

THE SENATE AND THE HOUSE BILLS ON FOREIGN INVESTMENTS: A Comparison, Analysis, and Proposed Consolidation

SULPICIO GUEVARA *

The Need for Foreign Investments Law

Senate Bill No. 80 and House Bill No. 2046 (Fourth Congress, First Session 1958) on foreign investments had been passed by the Senate and the House of Representatives on May 16, 1958, respectively. But due to variance in their provisions in some respects and differences of opinion between the two Houses regarding their proper consolidation, the bills failed to become law.

It is admitted that a law on foreign investments is needed to accelerate the tempo of economic development of the Philippines. Local capital is either lacking or timid to accomplish this desired object. The diminishing dollar reserve of the country continues to take a deeper dip, and one of the practical ways to reverse its course is to encourage the establishment of factories and industries which are not only dollar-saving but principally and effectively dollar-producing industries. Local capitalists have been given a chance to put up dollar-saving and dollar-producing industries, but they established mere packaging and assembly plants which required more dollars for the importation of raw materials from abroad. More dollars continue to go out and less and less dollars come into the international dollar reserve. This is so because our imports always exceed our exports. We have really few things to export because we have few industries that turn out products for exports. For many, many years, our exports have been limited to a few things like sugar, copra, lumber, and abacá. The idea of attracting foreign capital into the Philippines is to encourage the establishment in our country of other industries that would turn out finished products for export abroad and bring in more dollars to bolster our national economy. In this way, we shall not only solve our dollar problem but at the same time give work to thousands of Filipino laborers, thereby solving in one shot our unemployment problem, which is one of the most serious problems confronting the Republic today.

A Foreign Investments Law Must Really Attract

A law on foreign investment must really attract, not discourage, foreign investors in the Philippines. It should be a law to benefit not only the host country but also the invited guests. As a matter of fact, under the traditional Filipino hospitality, it should be the invited guest that should receive all the benefit. But, of course, this one-way relationship is expected only in a social invitation. In a business invitation, it is understood and understandable that the

* A.B., LL.B., LL.M.; Professor of Law, College of Law, U.P.

invitation is a business proposition; hence, both the one extending the invitation and the one invited must profit equally in the undertaking. A law that seeks only self-protection and self-enrichment on the part of the country asking for investment, without due regard to the natural desire of the foreign capitalists to gain, will fail to attract. To attract foreign capitalists, a law on foreign investments must satisfy certain minimum expectations of every ordinary prudent businessman. Some of the rights which foreign investors expect to know, and to be assured of, are the following:

1. In what industries shall they be allowed to engage?
2. May they repatriate the profits realized in their investments?
3. Could they repatriate their capital in case of dissolution and liquidation of the enterprise?
4. Is there any fear of their business and property being nationalized at any time by legislation?
5. Are local taxes fair and just and not discriminatory against alien enterprises?
6. Are local labor laws and regulations fair and just, not only to the laborers but also to the employers?
7. Could they freely import machineries, chemicals, raw materials and other capital goods not available in the Philippines and which are needed in the progress and expansion of their business?
8. Is the government of the country in which they have their investments democratic in theory and in practice?

With the exception of three items enumerated above, which may be remedied, if necessary, by separate legislation, most of the minimum expectations may be embodied in a foreign investment law. Are the proposed Senate and House Bills on foreign investments fair enough to sufficiently attract foreign investors in the Philippines?

The Senate and the House Bills Compared and Analyzed

Let us now examine the respective provisions of the Senate Bill No. 80 and the House Bill No. 2046 referred to above.

Senate Bill No. 80

SEC. 1. This Act shall be known as the FOREIGN INVESTMENT LAW.

SEC. 2. *Declaration of policy*—Subject to constitutional limitations and international trade agreements, it is hereby declared to be the national policy that the development program of the Philippines must be based, and should rely mainly, on domestic financing, but foreign capital investments are welcome, preferably in partnership with Philippine capital, provided they satisfy the following conditions:

House Bill No. 2046

SEC. 1. This Act shall be known as the FOREIGN INVESTMENT LAW.

SEC. 2. *Declaration of policy*—Subject to constitutional limitations and international trade agreements, it is hereby declared to be the national policy that the development program of the Philippines must be based, and should rely mainly, on domestic financing, but foreign capital investments are welcome, preferably in partnership with Philippine capital, subject to the provisions of existing laws, provided they satisfy the following conditions:

(a) they are considered necessary to the economic development and welfare of the citizens of the Philippines and will not prejudice the national security;

(b) they will not result in restraint and discriminatory practices, such as, among others, the discrimination against Filipino citizens in their employment and/or compensation;

(c) they will not operate in a particular line of industry wherein domestic investors are already well established or in the import, the wholesale, or the retail trade, and they will not be used basically to supply parent companies with raw materials or semi-finished products;

(d) such investments will directly contribute to the improvement of the international balance of payment;

(e) they will promote the development of essential industries or public services;

(f) that, if the foreign capital is invested in manufacturing, they will utilize as much as possible raw materials which are produced, raised, grown or processed in the Philippines; and

(g) they will result in the further training of Filipino technicians and labor in the operation of the industry: Provided, That if there are sufficient available Filipino technicians and labor this last requirement may be dispensed with.

