17 September 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 the following bills, entitled:

Senate Bill Nos. 418 and 919	**"An Act Amending Republic Act No. 7042, Otherwise Known as the Foreign Investments Act of 1991, as Amended by Republic Act No. 8179, and for Other Purposes"**
Senate Bill No. 1024	**"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

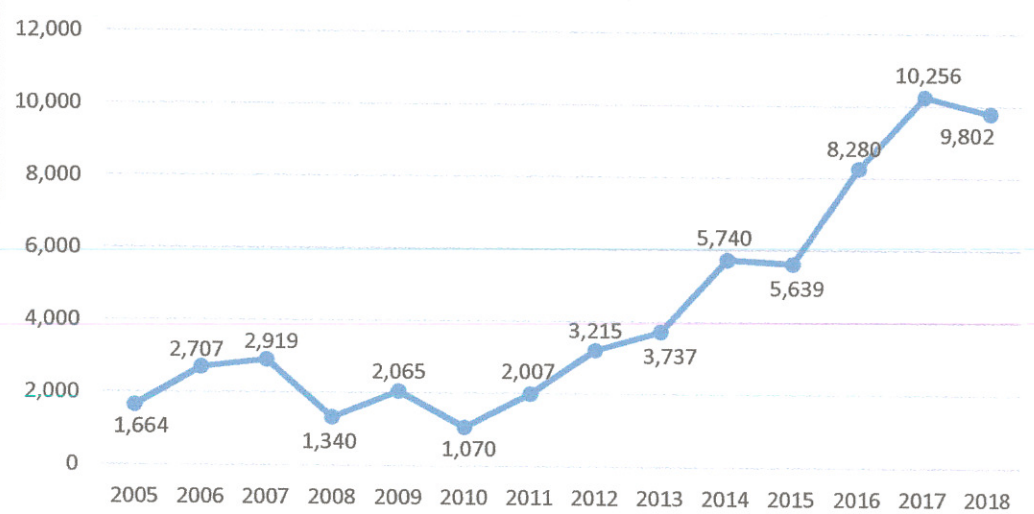
OFFICE OF THE SECRETARY

DTI Position on

Senate Bill Nos. 418 and 919	**"An Act Amending Republic Act No. 7042, Otherwise Known as the Foreign Investments Act of 1991, as Amended by Republic Act No. 8179, and for Other Purposes"**
Senate Bill No. 1024	**"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"**

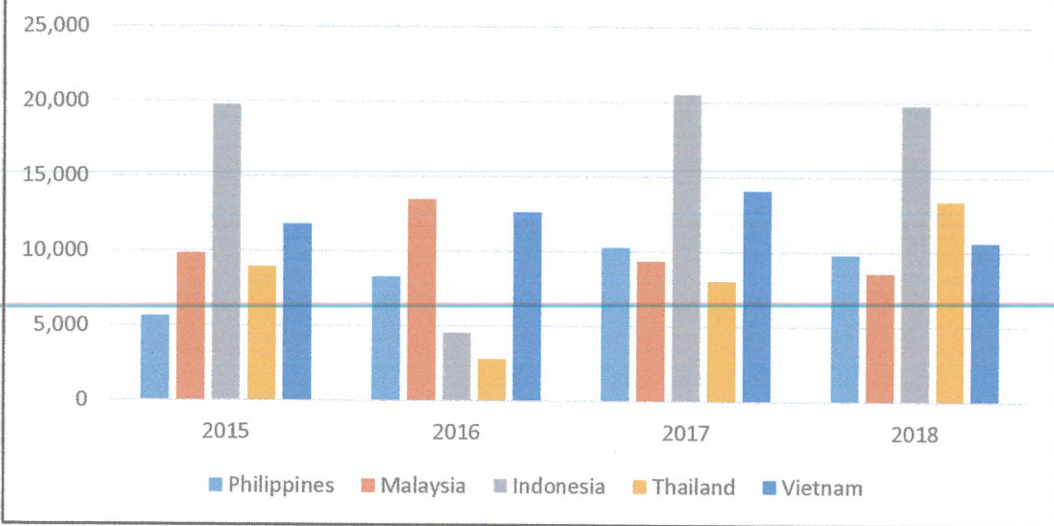
The Department acknowledges the intentions of the proposed bill to stimulate foreign direct investment (FDI) inflows by further liberalizing the existing regime on foreign investment regulation. Although the country's net FDI performance is growing over the years as reflected in Figure 1 below, the DTI 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 Figure 2). 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 interest was instead destined to Indonesia and Vietnam due to their better investment policies and lighter regulations.

