

MALACAÑANG
Manila

EXECUTIVE ORDER NO. 389

**PROMULGATING THE
SIXTH REGULAR FOREIGN INVESTMENT NEGATIVE LIST**

WHEREAS, Republic Act (RA) No. 7042 also known as the Foreign Investments Act of 1991, as amended by RA 8179, provides for the formulation of a Regular Foreign Investment Negative List covering investment areas/activities which may be opened to foreign investors and/or reserved to Filipino nationals;

WHEREAS, the Regular Foreign Investment Negative List, consisting of Lists A and B, is effective for two years and has expired on 8 November 2004, pursuant to Section 8 of RA 7042, as amended, and its revised Implementing Rules and Regulations;

WHEREAS, there is a need to formulate a Sixth Regular Foreign Investment Negative List in view of the expiration of the existing list to reflect the changes to Lists A and B provided in specific laws;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by Law, do hereby order:

SECTION 1. Only the investment areas or activities listed in Annex A hereof shall be reserved to Philippine nationals, and hereafter shall be referred to as the Sixth Regular Foreign Investment Negative List. The extent of foreign equity participation in these areas shall be limited to the percentages indicated in the List.

SECTION 2. Any amendment to List A may be made at any time to reflect changes instituted in specific laws while amendments to List B shall not be made more often than once every two years, pursuant to Section 8 of RA 7042 as amended, and its revised Implementing Rules and Regulations.

SECTION 3. All orders, issuances, rules and regulations or parts thereof, which are inconsistent with this Order are hereby revoked or modified accordingly.

SECTION 4. This Executive Order shall take effect 15 days after publication in a newspaper of general circulation.

DONE in the City of Manila, this 30th day of November, in the year of Our Lord, Two Thousand and Four.

(Sgd) **GLORIA MACAPAGAL ARROYO**

By the President:

(Sgd) **EDUARDO R. ERMITA**
Executive Secretary

"ANNEX A"

SIXTH REGULAR FOREIGN INVESTMENT NEGATIVE LIST

LIST A: FOREIGN OWNERSHIP IS LIMITED BY MANDATE OF THE CONSTITUTION AND SPECIFIC LAWS

No Foreign Equity

1. Mass media except recording (Art. XVI, Sec. 11 of the Constitution; Presidential Memorandum dated 04 May 1994)
2. Practice of all professions¹
 - a. Engineering
 - i. Aeronautical engineering
 - ii. Agricultural engineering
 - iii. Chemical engineering
 - iv. Civil engineering
 - v. Electrical engineering
 - vi. Electronics and communication engineering
 - vii. Geodetic engineering
 - viii. Mechanical engineering
 - ix. Metallurgical engineering
 - x. Mining engineering
 - xi. Naval architecture and marine engineering
 - xii. Sanitary engineering
 - b. Medicine and allied professions
 - i. Medicine
 - ii. Medical technology
 - iii. Dentistry
 - iv. Midwifery
 - v. Nursing
 - vi. Nutrition and dietetics
 - vii. Optometry
 - viii. Pharmacy
 - ix. Physical and occupational therapy
 - x. Radiologic and x-ray technology
 - xi. Veterinary medicine
 - c. Accountancy
 - d. Architecture
 - e. Criminology
 - f. Chemistry
 - g. Customs brokerage
 - h. Environmental planning
 - i. Forestry
 - j. Geology
 - k. Interior design
 - l. Landscape architecture
 - m. Law

¹ This is limited to Filipino citizens save in cases prescribed by law.

- n. Librarianship
- o. Marine deck officers
- p. Marine engine officers
- q. Master plumbing
- r. Sugar technology
- s. Social work
- t. Teaching
- u. Agriculture
- v. Fisheries

(Art. XII, Sec. 14 of the Constitution; Sec. 1 of RA 5181)

3. Retail trade enterprises with paid-up capital of less than US\$2,500,000 (Sec. 5 of RA 8762)²
4. Cooperatives (Ch. III, Art. 26 of RA 6938)
5. Private security agencies (Sec. 4 of RA 5487)
6. Small-scale mining (Sec. 3 of RA 7076)
7. Utilization of marine resources in archipelagic waters, territorial sea, and exclusive economic zone as well as small-scale utilization of natural resources in rivers, lakes, bays, and lagoons (Art. XII, Sec. 2 of the Constitution)
8. Ownership, operation and management of cockpits (Sec. 5 of PD 449)
9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons (Art. II, Sec. 8 of the Constitution)³
10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines (various treaties to which the Philippines is a signatory and conventions supported by the Philippines)³
11. Manufacture of firecrackers and other pyrotechnic devices (Sec. 5 of RA 7183)

Up to Twenty-Percent (20%) Foreign Equity

12. Private radio communications network (RA 3846)

Up to Twenty-Five Percent (25%) Foreign Equity

13. Private recruitment, whether for local or overseas employment (Art. 27 of PD 442)
14. Contracts for the construction and repair of locally-funded public works (Sec. 1 of Commonwealth Act No. 541, Letter of Instruction No. 630) except:
 - a. Infrastructure/development projects covered in RA 7718; and
 - b. Projects which are foreign funded or assisted and required to undergo international competitive bidding (Sec. 2(a) of RA 7718)
15. Contracts for the construction of defense-related structures (Sec. 1 of CA 541)

