

# Joint Foreign Chambers of the Philippines

American Chamber of Commerce of the Phils., Inc. ♦ Australian-New Zealand Chamber of Commerce (Phils.), Inc.  
Canadian Chamber of Commerce of the Phils., Inc. ♦ European Chamber of Commerce of the Phils., Inc.  
Japanese Chamber of Commerce & Industry of the Phils., Inc. ♦ Korean Chamber of Commerce of the Phils., Inc.  
Philippine Association of Multinational Companies Regional Headquarters, Inc.

January 24, 2018

## JFC Statement on Senate Bill 2102 or the Foreign Investment Act amendments

### Hearing of the Senate Committee on Economic Affairs

We sincerely thank the chairman for his strong interest in increasing foreign investment, job creation, and technology transfer in the Philippines by sponsoring progressive legislative reforms.

Last July 19, the Senate Committee on Economics held an important hearing to review relevant laws and policies comprising the foreign investment regime of the Philippines. We commend the chairman for his leadership in acting on the conclusion of that hearing that the country's foreign investment regime remains too restrictive and that liberalization of the country's foreign investment laws is long overdue.

He has introduced four bills, Senate Bills 1907, 1909, 1921, and 2102, that will, in the chairman's words last September 12, constitute "a proactive role in championing reforms that will usher in a new and exciting era of economic growth and progress in our country through liberalization and competition legislation." Today's hearing concerns Senate Bill 2102, An Act Amending Republic Act No. 7042.

In 1991, Republic Act 7042, as amended by RA 8179, or the Foreign Investments Act (FIA) was enacted liberalizing the entry of foreign investments into the country by opening the domestic market to 100% foreign investment projects except in areas/sectors identified in the Foreign Investment Negative List (FINL). This landmark law is intended to attract more foreign investments to the Philippines thereby expanding employment opportunities for Filipinos.

We recommend the passage of all the amendments sought in SB 2102.

**First**, it is our view that the practice of all professions is not a germane provision in the Foreign Investment Negative List (FINL), the key document created by the Foreign Investments Act. The FINL is intended to catalogue limitations on foreign equity in non-banking business sectors of the country's domestic market. The practice of profession is not an investment activity under the scope of the Foreign Investment Act and therefore should not be included in the FINL.



**AMCHAM**  
**PHILIPPINES**

AMERICAN



AUSTRALIAN-NEW ZEALAND



CANADIAN



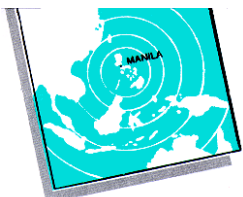
EUROPEAN



JAPANESE



KOREAN



PAMURI

The Philippine Constitution creates a policy bias in favor of Filipinos, but not a strict legal barrier to the participation of foreign professionals. Although Section 14, Article XII states that “the practice of all professions in the Philippines shall be limited to Filipino citizens,” this statement is immediately followed by “save in cases prescribed by law.” Almost all of the laws regulating professions contain reciprocity provisions (see attached - list).

There are 47 laws governing the practice of specific professions, and 46 contain “reciprocity” provisions allowing foreigners to practice their profession in the Philippines, provided their countries of origin also allow Filipinos to practice the same. Only the law regulating the practice of radio and x-ray technology remains restricted to Philippine nationals and contains no reciprocity provision. In addition, a Supreme Court rule limits the practice of law to Philippine nationals.

Considering that certain laws governing each profession allow foreign nationals to practice in the Philippines under reciprocity arrangements, it was extremely misleading to include such items in the FINL as a nationalized activity, as was done for many years. Only in the 10<sup>th</sup> FINL was a footnote inserted that informed readers of the FINL that reciprocity provisions existed for most of the professions. This effectively discouraged foreign professionals who could otherwise be allowed to practice here by virtue of reciprocity from working in the Philippines and sharing their ideas and technical know-how, contrary to the more inclusive policy contained in the Foreign Investment Act.

Because millions of Filipinos work abroad and support the Philippine economy with their remittances, it should be in the national interest to seek the reduction of restrictions on professionals in other countries as well as in the Philippines. For example, in negotiations of the General Agreement on Trade in Services (GATS) under the World Trade Organization and the ASEAN Framework Agreement on Services (AFAS).

At the same time, having more foreign professionals practicing in the Philippines can bring new skills, ideas, connections and integration into global networks of service providers, and support sunrise sectors like R & D, medical travel, and retirement. This is a win-win policy, for Philippine professionals to have more opportunities on the world stage and for the domestic market to benefit and be enriched from the skills of foreign professionals.

On November 27 seven members of the Joint Foreign Chambers (JFC) joined by nine Philippine business groups, the British Council, and the US-ASEAN Business Council released a policy brief entitled *Creative Industries*. These 16 co-sponsors of the policy brief consider Creative Industries the next sunrise industry for the Philippines with potential to be as large as the IT/BPO sector. A copy of the policy brief is attached.

One of the recommendations in the policy brief is to encourage foreign professionals to practice and invest in creative industries in the Philippines, which is expected to result in technology transfer, foreign investment, and job creation. Malaysia and Singapore have successfully attracted high quality foreign professionals to work and invest in their countries.

While we do not have current data, even with reciprocity, the number of foreign professionals who have applied to the Professional Regulatory Commission is very low. This is despite the urgent need in the Philippines for more professionals and more technology transfer.

In short, more foreign professionals practicing in the Philippines can mean more jobs for Filipinos at home.

**Second**, the FIA allows 100% foreign ownership in domestic market activities above a minimum investment of US\$100,000 (with advanced technology or employing 50 direct employees), otherwise US\$200,000. However, a US\$ 100,000 enterprise - only a little over PhP 5.4 million - cannot sustain a labor force of 50 persons.