Figure 1. Philippine Net FDI 2005-2018 (in USD million)



Source: Bangko Sentral ng Pilipinas

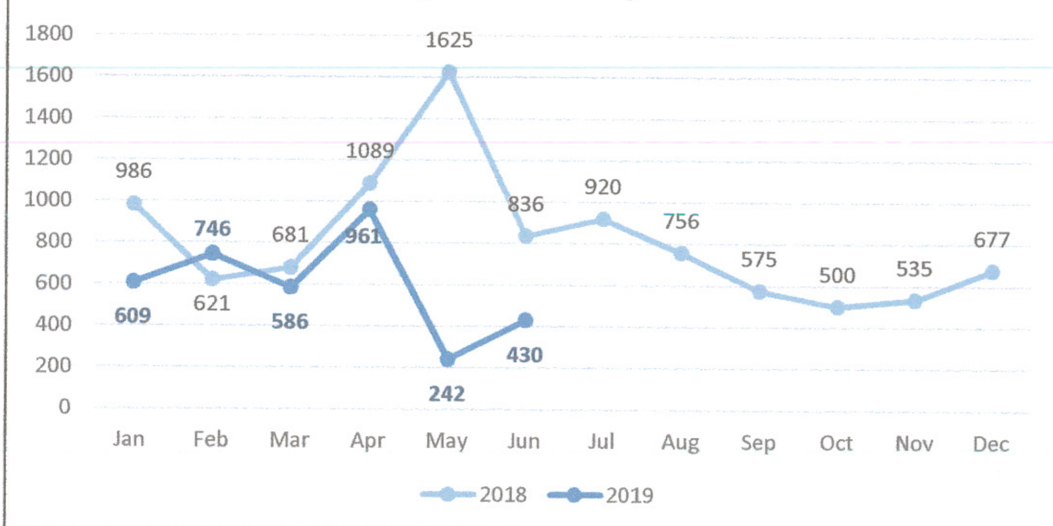
Figure 2. Net FDI of Selected ASEAN Countries (in USD million)



Source: Bangko Sentral ng Pilipinas (Vietnam's 2018 FDI data only accounts for Q1-Q3)

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 year-on-year growth – this is neither sustainable nor stable. The comparative net FDI performance between year-to-date 2018 and 2019 reflects a contraction in generated investments and negative growth rates. For the first half of 2019, net FDI was characterized by poor capture of net equity placements due to substantial withdrawals, low debt instruments, and a weak growth in reinvestments of earnings. 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.

Figure 3. Year-on-Year Philippine Net FDI (in USD million)



Source: Bangko Sentral ng Pilipinas

In view of the foregoing, the DTI reiterates its previously expressed support and recommendations to the similar initiatives on amending the FIA from the 17th Congress as well as from the present 18th Congress' House of Representatives[1], to wit:

Amendments to Section 2. Declaration of Policy

The DTI believes that the Declaration of Policy, which are interpolated for interpretation of the FIA, must be aligned with our present priorities and goals in developing an inclusive, sustainable, and progressive Philippine economy. We therefore express no objections to the proposed bills' amendments on the FIA's *Section 2. Declaration of Policy* since they already incorporate the vision of the Department for the country.

Amendments to Section 3. Definitions

The Department supports the provision of the proposed bills to amend the definition of *"investment,"* reflecting that the same must be qualified by the stock and transfer books of the receiving firm to be legally identified as such. This new definition strengthens business safeguards by limiting the recognition of investment to only those that have been duly documented in accordance with the prescribed laws.

Amendments to Section 4. Scope

The Department notes that the 1987 Philippine Constitution[2] states that "*The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.*" Nonetheless, we support the liberalization of the practice of profession on the condition of reciprocity as this enhances the competitiveness of Filipino professionals both in the domestic and international labor markets. The reciprocal liberalization approach guarantees the status of our Overseas Filipino Workers (OFWs) and preserves opportunities to work abroad. Moreover, allowing foreigners to practice in the country would enable for closer cooperation and the spread of innovation to our own pool of professionals.