Up to Thirty Percent (30%) Foreign Equity

16. Advertising (Art. XVI, Sec. 11 of the Constitution)

² Full foreign participation is allowed for retail trade enterprises: (a) with paid-up capital of US\$2,500,000 or more provided that investments for establishing a store is not less than US\$830,000; or (b) specializing in high end or luxury products, provided that the paid-up capital per store is not less than US\$250,000 (Sec. 5 of RA 8762)

³ Domestic investments are also prohibited (Art. II, Sec. 8 of the Constitution; Conventions/Treaties to which the Philippines is a signatory)

Up to Forty Percent (40%) Foreign Equity

17. Exploration, development and utilization of natural resources (Art. XII, Sec. 2 of the Constitution)⁴
18. Ownership of private lands (Art. XII, Sec. 7 of the Constitution; Ch. 5, Sec. 22 of CA 141; Sec. 4 of RA 9182)
19. Operation and management of public utilities (Art. XII, Sec. 11 of the Constitution; Sec. 16 of CA 146)
20. Ownership/establishment and administration of educational institutions (Art. XIV, Sec. 4 of the Constitution)
21. Culture, production, milling, processing, trading excepting retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof⁵ (Sec. 5 of PD 194; Sec. 15 of RA 8762)⁵
22. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation (Sec. 1 of RA 5183)
23. Project proponent and facility operator of a BOT Project requiring a public utilities franchise (Art. XII, Sec. 11 of the Constitution; Sec. 2(a) of RA 7718)
24. Operation of deep sea commercial fishing vessels (Sec. 27 of RA 8550)
25. Adjustment companies (Sec. 323 of PD 612 as amended by PD 1814)
26. Ownership of condominium units where the common areas in the condominium project are co-owned by the owners of the separate units or owned by a corporation (Sec. 5 of RA 4726)

Up to Sixty Percent (60%) Foreign Equity

27. Financing companies regulated by the Securities and Exchange Commission (SEC) (Sec. 6 of RA 5980 as amended by RA 8556)⁶
28. Investment houses regulated by the SEC (Sec. 5 of PD 129 as amended by RA 8366)⁶

LIST B: FOREIGN OWNERSHIP IS LIMITED FOR REASONS OF SECURITY, DEFENSE, RISK TO HEALTH AND MORALS AND PROTECTION OF SMALL- AND MEDIUM-SCALE ENTERPRISES

Up to Forty Percent (40 %) Foreign Equity

1. Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance:
 - a. Firearms (handguns to shotguns), parts of firearms and ammunition therefor, instruments or implements used or intended to be used in the manufacture of firearms
 - b. Gunpowder
 - c. Dynamite
 - d. Blasting supplies

⁴ Full foreign participation is allowed through financial or technical assistance agreement with the President (Art. XII, Sec. 2 of the Constitution)

⁵ Full foreign participation is allowed provided that within the 30-year period from start of operation, the foreign investor shall divest a minimum of 60 percent of their equity to Filipino citizens (Sec. 5 of PD 194; NFA Council Resolution No. 193 s. 1998)

⁶ No foreign national may be allowed to own stock in financing companies or investment houses unless the country of which he is a national accords the same reciprocal rights to Filipinos (Sec. 6 of RA 5980 as amended by RA 8556; PD 129 as amended by RA 8366)

- e. Ingredients used in making explosives:
 - i. Chlorates of potassium and sodium
 - ii. Nitrates of ammonium, potassium, sodium barium, copper (11), lead (11), calcium and cuprite
 - iii. Nitric acid
 - iv. Nitrocellulose
 - v. Perchlorates of ammonium, potassium and sodium
 - vi. Dinitrocellulose
 - vii. Glycerol
 - viii. Amorphous phosphorus
 - ix. Hydrogen peroxide
 - x. Strontium nitrate powder
 - xi. Toluene
 - f. Telescopic sights, sniper scope and other similar devices
 However, the manufacture or repair of these items may be authorized by the Chief of the PNP to non-Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance (RA 7042 as amended by RA 8179)
2. Manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) clearance:
 - a. Guns and ammunition for warfare
 - b. Military ordnance and parts thereof (e.g., torpedoes, depth charges, bombs, grenades, missiles)
 - c. Gunnery, bombing and fire control systems and components
 - d. Guided missiles/missile systems and components
 - e. Tactical aircraft (fixed and rotary-winged), parts and components thereof
 - f. Space vehicles and component systems
 - g. Combat vessels (air, land and naval) and auxiliaries
 - h. Weapons repair and maintenance equipment
 - i. Military communications equipment
 - j. Night vision equipment
 - k. Stimulated coherent radiation devices, components and accessories
 - l. Armament training devices
 - m. Other as may be determined by the Secretary of the DND
 However, the manufacture or repair of these items may be authorized by the Secretary of National Defense to non-Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance (RA 7042 as amended by RA 8179).
 3. Manufacture and distribution of dangerous drugs (RA 7042 as amended by RA 8179)
 4. Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks posed to public health and morals (RA 7042 as amended by RA 8179)
 5. All forms of gambling, e.g. race track operation (RA 7042 as amended by RA. 8179)
 6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000 (RA 7042 as amended by RA 8179)
 7. Domestic market enterprises which involve advanced technology or employ at least fifty (50) direct employees with paid-in-equity capital of less than the equivalent of US\$100,000 (RA 7042 as amended by RA 8179)