(a) they are considered necessary to the economic development and welfare of the citizens of the Philippines and will not prejudice the national security or waste of natural resources;

(b) they will not result in restraint and discriminatory practices, such as, among others, the discrimination against citizens of the Philippines in their investment, employment and/or compensation;

(c) they will not operate in a particular line of industry wherein domestic investors are already established; or engaged in the import, the wholesale, or the retail trade, and they will not be used to supply parent companies abroad and other non-resident companies with raw materials or semi-finished products;

(d) they will promote the development of essential industries or of public services, mining, heavy industries, canning, textile manufacture and such other industries as Congress may from time to time declare open to foreign investment under this Act.

(e) that, if the foreign capital is invested in manufacturing, the enterprise will utilize only local materials which are produced, raised, grown or processed in the Philippines whenever available in sufficient quantity for the purpose as may be determined by the National Economic Council: Provided, however, That whenever possible said enterprise shall encourage and promote the production of raw materials necessary in its industry in such manner as the National Economic Council may provide; and

(f) they will result in the further training of Filipino technicians and labor in the operation of the industry taking into consideration the provisions of the Apprenticeship Law.

Both the Senate and the House Bills prohibit foreign capital investors from engaging: "in the wholesale, or retail trade", from operating in a particular line of industry wherein domestic investors are

already "established" (according to the House Bill) or "well-established" (according to the Senate Bill); from engaging in the import trade, or from merely acting as suppliers of raw materials to their parent companies or non-resident companies abroad. The prohibition against engaging in an industry in which the Filipinos are already well-established or purely in the import business, or acting as mere suppliers of local raw materials to foreign companies, are reasonable, prudent, and understandable. But why cannot foreign capital investors in the Philippines engage in the "wholesale" business? To prohibit them from engaging in the wholesale trade is to nullify the privilege granted to them to engage in business. For, it has been held by the Supreme Court that "wholesale" means selling goods or merchandise to another who intends to resell them for profit, while "retail" means to sell directly to consumers.¹ If that is so, and foreign investors cannot engage either in the wholesale or in retail business, how could they ever dispose of their products?

It seems sufficient that these foreign investors be prohibited from engaging primarily in the import trade or from acting as mere suppliers of raw materials to parent or non-resident companies abroad. They may be prohibited from engaging in mere retail trade, but not from the wholesale trade. With respect to the prohibition to engage in an industry wherein domestic investments or Filipino capitalists are already "well-established", the problem may be: What is the test or criterion for determining whether or not Filipino capital investments in a certain line of industry are already well-established? Is it the number of local establishments or the amount of capital invested in such line of industry, or should it be the fact that the products manufactured are sufficient to meet local as well as foreign demand for the products of such line of industry? As long as an industry has not reached the exporting stage for satisfying the local demand, foreign investments in such line of industry must still be welcomed. However, to avoid abuse in the exercise of discretion on the part of the officials charged with the implementation of this legal provision and to avoid misplaced favoritism to some local businessmen engaged in a certain line of industry, sought to be protected, the foreign investments law itself must specify categorically what industries are open and what are not open to foreign investors. House Bill No. 2046 was in the right track when it specified the industries open for foreign investments, by requiring these foreign investors desiring to engage in business in the Philippines that:

(d) they will promote the development of essential industries or of public services, mining, heavy industries, canning, textile manufacture and such other industries as Congress may from time to time declare open to foreign investment under this Act."

But, it is better that after the law has specified the industries open to foreign investments, it should delegate to the National Economic Council the duty to open other industries as the Council may from time to time declare open to foreign investors. The National

¹ City of Manila v. Manila Blue Printing Co., 74 Phil. 317 (1944)

Economic Council would be in a better position to implement the law in this regard.

Both the Senate and the House Bills fairly admonish intending foreign investors that the invitation is "subject to constitutional limitations and international trade agreements." Because of the existing provisions in the Philippine constitution, limiting the disposition, development, and utilization of the natural resources of the Philippines (and the operation of public utilities) only to Filipino citizens or to business associations or corporations 60% of the capital of which is owned by Filipino citizens,² aliens (other than U.S. citizens who, under the Parity Amendment to the Constitution, enjoy equal rights and privileges as Filipinos until the year 1971) are *disqualified* to engage in an enterprise involving the natural resources of the Philippines and the operation of public utilities. However, aliens other than U.S. citizens may lawfully organize a business corporation or joint venture with Filipino capitalists giving the latter the right to own at least 60% of the capital of such business enterprises. If they do not relish the idea of joint venture with the Filipinos, then the only industries legally open to them would be those *other than* the development, disposition, and utilization of the Philippine natural resources and the operation of public utilities. There are still other fields of business enterprise, besides mining, agriculture, lumbering, shipping and public utilities which are open to foreign investors other than U.S. citizens; such as paper-manufacture, fish-canning, textile manufacture, oil processing, flour manufacture, nail, wire, and hardware manufacture, milk factory, meat preparation, cement factory, ship building and many others.

