

## 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.

September 23, 2019

### Joint Foreign Chamber (JFC) Statement on Senate bills 418, 919 and 1024 Foreign Investment Act amendments

In 1991, the Foreign Investments Act (FIA) or Republic Act 7042 (amended in 1996 by RA 8179) was enacted liberalizing the entry of foreign investments into the country by opening the domestic market to 100% foreign investment project except in areas/sectors identified in the Foreign Investment Negative List (FINL). This landmark law was intended to attract more foreign investments to the Philippines thereby expanding employment opportunities for Filipinos.

This reform is one three prioritized by the Department of Finance, along with the Public Service Act amendments and the Amendments to the Retail Trade Act Amendments. Last June 3, President Duterte certified all three measures as urgent in a letter to Senate President Sotto.

Further, the House of Representatives on September 9, 2019 approved in third reading HB 300, which was previously approved in the House of Representatives in the 17<sup>th</sup> Congress. The JFC supported HB 300, which contains two amendments. We recommend that both be include in the Senate bill.

**Practice of Professions is not an investment (in HB 300) and should be excluded from the FINL.** We agree with the proposed language that adds “and the practice of professions” to Sec. 3 of SB 418 and 919. This language does not appear in Sec. 4 of SB 1024, where we recommend it be added. We believe the practice of professions is not a germane provision in the FINL, a vital document for potential foreign investors created by the FIA. The FINL is intended to catalogue limitations on foreign equity in non-banking business sectors. Likewise, the FINL can exclude the practice of professions in individual or corporate form.

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

There are 46 laws governing the practice of specific professions; 45 contain “reciprocity” provisions allowing foreign nationals to practice their profession in the Philippines, provided their countries of origin also allow Filipinos to practice there. In addition, a Supreme Court rule limits the practice of law to Philippine nationals. The law regulating radio and x-ray technologists states the profession is restricted to Philippine nationals and contains no reciprocity provision.

Considering that laws governing each profession allow foreign nationals to practice in the Philippines under reciprocity arrangements, it is misleading to include such item in the FINL as a nationalized activity. This effectively discourages foreign professionals who



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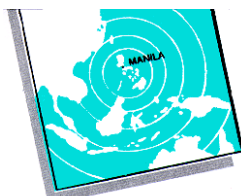
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could otherwise be allowed to practice here by virtue of reciprocity from working in the Philippines and sharing their ideas and technical know-how, contrary to the inclusive policy of the FIA. The proposed amendment removes confusion when potential investors consult the FINL.



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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, and creative industries. As Sen. Gatchalian stated in the explanatory note to SB 919 the amendment “seeks to encourage foreign professionals to come to the country to share their knowledge, expertise, skills, and technical know-how to us Filipinos.”



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



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Because the practice of profession is not an investment activity under the scope of the Foreign Investment Act the professions should not be included in the FINL.

**Reduce 50 to 15.** We support the second amendment in HB 300 that reduces the employment requirement from 50 to 15 persons to allow 100% foreign ownership in domestic market activities above a minimum investment of \$100,000. Operationally speaking, a US\$100,000 enterprise - only a little over PhP 5.2 million - cannot initially sustain a labor force of 50 persons.



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When the law was enacted in 1991, the minimum wage in the National Capital Region was PhP142. Today it has reached PhP500. PhP5.2 million (USD\$ 100,000) is not enough to sustain a labor force of 50 persons at the current minimum wage. At the rate of PhP 52 = US\$ 1 an investor would need to spend US\$ 120, 283 to pay basic wages for a 50-employee work force for one year. This does not take into account other labor expenses and other operating costs. However, with a requirement for 15 employees, the basic wage labor budget for one year would be USD\$ 36,076 with enough funds remaining for other expenses.



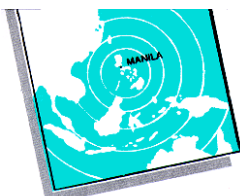
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So as not to render pointless this provision of the law, and to align it with the spirit of the FIA, there is a need to reduce the employment requirement by lowering the threshold to a more reasonable number, which the bill recommends should be fifteen.



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At least three ASEAN countries that receive more FDI than the Philippines (US\$ 6.5 billion in 2018) do not have similar restrictions for foreign investors. These are Singapore, Thailand, and Vietnam.<sup>1</sup> However, some may limit these rules to specific products or services.



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- Singapore has no minimum investment or job creation requirements. In 2018 Singapore received US\$ 77.6 billion in net FDI.

<sup>1</sup> FDI data sourced from UNCTAD and differs from BSP and ASEAN.

- Thailand has no minimum investment requirements for foreign investors. In 2018 Thailand received US\$10.5 billion in net FDI. (In two previous years Thailand received more than \$10 billion, \$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 2018 Vietnam received \$15.5 billion in net FDI.



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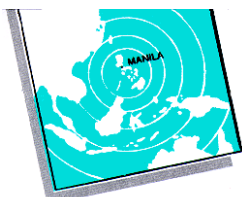
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The reduced employment requirement will support the development of small foreign-owned enterprises in the creative industries such as design, IT applications, and similar businesses that start small and steadily grow and employ increasing numbers of Filipinos. They can also attract smaller foreign investors who enrich the country's vibrant tourism sector by providing a larger variety of cuisines and special services for foreign investors, including speakers in a variety of languages.

**Senate bills strengthen declaration of policy.** We support the additional language under "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 and consistent with protection of national security."

**Annual review of FINL.** A 4<sup>th</sup> proposed amendment to the FIA in Sec. 11 of SB 919 has been 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 the output of stakeholders analysis of the contribution to the economy of the investment areas included therein and recommend to the Congress investment-related matters requiring necessary legislation. This requirement is also in SB 1024 Sec. 7, where it should be separated from the annual FINL. The FINL has been issued 11 times over 22 years. The annual output report should be separate as it reports different information.


**Joint Web Portal.** We support Sec. 13 of SB 1919 and Sec. 6 in SB 1024 to establish a joint web portal that facilitates providing relevant information to potential foreign investors. However, SB 919 Sec. 6 is redundant is requiring an Investment Priorities Plan, as this has been happening regularly under current law.

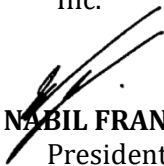
**New section on national security.** We support the proposed new Sec. 12 in SB 919 and Sec. 9 in SB 1024 to establish a procedure to "review any foreign investment transaction that threatens to impair national security. Many countries have procedures in place. Australia has a Foreign Investment Review Board (FIRB). The United States has a Committee on Foreign Investment in the US (CFICUS) that reviews mergers and stock purchases to ensure they do not harm national security. Investments in 27 industries must be reported to the committee under certain conditions. We note that the process will be spelled out in the Implementing Rules and Regulations and we support this amendment.

Other sections. We have only one comment on sections 5, 7, 14, and 16 of SB 1024 appear redundant with other laws or require further comment and study

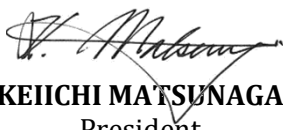
The JFC is a coalition of the American, Australian-New Zealand, Canadian, European, Japanese, and Korean chambers and PAMURI. We represent over 3,000 member companies engaged in over US\$100 billion worth of trade and some \$30 billion worth of investments in the Philippines. The JFC supports and promotes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

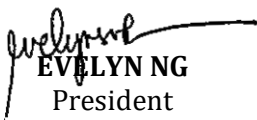
Sincerely,


  
**JAMES WILKINS**  
President  
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