

**[NEDA IMPLEMENTING RULES AND REGULATIONS
OF RA 7042, March 03, 1998]**

(AS AMENDED BY REPUBLIC ACT NO. 8179^[1])

The National Economics and Development Authority (NEDA) hereby issues the following rules and regulations implementing Republic Act No. 7042, otherwise known as the foreign Investments Act of 1991, as amended by Republic Act No. 8179:

**RULE I
DEFINITIONS**

SECTION 1. DEFINITION OF TERMS. — For the purposes of these Rules and Regulations:

a. Act shall refer to Republic Act 7042 entitled "An Act to Promote Foreign Investments, Prescribed the Procedures for Registering Enterprises Doing Business in the Philippines, and for other Purposes", Also known as the Foreign Investments Act of 1991, as amended.

b. Philippine national shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by the citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which 100% of the capital stock outstanding and entitled to vote is wholly owned by Filipinos; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefits of the Philippine nationals; Provided, that where a corporation and its non-Filipino stockholders own stocks in Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporation must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national. The control test shall be applied for this purpose.

Compliance with the required Filipino ownership of a corporation shall be determined on the basis of outstanding capital stock whether fully paid or not, but only such stocks which are generally entitled to vote are considered.

For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights is

essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.

Individuals or juridical entities not meeting the aforementioned qualifications are considered as non-Philippine nationals.

c. Foreign corporation shall mean one which is formed, organized or existing under laws other than those of the Philippines.

Branch office of a foreign company carries out the business activities of the head office and derives income from the host country.

Representative or liaison office deals directly with the clients of the parent company but does not derive income from the host country and is fully subsidized by its head office. It undertakes activities such as but not limited to information dissemination and promotion of the company's products as well as quality control of products.

d. Investment shall mean equity participation in any enterprise organized or existing under the laws of the Philippines. It includes both original and additional investments, whether made directly as in stock subscription, or indirectly through the transfer of equity from one investor to another as in stock purchase. Ownership of bonds (including income bonds), debentures, notes or other evidences of indebtedness does not qualify as investments.

The purchase of stock options or stock warrants is not an investment until the holder thereof exercises his option and actually acquires stock from the corporation.

e. Foreign investment shall mean an equity investment made by a non-Philippine national; *Provided, however*, that for purposes of determining foreign ownership, peso investments made by non-Philippine nationals shall be considered; *Provided, further*, that only foreign investments in the form of foreign exchange and/or other assets actually transferred to the Philippines and duly registered with the Central Bank (CB) and profits derived therefrom can be repatriated; and *Provided, finally*, that, for purposes of Section 8 of the Act, and Rule VIII, Section 6 of these Rules and Regulations, Existing Foreign Investments shall mean an equity investments made by a non-Philippine national duly registered with the SEC or the Bureau of Trade Regulation and Consumer Protection (BTRCP) in the form of foreign exchange and/or other assets transferred to the Philippines.

f. Doing Business shall include soliciting orders, service contracts, opening offices, whether liaison offices or branches; appointing representatives or distributors, operating under full control of the foreign corporation, domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that comply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to and in progressive prosecution of commercial gain or of the purpose and object of the business organization. The following acts shall not be deemed "doing business" in the Philippines:

1. Mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor;
2. Having a nominee director or officer to represent its interest in such corporation;
3. Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account;
4. The publication of a general advertisement through any print or broadcast media;
5. Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;
6. Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export;
7. Collecting information in the Philippines; and
8. Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services.

g. Export enterprise shall mean an enterprise wherein a manufacturer, processor or service (including tourism) enterprise exports sixty percent (60%) or more of its output, or wherein a trader purchases products domestically and exports sixty percent (60%) or more of such purchases.

h. Exports shall mean the volume or the Philippine port F.O.B. peso value, determined from invoices, bills of lading, inward letters of credit, loading certificates, and other commercial documents, of products exported directly by an export enterprise or the value of services including tourism sold by service-oriented enterprise to non-resident foreigners or the net selling price of export products sold by an export enterprise to another export enterprise that subsequently exports the same; *Provided*, that sales of export products to another export enterprise shall only be deemed exports when actually exported by the latter, as evidenced by loading certificates or similar commercial documents; and *Provided, finally*, that without actual exportation, the following shall be considered constructively exported for purposes of the Act: (1) sales of products to bonded manufacturing warehouses of export enterprises; (2) sales of products to export processing zone enterprises; (3) sales of products to export enterprises operating bonded trading warehouses supplying raw materials used in the manufacture of export products; and (4) sales of products to foreign military bases, diplomatic missions and other agencies, and/or instrumentalities granted tax immunities of locally manufactured, assembled or repacked products whether paid for in foreign currency or pesos funded from inwardly remitted foreign currency.