Senate Bill No. 80

SEC. 3. The National Economic Council, within 120 days after the effectivity of this Act, shall:

(a) determine and declare the specific industries wherein the investment of foreign capital will promote the sound economic development and stability of the country taking into consideration the conditions laid down in Section 2 hereof;

(b) provide, through the Philippine Diplomatic Missions, information to prospective investors abroad about said industries, the raw materials locally available thereof, market conditions, labor supply, and other data which may be of interest to them; and

(c) formulate such rules and regulations as may be necessary for the

House Bill No. 2046

SEC. 3. The decisions and actuations of the National Economic Council on all matters provided for in this Act shall be final and binding on all offices and institutions of the Government, including the Central Bank. The National Economic Council, within 120 days after the approval of this Act, shall:

(a) determine the specific industries wherein the investment of foreign development and stability of the country taking into consideration the conditions laid down in Section 2 hereof and shall accordingly submit its recommendation to Congress at the opening of each regular session for appropriate legislation;

(b) provide, through the Philippine Diplomatic Missions, information to

² Art. XIII, Sec. 1, Constitution of the Philippines.

implementation of this Act, such rules and regulations to be as widely publicized and circularized as possible, in the Philippines and abroad.

The Members of the National Economic Council representing the Senate and the House of Representatives shall be disqualified from taking part in the functions of the Council under this Act.

prospective investors abroad about said industries, the raw materials locally available therefor, market conditions, labor supply, and other data which may be of interest to them; and

(c) formulate such rules and regulations as may be necessary for the implementation of this Act, which rules and regulations shall be widely publicized and circularized as possible, in the Philippines and abroad.

The House Bill makes "the decisions and actuations of the National Economic Council on all matters provided for in this Act" to be "final and binding on all offices and institutions of the Government, including the Central Bank". Does this include the courts of justice? Evidently the purpose of the law is to make the right to invest in the Philippines a matter of public policy. However, the National Economic Council cannot have the monopoly of wisdom in the interpretation of the proper application of the Act. The courts of justice must always have the final say in matters of law. Or perhaps, if the intention is to make the decisions of the Government on these questions final as matters of national policy, the decisions and actuations of the National Economic Council may prudently be made appealable to the President of the Philippines, whose decisions shall be final.

Senate Bill No. 80

SEC. 4. *Time within which to act on all applications*—Applications for authority to engage in an enterprise or industry under the provisions of this Act and all requests for a permit, license, ruling or decision on any matter falling within the purview of this Act shall be presented to the National Economic Council which shall act upon and decide the same within thirty (30) days from the date of receipt of such application or request. However, if the data needed by the National Economic Council before any application or petition can be properly decided are such that by reason of their nature or source a longer period is rendered necessary, the National Economic Council shall have an additional period of thirty (30) days within which to decide such application or petition.

House Bill No. 2046

SEC. 4. *Time within which to act on all applications*—Applications for authority to engage in an enterprise or industry under the provisions of this Act and all requests for a permit, license, ruling or decisions on any matter falling within the purview of this Act shall be presented to the National Economic Council which shall act upon and decide the same within thirty days from the date of receipt of such application or request: *Provided*, That if the data needed by the National Economic Council before any application or petition can be properly decided are such that, by reason of their nature and source, a longer period is rendered necessary, the National Economic Council shall have an additional period of thirty days within which to decide such application or petition.

SEC. 5. Alien investors, whether natural or juridical persons, who have been allowed to engage in any of the industries mentioned in the preceeding section, shall be permitted to bring into this country from abroad for the establishment, development and expansion of the industry in which they shall engage:

(1) capital in the form of foreign exchange;

(2) machinery, equipment, instruments and the like, machinery components, raw materials and other capital goods under no-dollar remittance basis, any provisions of Republic Act No. 1410 to the contrary notwithstanding;

(3) intangible assets such as license, patent rights, trademarks and services;
(4) alien managerial representatives and immediate members of their families;

(5) alien experts, technicians, foremen and other skilled personnel who are needed for the establishment, operation and maintenance of the industry and for the training of Filipino experts and technicians; and

(6) the immediate family members of the persons mentioned in paragraph (4) of this section;

Persons mentioned in paragraph (4) may stay in the Philippines as long as the authorized industry and business are in operation. Those mentioned in paragraph (5) and (6) may remain therein for a period of not more than 4 years.

SEC. 5. *Rights of foreign capital investments*—Alien or foreign investors, whether natural or juridical persons, who have been allowed to engage in any of the industries mentioned in the preceeding section, shall be permitted to bring into this country from abroad for the establishment, development and expansion of the industry in which they will engage:

(1) capital in the form of foreign exchange;

(2) machinery equipment, instruments, and the like, machinery components, raw materials not locally available and other capital goods under no-dollar remittance basis, any provision of Republic Act No. 1410 to the contrary notwithstanding: Provided, That the enterprise shall be permitted to import only such items enumerated above actually and necessarily needed by it as shall be determined by rules and regulations of the National Economic Council subject to the provisions of subsection (f) of section two;

(3) intangible assets such as licenses, patent rights, trademarks, and service names as long as they do not infringe upon vested rights assured to nationals;

(4) alien or foreign managerial representatives and immediate members of their families consisting of the spouse and the dependent children;

(5) alien or foreign experts, and technicians who are needed for the establishment, operation and maintenance of the industry and for the training of Filipino experts and technicians; and

(6) the immediate family members of the persons mentioned in paragraph (5) of this section.

Persons mentioned in paragraph (4) may stay in the Philippines as long as the authorized industry and business is in operation and as long as their services are indispensable to that corporation: Provided, however, That in

no case shall they be allowed to work in any other corporation. Those mentioned in paragraphs 5 and 6 may remain therein for a period of not more than four years. In no case, however, may the benefits and privileges provided in paragraphs 4, 5, and 6 be availed of where the actual investment in the authorized industry is less than two hundred thousand pesos.