When the law was enacted in 1991, the minimum wage in the National Capital Region was PhP 142 and today it is PhP 475. PhP 5.4 million (100,000 USD) is not enough to sustain a labor force of 50 persons at the current minimum wage. At the current rate of PhP 54 = US\$ 1 an investor would need to spend 114,269 USD to pay basic wages for a 50-employee work force for one year. This does not take into account other labor expenses nor other costs to operate. However, with a requirement for 15 employees, the basic wage labor budget for one year would be 34,273 USD enough funds left over for other expenses.

So as not to render pointless this provision of the law, and to align it with the spirit of the FIA, there is a need to reduce the employment requirement and lower the threshold to a more reasonable number, which the bill recommends to be 15 employees.

We also wish to note that at least three ASEAN countries that receive more FDI than the Philippines (10 billion USD in 2017) do not have similar restrictions for foreign investors. These three countries are Singapore, Thailand, and Vietnam. (However, these countries may otherwise limit foreign investment in some domestic market activities.)

- **Singapore** has no minimum investment or job creation requirements. In 2017, it received US\$ 62 billion in FDI.
- **Thailand** has no minimum investment requirements for foreign investors. In 2017, it received US\$ 7.3 billion in FDI. (In two previous years Thailand received more than US\$10 billion, US\$15.5 billion in 2013 and 11.4 billion in 2007).
- **Vietnam** has no minimum requirement for foreign investors for neither capital nor employment. In 2017, it received US\$ 14 billion in FDI.

The absence of minimal restrictions enables the development of small foreign - owned enterprises in the creative industries, such as design and IT applications and similar businesses that start small and subsequently steadily grow while employing increasing numbers of local workers. They can also attract smaller foreign investors who will enrich the country's vibrant tourism industry by providing a larger variety of cuisines and special services for foreign visitors, including speakers in a variety of languages.

**Third**, we also note that SB 2102 adds language to Sec. 2 "Declaration of Policy" that adds more clarity to benefits for the Philippine nation that derive from foreign investments such as "sustainable inclusive economic growth, productivity, global competitiveness, employment creation, technological advancement, and countrywide development."

**Fourth**, Section 5 of the bill embodies a long-standing JFC recommendation to undertake systematic inter-agency review of the FINL. It requires NEDA to lead an annual review of the negative list and submit to Congress every April 30 a cost-benefit analysis of the contribution to the economy of the investment areas included therein and recommend to the Congress investment-related matters requiring necessary legislation.

There has never been a reform policy by successive administrations to review the FINL to determine whether existing restrictions continue to be necessary. While two commissions have reviewed the constitution's foreign equity restrictions and recommended they be removed and instead be addressed in legislation as may be necessary no similar review has taken place for other legal restrictions. Year after year, government departments apply the same laws without taking any initiative to change them. Making the FINL less negative, i.e. more positive, was never a priority.

However, this changed in the current administration with Memorandum Order 16 dated November 21, 2017 of President Duterte. MO 16 to "exert utmost efforts" in the following eight areas:

1. Private recruitment, whether local or overseas employment
2. Practice of particular professions, where allowing foreign participation will redound to the public benefit
3. Contracts for construction and repair of locally-funded public works
4. Public services, except activities and systems that are recognized as public utilities such as transmission and distribution of electricity, water pipeline distribution system, and sewerage pipeline system.
5. Culture, production, milling, processing, and trading except retailing, of rice and corn and acquiring by barter, purchase or otherwise, rice and corn and by-products
6. Teaching at higher education level
7. Retail trade enterprises
8. Domestic market enterprises.

Unfortunately, the 11<sup>th</sup> FINL only made small changes in the FINL, described by NEDA Secretary Pernia as "marginal improvements" and "baby steps." Meaningful reforms in the FINL will require Congress to pass relevant laws, for which senior administration officials have expressed their support. A copy of the November 12 statement of the JFC on the 11<sup>th</sup> FINL is attached.

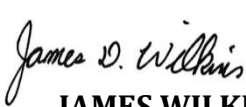
Going forward we are optimistic that with the Executive and Legislative branches prioritizing making the FINL less negative, reforms will finally be made. The cost-benefit analysis of NEDA required in Section 5 should provide justification for further reform. If this bill is enacted by February 2019 when Congress recesses, NEDA could make an important

contribution in its first report to congress in April 2019. This report could then lead to reform legislation being passed in the 19<sup>th</sup> Congress, which we would expect to stimulate new foreign investment, technology transfer, and job creation for the Philippine economy.


Finally, SB 2102 adds a new Sec. 6 that requires the BOI with other IPAs and agencies to operate a joint web portal that will have all information pertinent to investment policies, programs, and procedures. This will be very useful for prospective investors in the Philippines.

The JFC is a coalition of the American, Australian-New Zealand, Canadian, European, Japanese, and Korean chambers and PAMURI. We represent over 3,000 member companies engaged in over US\$100 billion worth of trade and some \$30 billion worth of investments in the Philippines. The JFC supports and promotes open international trade, increased foreign investment, and improved conditions for business to benefit both the Philippines and the countries the JFC members represent.


Sincerely,

  
**JAMES WILKINS**  
President  
American Chamber of  
Commerce of the Philippines,  
Inc.

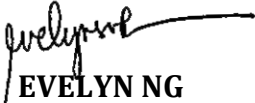
  
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Regional Headquarters, Inc.

Attachments:

- 1. List of regulated professions, as of November 2018
- 2. Creative Industries policy brief Number 10, November 2018
- 3. JFC statement on the 11<sup>th</sup> FINL, November 12, 2018