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning overseas Filipinos under the Internal Export Program of the Government and paid for in convertible foreign currency inwardly remitted through the Philippine banking system shall also be considered exports.

i. Output shall refer to the export enterprise's total sales in a taxable year. The term sales shall refer to the value in case of heterogeneous products and volume in case of homogeneous products.

Heterogeneous products shall refer to products of different kinds and characteristics as well as to those of the same kind but with various categories using different units of measurement.

Homogeneous products shall refer to products of the same kind or category using a common unit of measurement.

j. Export ratio shall refer to:

1. the percentage share of the volume or peso value of goods exported to the total volume or value of goods sold in any taxable year if the export enterprise is engaged in manufacturing or processing;

2. the percentage share of the peso value of services sold to foreigners to total earnings or receipts from the sale of its services from all sources in any taxable year if the export enterprise is service-oriented; Value of services sold shall refer to the peso value of all services rendered by an export enterprise to foreigners that are paid for in foreign currency and/or pesos funded from inwardly remitted foreign currency as properly documented by the export enterprise; or

3. the percentage share of the volume or peso value of goods exported to the total volume or value of goods purchased domestically in any taxable year if the export enterprise is engaged in merchandise trading.

k. **Domestic market enterprise** shall mean an enterprise which produces goods for sale, ***or renders service or otherwise engages in any business in the Philippines.***

l. **Joint Venture** shall mean two or more entities, whether natural or juridical, one of which must be a Philippine national, combining their property, money, efforts, skills or knowledge to carry out a single business enterprise for profit, which is duly registered with the SEC as a corporation or partnership.

m. **Substantial Partner** shall mean an individual or a firm who owns enough shares to be entitled to at least one (1) seat from the Board of Directors of a corporation, or in the case of a partnership, any partner.

n. **Dangerous Drugs** as defined under Republic Act 6425 or the Dangerous Drugs Act, as amended, refers to either:

1. *"Prohibited drug"* which includes opium and its active components and derivatives, such as heroin and morphine; coca leaf and its derivatives, principally cocaine; alpha and beta eucaine; hallucinogenic drugs, such as mescaline, lysergic and dichthylamide (LSD) and other substances producing similar effects; Indian hemp and its derivatives; all preparations made from any of the foregoing; and other drugs and chemical preparations whether natural or synthetic, with the physiological effects of a narcotic or hallucinogenic drug; or

2. *"Regulated drug"* which includes, unless authorized by the Department of Health (DOH) and in accordance with the Dangerous Drugs Board, self-inducing sedatives, such as secobarbital, phenobarbital, pentobarbital, barbital, amobarbital or any other drug which contains a salt or a derivative of salt of barbituric acid; any salt, isomer, or salt of an isomer, of amphetamine such as benzedrine or dexedrine, or any drug which produces a physiological action similar to amphetamine; and hypnotic drugs, such as methaqualone, nitrazepan or any other compound producing similar physiological effects.

o. **Advanced Technology** refers to a higher degree or form of technology than what is domestically available and needed for the development of certain industries as subject to guidelines of the Department of Science and Technology (DOST). Its introduction into the country through foreign investments under the terms and conditions of the Act must be linked to its appropriateness and adaptability to local conditions with a view towards eventual transfer and applicability including the upgrading of the indigenous technology available.

p. **Paid-in Equity Capital** shall mean the total investment in a business that has been paid-in in a corporation or partnership or invested in a single proprietorship, which may be in cash or in property. It shall also refer to inward remittance or assigned capital in the case of foreign corporations.

q. **Foreign Investment Negative List (FINL) or Negative List** shall mean a list of areas of economic activity whose foreign ownership is limited to a maximum of forty percent (40%) of the outstanding capital stock in the case of a corporation or capital in the case of a partnership.

r. **NEDA Board** shall refer to the body constituted as such under Executive Order No. 230 entitled "Reorganizing the National Economic and Development Authority" and in which reside the powers and functions of the Authority.

s. **NEDA** shall refer to the NEDA Secretariat, which is the body constituted as such under Executive Order No. 230 and which serves as the research and technical support arm and the Secretariat of the NEDA Board.

t. **SEC** shall refer to the Securities and Exchange Commission.

u. **BTRCP** shall refer to the Bureau of Trade Regulation and Consumer Protection as represented by the provincial offices of the Department of Trade and Industry (DTI).

v. **BOI** shall refer to the Board of Investments.

w. **Technology Transfer Board** shall refer to the Bureau of Patents, Trademarks and Tec

x. *Former natural born Filipinos shall mean those who have lost Philippine citizenship but were previously citizens of the Philippines falling in either of the following categories: (a) from birth without having to perform any act to acquire or perfect their Philippine citizenship; or (b) by having elected Philippine citizenship upon reaching the age of majority, if born before January 17, 1973, of Filipino mothers.*