Why limit the period of residence of managerial representatives, alien experts and technicians and other skilled personnel of these foreign investors to only four years? The apparent purpose of the Bills is to compel the foreign investors to train Filipino managers, experts, and technicians and place them on the job after the four-year period. This is not fair to the foreigner. Technical knowledge and skill are not easily transmitted and acquired; and even if transmissible within 4 years, certain aspects of the technical skill are at times too personal to be transmitted or acquired. Besides, any businessman has a right to rely on those men in charge of the business on whom they have complete trust and confidence. The law may oblige them to employ Filipino personnel, including experts and technicians, but to drive away the men responsible for running the business of the foreign investors after 4 years is selfish and uneconomic. If these foreign experts and technicians would prefer to remain in the country after putting in good order the business of the foreign investor, *and they are otherwise eligible for naturalization*, what is wrong with so many experts and technicians in the Philippines? And why prohibit them from being employed in other business corporations? Has not America, the melting pot of all the nations, profited much from the experience of foreign technicians? If we have not heretofore been very strict with non-skilled "overstaying" aliens, why be so strict now with men possessing technical knowledge and skill, of "knowhow" men in the operation and maintenance of industrial plants?

The House Bill limiting the importation of machinery, equipment and other capital goods to such quantity "*as shall be determined by rules and regulations of the National Economic Council*" may scare away many foreign investors. As to what is needed or not needed in the business of the foreign investor is a matter that properly belongs to the sound discretion of the investor. So long as the materials and equipment desired to be brought in are directly connected with the operation of the business, they must be allowed. Too many "rules and regulations", as a general rule, are irritating to practical businessmen. Evidently, the fear against free and unlimited importation of capital goods is that the alien investor may bring in so many unnecessary machinery and components and raw materials and other capital goods which may drain our international dollar reserves. But this fear is obviated by the provision that all capital goods brought in shall be under the *no-dollar* remittance

basis,³ which means, that the importation of these capital goods needed by the foreign investors are not to be covered by any dollar allocation by the Central Bank; i.e., the dollars used would not come from the Philippine international dollar reserve. If this is not the meaning of the provision, then a special provision may be inserted in the Bill allowing free importation of capital goods needed in the business, provided all dollars necessary for their importation must come from the outside and not supplied by the Central Bank.

Senate Bill No. 80

SEC. 6. *Repatriation of profits and capital.* Foreign investors engaged in industries in the Philippines under this Act shall be allowed to transfer abroad:

a) from twenty-five to one hundred per cent of the amounts of profit they realize in their investments after December 31st of each year as determined under the tax laws in force, the specific amount allowed in each individual case to be determined in accordance with a schedule of preferences which the National Economic Council is hereby directed to formulate taking into consideration the contribution of the investments to the national income, their effect on the balance of payments position, their contribution to the promotion of employment, and the essentiality of the product;

b) the full share of the owners of the foreign investments in the *bonafide* proceeds of the sale of assets in case of partial or total liquidation of the assets of the enterprise or in the *bonafide* proceeds of the sale of part or the whole of an enterprise established in accordance with this Act: *Provided, however,* That the total value of such proceeds allowed to be transferred abroad shall not exceed the value of the capital investment brought into the country by such owners in the forms mentioned in the preceding section as assessed, appraised and/or determined upon their entry by a committee of ex-

House Bill No. 2046

SEC. 6. *Repatriation of capital investments and remittance of profits.*—Foreign investors engaged in industries in the Philippines who brought in and invested foreign capital after the approval of this Act shall be allowed to transfer abroad:

a) Fifty per cent of the amounts of profits they realize in their investments after December thirty-first of each year as determined under the tax laws in force. The Central Bank shall set aside from its international reserve such amount as may be necessary to answer for all such remittances abroad;

b) The repatriation of such foreign investments during such a period and in such amounts as may be provided by the National Economic Council;

c) Payments on the principal and interest in the case of loans obtained from foreign countries which shall not be more than fifty per cent at any one year as may be determined by the National Economic Council;

d) Foreign investments, foreign funds or assets in the Philippines now the subject of repatriation under the rules and regulations of the Central Bank of the Philippines shall henceforth not be subject to repatriation except under the conditions and terms embodied in this Act requiring their reinvestment in those industries to be specified by the National Economic Council as set fourth in Section 3-a:

³ Imports under the "No-dollar remittance" basis refer to those goods which are imported for the payment of which no foreign exchange has been allocated by the Central Bank of the Philippines. (R.A. No. 1410, Sec. 2.)

perts to be appointed by the National Economic Council; and

c) payments on the principal and interest in the case of loans obtained from foreign countries:

Provided, That, provisions of existing laws or regulations to the contrary notwithstanding, all dollar-producing industries whether of foreign or local capital meeting the conditions set in this Act, shall be given priority in the use of dollars produced by these industries for the importation of all machineries, equipment, tools, raw materials and other capital goods needed by these industries. In no case, however, shall the dollar allocation be given in excess of dollars actually produced by these industries.

Provided, That the retirement of such capital as provided for by this Act shall be permitted only after the lapse of five (5) years from the date of such reinvestment: Provided, further, That the remittances of profits from such reinvestment shall be in accordance with the provisions of this Act pertaining to all other kinds of foreign investments.

