

29 May 2021

SEN. AQUILINO PIMENTEL III

Chairperson

Committee on Trade, Commerce, and Entrepreneurship

Senate of the Philippines

Pasay City

Dear **Senator Pimentel**:

In line with pending discussions at the Bicameral Conference Committee on the disagreeing provisions of Senate Bill No. 1840¹ and House Bill No. 59², we are pleased to submit the attached matrix containing the Department's additional comments.

We hope that our comments and recommendations merit the Committee's consideration.

With my best regards.

Very truly yours,



RAMON M. LOPEZ
Secretary

¹ "An Act Amending Republic Act No. 8762, Otherwise Known as the 'Retail Trade Liberalization Act of 2000', by Lowering the Required Paid-Up Capital for Foreign Retail Enterprises, and for Other Purposes"

² "An Act Setting the Minimum Paid-Up Capital and Locally Produced Stock Inventory Requirements for Foreign Retail Business Enterprises, Amending for the Purpose Republic Act No. 8762, Otherwise Known as the "Retail Trade Liberalization Act of 2000"

OFFICE OF THE SECRETARY

MATRIX OF DISAGREEING PROVISIONS ON THE AMENDMENTS TO THE RETAIL TRADE LIBERALIZATION ACT

SUBJECT/ISSUE	Retail Trade Liberalization Act RA No. 8762	SB No. 1840	HB No. 59	DTI Position
FOREIGN-EQUITY PARTICIPATION	<p>"Section 5. Foreign Equity Participation. - Foreign-owned partnerships, associations and corporation formed and organized under the laws 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 proprietorships, with the DTI, Engage or invest in the retail trade business, subject to the following categories.</p> <p>Category A – Enterprises with paid-up capital of the equivalent in Philippine Peso of the than Two million five hundred thousand US dollars (US\$2,500,000.00) shall be reserved exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.</p> <p>Category B – Enterprises with a minimum paid-up capital of the equivalent in Philippine Pesos of two million five hundred thousand US dollar (US\$2,500,000.00) but less than Seven million five hundred thousand US dollars</p>	<p>Sec. 2. Section 5 of Republic Act No. 8762 is hereby amended to read as follows:</p> <p><i>"Sec. 5. Foreign Equity Participation.</i> – Foreign-owned partnerships, associations and corporations formed and organized under the laws of the Philippines may, upon registration with the Securities and Exchange Commission (SEC), or in case of foreign-owned single proprietorships, UPON REGISTRATION with the DEPARTMENT OF TRADE AND INDUSTRY (DTI), engage or invest in the retail trade business:</p> <p>PROVIDED, THAT SUCH FOREIGN-OWNED PARTNERSHIPS, CORPORATIONS, OR SINGLE PROPRIETORSHIPS COMPLY WITH THE FOLLOWING CONDITIONS:</p> <p>(A) A FOREIGN RETAILER SHALL HAVE A MINIMUM PAID-UP CAPITAL OF</p>	<p>Sec. 1. Section 5 of Republic Act No. 8762 is hereby amended to read as follows:</p> <p><i>"Sec 5. Foreign Equity Participation</i> Foreign-owned partnerships, associations and corporations fomed and organized under the laws 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 proprietorships, with the DTI, engage or invest in the retail trade business WITH A MINIMUM PAID-UP CAPITAL OF THE EQUIVALENT IN THE PHILIPPINE PESOS OF TWO HUNDRED THOUSAND US DOLLARS (US\$200,000.00)</p> <p>XXX"</p>	<p>The Department stands by its original position on the minimum-paid up capital requirement of three hundred thousand dollars (USD300,000.00) or fifteen million pesos (PhP15,000,000.00) and per additional store requirement of one hundred fifty thousand dollars (USD150,000.00) or seven million five hundred thousand pesos (PhP7,500,000.00) to balance liberalizing the retail trade industry and affording protection to micro and small enterprises.</p> <p>However, with ongoing deliberations, the DTI views a compromise of a minimum paid-up capital requirement of five hundred thousand dollars (USD500,000.00) or twenty-five million pesos (PhP25,000,000.00) and per additional store requirement of three hundred fifty thousand dollars (USD300,000.00) or fifteen million pesos (PhP15,000,000.00) subject to the proposed periodic review.</p>

