation of special penalties, unique to IPAs, considering that there are already existing laws and penalties on graft and corruption, as well as non-compliance to due processes.</p>

The Department reiterates its support to the proposed bill, with consideration of our inputs.



**Bureau of Trade and Industrial Policy Research**  
**28 November 2019**  
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