Provided, That, provisions of existing laws or regulations to the contrary notwithstanding, all dollar-producing industries, whether of foreign or local capital, meeting the conditions set in this Act, shall be given priority in the use of dollars produced by these industries for the importation of all machineries, equipment, tools, raw materials not available locally and other capital goods needed by these industries. In no case, however, shall the dollar allocation be given in excess of dollars actually produced by these industries: Provided, further, That all the dollars produced or earned by such industries shall be set aside as a special fund from which shall be drawn the foreign exchange necessary for the imports as may be herein authorized as decided by the National Economic Council.

The above provision is the most important insofar as the foreign investor is concerned, as it affects his right to enjoy the fruits of his capital investment. The foreign investor would like to know definitely how much of the profits realized in his venture could be taken home by him.

The House Bill allows a fixed rate of 50% of the net profits to be remitted abroad, and the Central Bank is obliged to set aside from its international reserve such amount as may be necessary to answer for such remittances. On the other hand, the Senate Bill allows from 25% to 100% of the net profits, each individual case to be determined in accordance with a schedule of preferences which the National Economic Council is directed to formulate, taking into consideration the contribution of the investments to the national income, their effect on the balance of payments position, their contribution to the promotion of employment, and the essentially of the product. Although, apparently, the Senate Bill allows as much as 100% remittance, yet the right to remit is predicated on so many other factors and conditions that, ultimately, it may mean that remittance of profits for good reasons, may be limited to only 25%. On the other

hand, the House Bill allows profit remittances absolutely to the extent of 50%, and the Central Bank is directed "to set aside from its international reserve such amount." The foreign investor would probably prefer the House Bill as it is more definite, certain and categorical. But most assuredly, the foreign investor would still prefer to take away 100% of his net profits. And why not? The realization of net profits implies that the business had acquired enough surplus, which surplus, in turn, if *bona fide*, implies that the enterprise had *earned* for the country enough dollars arising from its exports. It must be remembered that the enterprise upon being permitted to engage in business under the provisions of this Act must have been adjudged a dollar-producing and dollar-saving industry. If this is not so, a provision, similar to that intended by the House Bill, should be inserted in the law that before a foreign investor may be permitted to remit profits abroad, it must prove that it had earned dollars for the country arising from its business equivalent to not less than the amount of the profits to be remitted.

Senate Bill No. 80

SEC. 7. *Reinvestment of profits.*—The net profits realized by an approved enterprise or industry may, with the approval of the National Economic Council, be reinvested and added, in whole or in part, to the basic foreign capital investment or invested in some other enterprise or industry approved by the National Economic Council.

Any enterprise or industry in the Philippines prior to the approval of this Act and which is financed or operated by foreign capital investments may, subject to the approval of the National Economic Council, reinvest or convert their accumulated profits or foreign capital under the provisions of this Act.

SEC. 8. No foreign loan shall be contracted by any person, partnership, company or enterprise for use in an enterprise authorized or which may be authorized under the provisions of this Act without the prior approval of the National Economic Council.

SEC. 9. *Tax exemptions.*—Foreign investments authorized under the provisions of this Act shall be entitled to the exemptions provided in the Tax Exemption Law (Republic Act No. 901) if such foreign investments are

House Bill No. 2046

SEC. 7. *Reinvestment of profits.*—The net profits realized by an approved enterprise or industry may with the approval of the National Economic Council, subject to the existing laws be reinvested and added, in whole or in part, to the original foreign capital investment, or invested in some other enterprise or industry approved by the National Economic Council.

SEC. 8. *Foreign Loans.*—Foreign loans may be contracted by any person, partnership, company or enterprise but only in such amount as shall be necessary for use in the enterprise authorized or which may be authorized under the provisions of this Act.

SEC. 9. *Obligations of foreign capital investments.*—All business enterprises operating under the provisions of this Act shall:

a) Make a verified report to the National Economic Council every June thirty and December thirty-one of every year which shall state (1) the names of all aliens in their employment, indicating the compensation and other emoluments of each; (2) date of their arrival in the Philippines; (3) the original date of their employment in the Philippines; (4) nature of their

qualified under the provisions of said Act: *Provided, however,* That income derived from within the Philippines by foreign managerial representatives, technicians, and skilled personnel in enterprises subject to the provisions of this Act, shall be taxed in accordance with the laws in force at the time of accrual of such income.

SEC. 10. *Obligations of foreign capital investments.*—All business enterprises operating under the provisions of this Act shall have the following obligations:

a) Make a verified report to the National Economic Council every June 30 and December 31 of every year which shall state (1) the names of all aliens in their employment, indicating the compensation and other emoluments of each; (2) date of arrival in the Philippines; (3) the original date of their employment in the Philippines; (4) nature of work or employment with the company; and (5) names of all the immediate members of their families residing in the Philippines; and

b) Make an annual report, which shall include a balance sheet and income statement (profit and loss) supported by schedules showing wages paid, and local materials purchased, and other foreign exchange disbursement.

The National Economic Council shall furnish the Commission on Immigration and the Central Bank a copy of each of the reports mentioned in paragraph (a) hereof.

SEC. 11. *Rights and privileges available to local capital.*—All rights and privileges herein granted to foreign capital investment and/or the equivalent of such rights and privileges shall be available likewise to local capital that may be invested in such industries as are allowed to be established under this Act.