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	<p>(US\$7,500,000.00) 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 sixty percent (60%) of total equity.</p> <p>Category C – Enterprises with a paid-up capital of the equivalent in Philippine Pesos of Seven million five hundred thousand US dollars (US\$7,500,000.00), or more may be wholly owned by foreigners: Provided, however, That in no case shall the investments for establishing a store in vestments 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).</p> <p>Category D – Enterprises specializing in high-end or luxury products with a paid-up capital of the equivalent in Philippine Pesos of Two hundred fifty thousand US dollars (US\$250,000.00) per store may be wholly owned by foreigners.</p>	<p>FIFTY MILLION PESOS (P50,000,000.00);</p> <p>(B) THE FOREIGN RETAILER’S COUNTRY OF ORIGIN DOES NOT PROHIBIT THE ENTRY OF FILIPINO RETAILERS;</p> <p>(C) IN THE CASE OF FOREIGN RETAILERS ENGAGED IN RETAIL TRADE THROUGH MORE THAN ONE PHYSICAL STORE, THE INVESTMENT FOR EACH STORE MUST BE AT LEAST TWENTY-FIVE MILLION PESOS (P25,000,000.00); PROVIDED, THAT THIS REQUIREMENT SHALL NOT APPLY TO A DOMESTIC CORPORATION AT LEAST SIXTY PERCENT (60%) FILIPINO-OWNED AND CONTROLLED.</p> <p>XXX"</p>		

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	XXX			
ON THE REVIEW OF MINIMUM-PAID UP CAPITAL REQUIREMENT	N/A	<p>Sec. 3. Section 6 of Republic Act No. 8762 is hereby amended to read as follows:</p> <p>“Sec. 6. REVIEW OF THE MINIMUM PAID-UP CAPITAL REQUIREMENT. – THE DTI, SEC, BSP AND THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA) SHALL REVIEW THE REQUIRED MINIMUM PAID-UP CAPITAL EVERY THREE (3) YEARS FROM THE EFFECTIVITY OF THIS ACT. THE RECOMMENDATION OF THE DTI, SEC, BSP AND NEDA SHALL BE SUBMITTED TO CONGRESS.”</p>	N/A	<p>The Department supports the provision of the Senate. The paid-up capital requirement should be subject to the periodic review by relevant government agencies, including DTI. In addition, we propose that the review be conducted every two (2) years to ensure that the paid-up capital requirement adapts to the rapidly changing investment climate.</p>
ON LABOR POLICY	N/A	<p>Sec. 4. Section 7 of Republic Act No. 8762 is hereby amended to read as follows:</p> <p>“Sec. 6. LABOR POLICY. – IN ALL CASES, THE EMPLOYMENT OF FOREIGN NATIONALS BY FOREIGN RETAILERS SHALL COMPLY WITH</p>	N/A	<p>The Department defers to the decision of the Bicameral Conference Committee on the section on labor policy. We note that foreign retailers, regardless of whether or not there is a section on labor laws, should comply with Philippine labor laws.</p>

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		<p>THE APPICABLE PROVISIONS OF THE LABOR CODE ON THE DETERMINATION OF NON-AVAILABILITY OF COMPETENT, ABLE AND WILLING FILIPINO BEFORE ENGAGING SERVICES OF A FOREIGN NATIONAL, WITH DUE REGARD TO THE STATE POLICY UNDER THE CONSTITUTION TO PROMOTE THE PREFERENTIAL USE OF FILIPINO LABOR."</p>		
<p>ON THE PRE-QUALIFICATION OF FOREIGN RETAILERS</p>	<p>Section 8. Qualification of Foreign Retailers. - No foreign retailer shall be allowed to engage in retail trade in the Philippine unless all the following qualifications are met:</p> <p>XXX</p> <p>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 Philippine.</p> <p>The DTI shall keep a record of Qualified foreign retailers who may, upon compliance with law,</p>	<p><i>Deleted the provision</i></p>	<p>Sec. 4. Section 8 of Republic Act No. 8762 is hereby amended to read as follows:</p> <p>Sec. 8. USE OF FOREIGN RETAILERS OF HIGH-END GOODS. – Only nationals from or juridical entities formed or incorporated in countries which allow the entry of Filipino retailers shall be allowed to engaged in retail trade in the Philippines.</p> <p>The DTI is hereby authorized to pre-qualify all foreign retailers, subject to the provisions of this Act, before</p>	<p>The Department supports the Senate version which deletes the pre-qualification of foreign retailers. Pre-qualification is no longer necessary as there is no need to distinguish foreign retailers.</p>

