

[NEDA, September 17, 1997]

**AMENDMENTS TO THE IMPLEMENTING RULES AND
REGULATIONS OF REPUBLIC ACT NO. 7042 (FOREIGN
INVESTMENTS ACT OF 1991), AS AMENDED BY REPUBLIC ACT
NO. 8179**

The National Economic and Development Authority (NEDA) hereby issues the following amendments to the 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. Definitions of Terms. — For purposes of these Rules and Regulations.

b. **Philippine National** shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by 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 Philippine nationals; Provided, That where a corporation and its Non-Filipino stockholders own stocks in a 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 60% of the members of the Board of Directors OF EACH of both corporations 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.

[The term Philippine national shall not include juridical entities organized and existing under the laws of any other country even if wholly owned by Philippine Citizens.]

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.

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 [to the domestic market entirely or, if exporting a portion of its output, continually fails to export at least sixty percent (60%) thereof for a period of three (3) years without any justifiable reason. A holding company whose principal function is to oversee investments made by its parent company in all kinds of real and personal property as may be allowed under existing laws and regulations shall not be considered a domestic market enterprise].

Item (p) Depleting Natural Resources is deleted. All other items remain the same and shall be re-lettered, accordingly.

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.

y. **TRANSFeree OF PRIVATE LAND SHALL** MEAN A PERSON TO WHOM THE OWNERSHIP RIGHTS OF PRIVATE LAND IS TRANSFERRED THROUGH EITHER VOLUNTARY OR INVOLUNTARY SALE, DEVISE, OR DONATION. INVOLUNTARY SALES SHALL INCLUDE SALES ON TAX DELINQUENCY, FORECLOSURES AND EXECUTIONS OF JUDGMENT.

z. **DIRECT EMPLOYEES** SHALL MEAN FILIPINO PERSONNEL HIRED AND ENGAGED UNDER THE CONTROL OF AND SUPERVISION OF THE APPLICANT INVESTOR/EMPLOYER IN THE PRODUCTION OF GOODS OR PERFORMANCE OF SERVICES. EXCLUDED FROM THIS DEFINITION ARE PERSONNEL HIRED AS CASUAL, SEASONAL, LEARNER, APPRENTICE OR ANY EMPLOYEE OF SUBCONTRACTOR OR THOSE UNDER FIXED TERM EMPLOYMENT.

aa. **START OF COMMERCIAL OPERATIONS** SHALL MEAN THE DATE WHEN A PARTICULAR ENTERPRISE ACTUALLY BEGINS PRODUCTION OF THE PRODUCT FOR COMMERCIAL PURPOSES OR COMMERCIAL HARVEST IN THE CASE OF AGRICULTURAL ACTIVITIES. IN THE CASE OF SERVICE ORIENTED ACTIVITIES, THE DATE WHEN THE ENTERPRISE BEGINS CATERING OR SERVICING ITS CLIENTS ON A COMMERCIAL BASIS. IN THE CASE OF EXPORT TRADERS AND SERVICE EXPORTERS, THE DATE WHEN THE INITIAL EXPORT SHIPMENT IN COMMERCIAL QUANTITY HAS BEEN MADE OR INITIAL PERFORMANCE OF SERVICE AS BORNE OUT BY THE APPROPRIATE SUPPORTING DOCUMENTS.

RULE IV. Registration of Investments of Non-Philippine Nationals

SECTION 3. Registration with the SEC.

b. Additional Requirements. As required by the Act, the following shall also be submitted to SEC:

(1) For enterprises wishing to engage in defense-related activities, clearance from the DND or PNP.

(2) For small and medium-sized domestic market enterprises with paid-in equity capital less than the equivalent of US\$200,000 BUT NOT LESS THAN THE EQUIVALENT OF US\$100,000, A CERTIFICATE FROM THE DOST THAT THE INVESTMENT INVOLVES ADVANCED TECHNOLOGY, OR A CERTIFICATE FROM THE APPROPRIATE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) REGIONAL OFFICE THAT THE ENTERPRISE HAS ISSUED AN UNDERTAKING TO EMPLOY AT LEAST 50 DIRECT EMPLOYEES [US\$500,000, a certificate from the DOST that the investment involves advanced technology] shall be submitted.

THE DOLE, THROUGH ITS REGIONAL OFFICES, SHALL VALIDATE AND MONITOR COMPLIANCE BY THE INVESTOR TO THE UNDERTAKING THAT IT WILL HIRE AT LEAST 50 DIRECT EMPLOYEES WITHIN SIX (6) MONTHS FROM THE START OF COMMERCIAL OPERATIONS. NON-SATISFACTION OF THE UNDERTAKING SHALL BE REPORTED BY THE DOLE REGIONAL OFFICE TO THE SEC, WHICH SHALL CAUSE THE INVESTOR TO SATISFY THE APPROPRIATE HIGHER INVESTMENT REQUIREMENT, WITH PENALTY FOR FAILURE TO SATISFY THE UNDERTAKING.

(3) FOR FORMER NATURAL BORN FILIPINOS WISHING TO ENGAGE IN INVESTMENT AREAS ALLOWED TO THEM UNDER THIS ACT, THE FOLLOWING DOCUMENTS ARE REQUIRED:

(i) COPY OF BIRTH CERTIFICATE

(i.1) CERTIFIED BY THE LOCAL CIVIL REGISTRAR OR THE NATIONAL STATISTICS OFFICE, OR

(i.2) FOR THOSE BORN ABROAD, CERTIFICATE OF BIRTH FROM THE APPROPRIATE GOVERNMENT AGENCY OF THE COUNTRY WHERE THE BIRTH IS RECORDED SHOWING THE FATHER OR MOTHER TO BE A FILIPINO AT THE TIME OF BIRTH OR IF THE CITIZENSHIP OF THE PARENTS IS NOT INDICATED, ADDITIONAL PROOF THAT THE PARENT/S IS A FILIPINO CITIZEN OR HAS NOT LOST HIS/HER FILIPINO CITIZENSHIP AT THE TIME OF THE APPLICANT INVESTOR'S BIRTH;

(ii) THOSE BORN BEFORE 17 JANUARY 1973 OF FILIPINO MOTHERS MUST ADDITIONALLY SUBMIT ALL OF THE FOLLOWING: CERTIFIED TRUE COPIES OF HIS/HER SWORN STATEMENT OF ELECTION OF FILIPINO CITIZENSHIP, OATH OF ALLEGIANCE FROM THE CIVIL REGISTRAR WHERE THE DOCUMENTS WERE FILED AND/OR, FORWARDED, AND IDENTIFICATION CERTIFICATE ISSUED BY THE BUREAU OF IMMIGRATION;