SEC. 12. *Additional appropriation for National Economic Council.*—The sum

work or employment with the company, and (5) names of all the immediate members of their families residing in the Philippines: *Provided, however,* That the National Economic Council shall likewise make a report to the Congress of the Philippines; and

b) make an annual report, which shall include a balance sheet and income statement (profit and loss) supported by schedules showing wages paid, local materials purchased, and all foreign exchange disbursement.

The National Economic Council shall furnish the Senate, the House of Representatives, the Bureau of Immigration and the Central Bank a copy of each of the reports mentioned in paragraph (a) hereof.

SEC. 10. *Rights and privileges available to non-resident Filipinos.*—All rights and privileges herein granted to foreign capital investment and/or the equivalent of such rights and privileges shall be available likewise to capital that may be invested by non-resident Filipinos in such industries as are allowed to be established under this Act if the capital comes from outside the Philippines.

SEC. 11. *Penal Provisions.*—Any violation of the provisions of this Act, or of any rule or regulation promulgated by the National Economic Council implementing this Act, shall be punished by a fine not exceeding two thousand pesos (P2,000) or imprisonment of not more than one year, or both, in the discretion of the court.

SEC. 12. *Repeal of inconsistent laws.*—Save the provisions of Republic Act Numbered Fourteen hundred and ten and the rules and regulations promulgated thereunder; all Acts or parts of Acts, Executive Orders, Administrative Orders, rules and regulations, and circulars which are inconsistent with the provisions of this Act are hereby repealed.

of two hundred thousand pesos is hereby appropriated from the General Fund for the fiscal year 1958-1959 in order to carry out the provisions of this Act. Subsequent appropriations shall be included in the regular General Appropriation Act.

SEC. 13. Penal Provisions.—Any violation of the provisions of this Act, or any rule or regulation promulgated by the National Economic Council implementing this Act, shall be punished with a fine not exceeding two thousand pesos (P2,000) or imprisonment of not more than one year, or both, in the discretion of the court.

SEC. 14. Repeal of inconsistent laws.
—Save the provisions of Republic Act Numbered Fourteen hundred and ten and the rules or regulations promulgated thereunder, all Acts or parts of Acts, Executive Orders, Administrative Orders, rules and regulations, and circulars which are inconsistent with the provisions of this Act are hereby repealed.

SEC. 15. Effectivity.—This Act shall take effect upon its approval.

The remaining provisions of the Senate and House Bills are substantially the same, except that the Senate Bill provides for tax exemptions.

Exemption from local taxes would, of course, greatly attract foreign investors into the Philippines. However, it is believed that foreign capitalists who are doing business in the Philippines and who are supposed to make money out of their investments would only be too glad to contribute in sharing the expenses of the Government which exist not only for the protection of citizens but of residents as well. It is not fair to local capitalists that these foreign investors should receive all the benefits of protection and none of the obligations incident to such protection afforded all citizens and foreigners alike. At the same time, taxes are reprehensible if they are not justly and fairly imposed, if they are discriminatory, and are oftentimes increased capriciously. In such cases, even local capitalists would be discouraged to engage or continue in business.

Instead of tax exemptions, it is suggested that a provision similar to those applied to certain public utilities be inserted; namely, that a certain percentage (say 5%) of the gross earnings of the foreign capitalists be paid into the treasury of the National Govern-

SEC. 13. Effectivity.—This Act shall take effect upon its approval.

ment, which shall be in lieu of all taxes imposed on similar business by the tax laws of the Philippines. That would in a way make the Government of the Philippines a partner or stockholder in all foreign investments operated in the Philippines, insofar as sharing in the earnings is concerned. Such a simple arrangement would do away with the intricacies of tax impositions and the possibilities of tax evasions.

Having compared the two Bills and noted the deficiencies and merits of each, we may now proceed to consolidate the two pieces of legislation with a view to submitting a proposed Bill on the matter.

In addition to what has been pointed out, we suggest that only foreign investments with a capital of not less than a certain minimum capital as may be fixed in the law be permitted to enjoy the rights and privilege under the Foreign Investments Law. Both the Senate and the House Bills fail to require any minimum capital investment in the Philippines. Small capital investments could very well be taken care of by local capitalists. It is only the "big business" enterprise that we should attract, not the small ones which local capital could afford to put up. With such an additional suggestion, and other minor details which need not be specially discussed here but which may be found in the proposed Bill, the following is our own:

PROPOSED BILL ON FOREIGN INVESTMENTS
AN ACT
TO PROVIDE A SOUND BASIS FOR FOREIGN CAPITAL INVESTMENT IN THE PHILIPPINES, FOR THE IMPLEMENTATION THEREOF, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short title.*—This Act shall be known and may be cited as THE PHILIPPINE FOREIGN INVESTMENT LAW.