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	<p>establish retail stores in the Philippine. It shall ensure that parent retail trading company of the foreign investor complies with the qualifications on capitalization and track record prescribed in this section</p> <p>XXX</p>		<p>they are allowed to conduct business in the Philippines.</p> <p>The DTI shall keep a record of qualified foreign retailers who may, upon compliance with law, establish retail stores in the Philippines.</p> <p>The Inter-Agency Committee on Tariff and Related Matters of the National Economic and Development Authority (NEDA) Board shall formulate and regularly update a list of foreign retailers of high-end or luxury goods and render an annual report on the same to Congress.</p>	
<p>ON THE PROMOTION OF LOCALLY-MANUFACTURED PRODUCTS</p>	<p>Section 9. Promotion of Locally Manufactured Products. - For ten (10) year after the effectivity of this Act, at least thirty percent (30%) of the aggregate cost of the stock inventory of foreign retailers falling under Categories B and C and ten percent (10%) for category D shall be made in the Philippines.</p>	<p>Sec. 5. Section 8 of Republic Act No. 8762 is hereby amended to read as follows:</p> <p>Sec. 8. PROMOTION OF LOCALLY MANUFACTURED PRODUCTS. – FOREIGN RETAILERS ARE ENCOURAGED TO HAVE A STOCK INVENTORY OF PRODUCTS WHICH ARE MADE IN THE PHILIPPINES.</p>	<p>Sec. 5. Section 9 of Republic Act No. 8762 is hereby amended to read as follows:</p> <p><i>Sec. 9. Promotion of Locally Manufactured Products. – AT least TEN percent (10%) of the aggregate cost of the stock inventory of foreign retailers shall be made in the Philippines.</i></p>	<p>The Department supports the HOR version and opines that the proposal affords domestic enterprises the benefits of value-chain integration, market access, and product promotion.</p> <p>We recommend the required minimum 10% to apply to operating costs for a more liberal coverage that may come in the form of complementary products in a gondola, packaging materials, advertisements, and employment, among others.</p>

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ON PENALTIES	<p>Section 12. Penalty Clause. - Any person who shall be Found guilty of Violation of any provision of this Act shall be punished by imprisonment of not less that six (2) years and one (1) day but not more than eight (8) years, and a fine of not less than One million pesos</p> <p>(P1,000,000.00) but not more that Twenty million pesos (P20,000,000.00) In the case of associations, partnerships or corporations, the penalty shall be imposed upon its partners, president, directors, manager and other officers responsible for the violation. If the offender is not a citizen of the Philippines he shall be deported immediately after service of sentence. If the Filipino offender is a public officer or employee, he shall, in addition to the penalty prescribed herein, suffer dismissal and permanent disqualification from public office</p>	<p>Sec. 6. Section 9 of Republic Act No. 8762 is hereby amended to read as follows:</p> <p>Sec. 9. PENALTIES. – VIOLATIONS OF ANY OTHER PROVISION OF THIS ACT SHALL BE PUNISHABLE BY IMPRISONMENT OF SIX (6) YEARS AND ONE (1) DAY AND A FINE OF NOT LESS THAN ONE MILLION PESPS (P1,000,000.00) BUT NOT MORE THAN FIVE MILLION PESOS (P5,000,000.00).</p> <p>IN THE CASE OF ASSOCIATIONS, PARTNERSHIPS OR CORPORATIONS, THE PENALTY SHALL BE IMPOSED UPON ITS PARTNERS, PRESIDENT, GENERAL MANAGER AND OTHER OFFICERS RESPONSIBLE FOR THE VIOLATION.</p> <p>IF THE OFFENDER IS NOT A CITIZEN OF THE PHILIPPINES HE SHALL BE DEPORTED IMMEDIATELY AFTER SERVICE OF</p>	<i>No amendments to the law</i>	<p>DTI defers to Congress on the penalties to be imposed on violators of the Act. While DTI initially believes that administrative fines would suffice, the Department subscribes to the wisdom of Congress in giving teeth to the law and deterring violators.</p>

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		SENTENCE. IF THE FILIPINO OFFENDER IS A PUBLIC OFFICER OR EMPLOYEE, HE SHALL, IN ADDITION TO THE PENALTY PRESCRIBED HEREIN, SUFFER DISMISSAL AND PERMANENT DISQUALIFICATION FROM PUBLIC OFFICE."		