The DTI cites certain laws, such as, but not limited to, Republic Act No. (RA) 7836 or the Philippine Teachers Professionalization Act of 1994 and RA 9173 or the Philippine Nursing Act of 2002 which already permit foreign practitioners so long as they are subject to the condition of reciprocity and other standards concerning the specific profession. Furthermore, RA 7916, or the Special Economic Zone Act of 1995[3], allows the employment of foreign executives or those possessing highly-technical skills within ecozones.

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[1] See DTI Position on 17th Congress' Senate Bill No. 2102 and House Bill No. 4067; also see the records on the hearing of the House of Representatives Committee on Economic Affairs joint with Committee on Trade and Industry, held on 27 August 2019, regarding House Bill Nos. 300, 399, and 1221 (Amendments to the Foreign Investments Act)

[2] Article XII, Section 14 of the 1987 Philippine Constitution

[3] Section 10. Immigration, of the Special Economic Zone Act

Additionally, foreign nationals from member-states of the ASEAN are also eligible to practice the following professions in the country under the ASEAN Mutual Recognition Agreements: (i) Engineering; (ii) Nursing; (iii) Architecture; (iv) Dental Practitioners; (v) Medical Practitioners; (vi) Accountancy; and (vii) Tourism Professionals.

The DTI opines that the text of the proposed bills' amendatory provisions must highlight that foreign entry of professionals would be governed by specific laws respective to each field incorporating reciprocity, otherwise, exclusivity to nationals must be expected. This arrangement reiterates the stipulations of the Constitution and provides blanket security for those professions that still have no specific legislations, policies, or reciprocity agreements that would regulate the entry of foreign professionals and govern their general conduct.

Amendments to Section 8. List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List)

The Department is cognizant of the proposed bills not having provisions amending the operative clauses of Section 8 of the FIA, particularly on the conditions for foreign entry into small and medium-sized domestic market enterprises which are to have: (i) a minimum of 50 direct employees; and (ii) paid-in capital of USD100,000.00. We note that this is unlike the House Bill versions on amending the FIA which reflect a reduction of the minimum employment requirement from 50 to 15 that the DTI supports.

The current conditions are practically untenable given that the sector is for small and medium-sized enterprises yet the conditions are disproportionally steep – supporting 50 employees would require capital greater than USD100,000.00 and a large annual productivity/revenue to sustain it. Therefore, the conditions may only be achieved in highly lucrative or labor-intensive economic activities, or by established global investors, effectively restricting venture initiatives from abroad.

Pursuant to our general goal of liberalizing and enhancing competitiveness of the Philippine economy, the DTI recommends for the specified minimum amounts in the conditions to be adjusted accordingly to what is economically-viable and pragmatic for micro, small, and medium enterprises (MSMEs). By facilitating foreign equity participation, local firms would have access to more options for expansion while entrepreneurs could seek more opportunities to realize their business plans. In essence, this amendment does not only allow foreign capital ownership but also empowers Filipino entrepreneurs such that they are not limited in exploring/pursuing other means to grow aside from what are currently available in the country.

The DTI is supportive of the reduction of the minimum number of direct employees from 50 to 15, and seeks for the proposed bills to incorporate the same. We believe that the liberalized entry of foreign investments would promote a boom in startup companies in the country. alongside the DTI's Inclusive Innovative Industrial Strategy (i^{3}S), RA 11232, otherwise known as the *"Innovative Startup Act,"* and RA 11337, otherwise known as the *"Revised Corporation Code of the Philippines."* The Department notes that the country's startup promotion activities are aligned with its initiatives for local firms to transition/adopt to the Fourth Industrial Revolution. These innovative startups are involved in creative industries, new business models, or in high-tech activities that would have comparatively smaller employment needs but are of higher productivity value. Therefore, the Department welcomes the proposed amendment on this section.