SEC. 2. *Declaration of policy.*—Subject to constitutional limitations and international trade agreements and treaties to which the Republic of the Philippines is or may be a signatory, it is hereby declared to be the national policy that the economic development program of the Philippines must be based, and should rely mainly, on domestic financing, but foreign capital investments are welcome, preferably in joint venture with Filipino capital, subject to the following conditions:

(a) That they shall be really and effectively dollar-saving and dollar-producing enterprises for the Philippines;

(b) That they are not inimical to the economic and national security of the citizens of the Philippines;

(c) That they will not engage in business which will result in restraint of trade and discriminatory practices, such as, among others, the discrimination against citizens of the Philippines in their investment, employment and/or compensation;

(d) That they will not engage primarily in the import business nor in mere packaging or assembly factories or plants using foreign-made materials, nor

shall they be used basically to supply parent companies abroad and other non-resident companies with raw materials or semi-finished products;

(e) That they will not engage primarily in the retail business;

(f) That they will utilize, as much as possible, only local raw materials and will employ and train Filipino technicians and labor in the operation of their business;

(g) That they will promote the development of essential industries or of public services, such as, mining, heavy industries, canning, textile manufacture, paper manufacture, oil processing and such other industries as the National Economic Council may, from time to time, declare open to foreign investment under this Act;

(h) That the capital investment in the Philippines of each foreign investor shall not be less than one million (P1,000,000) pesos.

SEC. 3. *The National Economic Council; duties and powers.*—The National Economic Council, within 120 days after the effectivity of this Act, shall:

(a) determine and declare the specific industries wherein the investment of foreign capital will promote the sound economic development and stability of the country, taking into consideration the conditions laid down in section two hereof;

(b) provide, through the Philippine Diplomatic Missions, information to prospective investors abroad about said industries, the raw materials locally available therefor, market conditions, labor supply, business taxes, labor laws, and other data which may be of interest to them;

(c) formulate such rules and regulations as may be necessary for the proper implementation of this Act, such rules and regulations to be widely publicized and circularized as possible, in the Philippines and abroad.

The decisions or orders of the National Economic Council regarding the implementation of the provisions of this Act shall be binding upon all offices and institutions of the Government, including the Central Bank, except that on questions of law or legal interpretation of the provisions of this Act, the said decisions or orders may be appealed to the President of the Philippines, whose decision shall be final.

SEC. 4. *Application for authority to engage in business in the Philippines.*—All applications of foreign capitalists to engage in business in the Philippines must be filed with the National Economic Council which shall state, among others, its authorized capital stock, the purpose for which it desires to engage in business in the Philippines, the names and addresses of its board of directors, and a certified copy of its articles of incorporation and by-laws. All such applications for authority to engage in business in the Philippines, as well as all requests for a ruling or decision on any matter falling within the purview of this Act shall be acted and decided upon by the National Economic Council within (30) days from the date of receipt of such application or request: Provided, however, That if the data needed by the National Economic Council before any application or request for ruling can be properly decided are such that by reason of their nature or source, a longer period is necessary, the National Economic Council shall have an additional period of thirty (30) days within which to decide such application or request.

SEC. 6. *Certificate of Authority.*—No foreign investor shall be permitted to transact business in the Philippines under the provisions of this Act without first having been issued a certificate of authority by the National Economic Council: Provided, however, that no such authority shall be granted unless the

applicant shall have appointed and designated a resident agent in the Philippines and had paid the permit fee of two hundred pesos (P200.00).

SEC. 6. *Suits, summons, and application of local laws.*—No foreign investor transacting business in the Philippines without the necessary certificate of authority shall maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever in the Philippine courts, and such debt, claim, or demand are hereby declared void;⁴ but such foreign investor may be sued by persons who may have rights against it, notwithstanding the lack of certificate of authority or failure to designate a resident agent.

Summons and legal process served upon the resident agent shall be binding upon the foreign investor, and should there be no such resident agent or he should become mentally incompetent or otherwise unable or unwilling or it is impossible to accept such service, the service may be made upon the National Economic Council in such case to send by registered mail to the foreign investor at its home address a true copy of the summons or legal process served on him.

All foreign investors authorized to engage in business in the Philippines under the provisions of this Act, shall be bound by all laws, rules and regulations applicable to domestic or local enterprises of the same class, save and except such as are expressly provided by this Act, and save and except such as, provide for the organization or dissolution of the parent corporation or enterprise or such as fix the relations, liabilities, responsibilities or duties of the members, stockholders or officers of the foreign corporation or enterprise to each other or among themselves, in which cases the laws under which the corporation or enterprise has been incorporated or created shall apply.

SEC. 7. *Rights of foreign investors.*—Foreign investors authorized to engage in business in the Philippines under the provisions of this Act, shall be permitted to bring into the Philippines for the establishment, development, and expansion of its or his industry the following:

- (a) capital in the form of foreign exchange;
- (b) machinery, equipment, raw materials, and other capital goods requiring no dollar remittance from the Central Bank;
- (c) intangible assets, such as licenses, patent rights, trademarks, and service names which do not infringe upon vested rights assured by Philippine law to nationals;
- (d) alien managerial representatives, experts and technicians, and the immediate members of their families and dependents: Provided, however, that all of them are eligible under the immigration laws of the Philippines, and, provided, further, that the said alien managerial representatives, experts and technicians and their respective families and dependents shall remain only for such period of time necessary for the training of Filipino experts and technicians; provided, however, that said alien managerial representatives, experts and technicians and their dependents may remain permanently in the Philippines of

⁴ Failure to comply with a statute requiring license before transacting business in a state involves one or more of the following sanctions: (1) a fine imposed either on the corporation or on the agent who transacted the corporation's business in the state; (2) making the officers and stockholders of the corporation individually liable as partners for its obligations; (3) denial to the corporation of the right to bring suit in the state courts; and (4) a declaration that all contracts made by the corporation in the state shall be void. (E.E. CHEATHAM et al., *CASES AND MATERIALS ON CONFLICT OF LAWS*, 4th Ed. (1957). Even in cases where the corporation law does not expressly declare the contract void, some courts hold that such contract is void. Says one court: "If a statute prohibits foreign corporations from doing business in the state without first having complied with the law, this prohibition is as effective to make the contracts of such corporations void as though the statute in terms so declared them; for if an act is prohibited or declared unlawful, it is not necessary for the law to declare the act or contract void; an unlawful act is itself void." (*Tri-State Amusement Co. v. Forest Park Highlands Amusement Co.*, 192, Mo. 404, 90 S.W. 102, 111 Am. S.R. p. 511). The Utah Corporation Law, however, expressly declares such contracts void on behalf of the corporation or its assignees. [CORPORATION MANUAL, 59 ed. Vol. II (1958), U.S. Corporation Co., N.Y.] The author believes that this should be the better policy.

otherwise eligible and have actually applied for naturalization under the Philippine Naturalization Law.

SEC. 8. *Right against nationalization.*—Foreign investments authorized to engage in business in the Philippines under the provisions of this Act, shall not be subjected to nationalization by the Government, save and except in case of war in which the Philippines is a party. And save and except where the foreign investor is an enemy alien, such nationalization shall be made only upon just compensation.

SEC. 9. *Repatriation of capital and profits.*—Foreign investments authorized to engage in business in the Philippines under the provisions of this Act shall be allowed to transfer abroad:

(a) 100% of the amounts of the net profits realized by them in their investments in the Philippines, provided that they are *bona fide* net profits as certified by an independent certified public accountant and as verified by a representative of the Auditor General of the Philippines;

(b) 100% of the share of the stockholders or owners of the foreign investments in the *bona fide* proceeds of the sale of assets in case of partial or total liquidation of the enterprise: Provided, however, That the total value of such proceeds allowed to be transferred abroad shall not exceed the value of the capital investment brought into the Philippines by such stockholders or owners in any forms of investment mentioned in Section 7 of this Act, as assessed, appraised and/or determined upon their entry by a committee of experts appointed by the National Economic Council;

(c) payments on the principal and interest in the case of loans obtained abroad as approved by the National Economic Council pursuant to Section 11 hereof.

SEC. 10. *Reinvestment of profits.*—The net profits realized by an approved enterprise or industry may, with the approval of the National Economic Council, be reinvested and added, in whole or in part, to the basic foreign capital investment or invested in some other enterprise or industry approved by the National Economic Council.

SEC. 11. *Foreign loans.*—No foreign loan shall be contracted by a foreign investment authorized to do business in the Philippines under the provisions of this Act without the prior approval of the National Economic Council; provided, however, that no such loan may be approved in excess of the total amount of foreign exchange already earned by such foreign investment up to the date of the loan.

SEC. 12. *Obligations of foreign investors.*—All foreign investors operating under the provisions of this Act shall have the following obligations:

(a) To employ and train immediately a sufficient number of Filipino experts and technicians in their business enterprise, subject to the provisions of the Apprenticeship Law;

(b) To see to it that at least 50% of its total personnel are citizens of the Philippines;

(c) To make and file a verified report to the National Economic Council on or before January 30 of every year, stating among other things: (1) the names and addresses of all aliens in their employ, and the names of all the immediate members of their families and dependents; (2) the number and proportion of Filipino employees in relation to its total personnel in the enterprise and the minimum wages or compensation given to Filipino employees; (3) a statement of its business operation for the preceding year, which shall

include a balance sheet and profit and loss statement; and (4) such other matters as may be required by the National Economic Council.

(d) To pay quarterly to the Government of the Republic of the Philippines a sum equal to five per centum (5%) of its total or gross earnings arising out of its business, as verified by a Government auditor, this payment to be in lieu of and all taxes imposed by the tax laws of the Republic of the Philippines and its political subdivisions on the same or similar business enterprise as of that of the foreign investor.

SEC. 13. *Revocation of certificate of authority; withdrawal.*—The certificate of authority granted to any foreign investment in the Philippines under the provisions of this Act may be revoked by the National Economic Council for violation of any of the terms and conditions imposed by this Act or of the rules and regulations issued by the National Economic Council. Any foreign investment doing business in the Philippines under the provisions of this Act may also withdraw from the Philippines subject to the prior approval of the National Economic Council under the rules and regulations that it may prescribe; provided, however, that no authority to withdraw shall be granted unless all its debts and liabilities in the Philippines shall have been settled or guaranteed. A withdrawal fee of ₱200.00 shall be paid for the issuance of a certificate of withdrawal.

SEC. 14. *Penal Provisions.*—Any violation of the provisions of this Act, or any rule or regulation issued by the National Economic Council implementing this Act, shall be punished with a fine of not more than ₱200 or by imprisonment of not more than 1 year, in the discretion of the court. In addition to these penalties, the certificate of authority of the foreign investor may be revoked pursuant to the next preceding section.

SEC. 15. *Repeal of inconsistent laws.*—All Acts or parts of Acts, executive orders, administrative orders, rules or regulations which are inconsistent with the provisions of this Act are hereby repealed.

SEC. 16. *Effectivity.*—This Act shall take effect upon its approval.