The Department wishes to placate concerns that the liberalized entry of foreign capital to small and medium-sized domestic market enterprises would lead to a substantial loss of national ownership/control in the overall Philippine economy by stating that only 11% of the total number of local establishments (representing approximately 111,070 local small and medium-sized establishments) would be affected by this amendment. The data is gathered from the results of the Philippine Statistics Authority (PSA)'s 2018 List of Establishments, which shows the number of establishments per classification, as follows:

Total	Micro	Small	Medium	Large
1,003,113	887,272	106,175	4,895	4,769

Furthermore, the top five sectors within the small and medium-sized enterprises are mostly activities that are labor-intensive but low-value, to wit:

Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles	34,664
Accommodation and Food Service Activities	19,139
Manufacturing	12,745
Education	8,703
Financial and Insurance Activities	8,220

Moreover, we also wish to placate concerns that the decreased number of minimum employees would not help alleviate employment shortages by pointing out that the reduction would promote the formation of a greater number of enterprises and thereby cause more aggregate local jobs eventually. Jobs that are of better quality and high paying are also expected from innovative startups since they are in the higher rungs of the value chain.

Amendments to Institutionalize Review

The DTI notes that as per Executive Order 226 or the "*Omnibus Investments Code of 1987,*" the Board of Investments (BOI) is stipulated to submit the Investment Priorities Plan (IPP) to the Office of the President not later than the end of March of every year. The IPP contains an analysis of specific economic activities currently encouraged and recommendations on the continuance of the identified list. This should already satisfy the necessity for an annual submission of a review of the Foreign Investment Negative List (FINL) as the IPP also covers the cost-benefit analysis of the FINL's contribution to the economy.

The Department notes that it expressed support to House Bill No. 4157, entitled *"Corporate Income Tax and Incentive Rationalization Act"* (CITIRA), which was recently passed by the House of Representatives on 13 September 2019. A provision of CITIRA supersedes the relevant stipulations under the *Omnibus*

Investments Code to replace the IPP with a Strategic Investment Priority Plan (SIPP) that shall be valid for three years, subject to review and amendment as the need arises. The SIPP shall be formulated by BOI in coordination with other concerned investment promotion agencies (IPAs) and government bodies, to be submitted to the President of the Philippines for approval.

The Department reserves support to the proposed bills' amendments to institutionalize review since CITIRA would already provide the superseding provisions on investment planning and review through the proposed SIPP. Therefore, we recommend for the proposed bills to be aligned with CITIRA's relevant provisions or adopt the latter's same clauses effecting SIPP.

Amendments to Establish an Investment Portal Guide

The Department highlights that the BOI has a cursory guide for investors in their own website that addresses what key investment areas in the Philippines are available[4], how to do business in the country[5], cost of doing business[6], and a comparative schedule of incentives between different IPAs[7]. Furthermore, the Philippine Economic Zone Authority (PEZA) also maintains in its website an informative list of eligible activities for incentives[8] as well as the process flow charts for application[9] which includes the PEZA-registration forms.

On the other hand, we note that there is a multitude of private consultancy/law firms that provide the same information and guides listed above but consolidated into one convenient website for easier access and cross-referencing of their clients.

The Department welcomes the objective of the proposed bills' provision to establish an online counterpart to the One-Stop Shop as it directs the different IPAs to collaborate and provide a joint services platform at par with what are offered by their private counterparts. We highlight that the BOI already launched the One-Window Network (OWN)[10] – a platform covering all investment-related information from the existing IPAs. This may already address the proposed bills' objectives for this particular amendment. Nonetheless, the DTI expresses its support for the amendment since it would provide an institutional framework for BOI-OWN as well as to any other succeeding or similar initiatives.

Conclusions

The Department reiterates its favorable position to the intentions of the proposed bills and recommends for them to be consolidated into one version taking into consideration our views. The DTI remains supportive of the provisions reflected by the previous bills of the 17th Congress on amending the FIA and recommends for

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4 Retrieved from http://boi.gov.ph/where-to-invest/

5 Retrieved from http://boi.gov.ph/how-to-setup-business/setting-up/business-process/

6 Retrieved from http://boi.gov.ph/how-to-setup-business/cost-of-doing-business/

7 Retrieved from http://boi.gov.ph/how-to-setup-business/incentives-to-investors/

8 Retrieved from http://www.peza.gov.ph/index.php/eligible-activities-incentives

9 Retrieved from http://www.peza.gov.ph/index.php/getting-started

10 Retrieved from http://boiown.gov.ph/

the proposed bills to adopt the same, especially on the amendments to Section 8 which are to reduce the minimum number of direct employees from 50 to 15. Finally, we defer to the Department of Labor and Employment (DOLE) and the Philippine Regulatory Commission (PRC) our inputs on the proposed amendments to Section 4.

Bureau of Trade and Industrial Policy Research
24 September 2019
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