SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

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SENATE

S.B. No. 1639

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Introduced by SEN. WIN GATCHALIAN

AN ACT
AMENDING REPUBLIC ACT NO. 8762, OTHERWISE KNOWN AS THE RETAIL TRADE LIBERALIZATION ACT, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

In 2000, the Philippines passed Republic Act No. 8762, otherwise known as the Retail Trade Liberalization Law, to allow the entry of foreign investments in the retail sector to stimulate economic growth, to create more job opportunities, and to provide Filipino consumers with better choices and higher quality goods and services at lower prices.

Seventeen years into the passage of the law, the reforms made under RA No. 8762 have not resulted in substantial foreign investments in the retail trade sector. Based on the list of foreign retailers pre-qualified by the DTI-BOI, only 22 foreign retailer firms have invested in the country's retail sector since 2000.[1] According to the Labor Force Survey, unemployment rate is at 5.7% as of April 2017,[2] and while a robust retail trade industry could have been a vehicle for job creation, the opportunity for employment is lessened without such investments.

[1] See http://www.boi.gov.ph/files/laws/List%20of%20Foreign%20Retailers%20Prequalified%20as%20of%20December%202016.pdf. Last viewed July 3, 2017. 4:30 pm.
[2] See https://psa.gov.ph/statistics/survey/labor-force. Last viewed July 3, 2017. 4:45 pm.

There is a need to revisit the requirements of the Retail Trade Liberalization Law to truly liberalize and incentivize investments in the retail sector. Currently, the law requires a minimum paid-up capital of $2.5M for a 100% foreign ownership of a retail establishment. These requirements, along with other barriers, have resulted in the Philippines lagging behind other Asian countries in terms of developing a regulatory regime favorable to foreign investment. In other jurisdictions, countries like Cambodia, Indonesia, and Singapore allow FDI in the retail trade sector without setting minimum capital requirements and without limits on foreign equity participation.

Considering that market competition benefits the Filipinos, especially the poor, through job creation made possible by the entry, growth, and expansion of efficient firms, and through lower prices that result from greater variety and higher quality of goods and services, this bill proposes to do away with these barriers to foreign investments by removing the equity and capitalization requirements under the Retail Trade Liberalization Law to create a more favorable investment climate in the country.

This proposed bill is in keeping with the government's legislative agenda under the PDP 2017-2022 to "align guidelines for foreign investments with the Foreign Investment Act and lower capital requirements for foreign enterprises and harmonize with those observed in Asian countries"[3] towards increased local and foreign investments. This is a Senate counterpart bill to the one filed in the House of Representatives by Representative Arthur C. Yap.[4]

WIN GATCHALIAN

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[3] Philippine Development Plan 2017-2002 (October, 2016), Chapter 9, Expanding Economic Opportunities in Industry and Services through *Trabaho* at *Negosyo*, p.134.

[4] This bill was originally filed in the House of Representatives during the Seventeenth Congress, First Regular Session.

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

SECTION. 1. *Section 5 of Republic Act No. 8762* is hereby amended to read as follows:

"SEC. 5. *Foreign Equity Participation.* - Foreign-owned partnerships, associations and corporations formed and organized under the laws of the Philippines may, upon registration with the Securities and Exchange Commission (SEC) and the Department of Trade and Industry (DTI), or in case of foreign-owned single proprietorships, with the DTI, engage or invest in the retail trade business. **[**, subject to the following categories:**]**

[Category A - Enterprises with paid-up capital of the equivalent in Philippine Pesos of less than Two million five hundred thousand US dollars (US$2,500,000) shall be reserved exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.**]**

[Category B - Enterprises with a minimum paid-up capital of the equivalent in Philippine Pesos of Two million five hundred thousand US dollars (US$2,500,000) but less than Seven million five hundred thousand US dollars (US$7,500,000) may be wholly owned by foreigners except for the first two (2) years after the effectivity of this Act wherein foreign participation shall be limited to not more than sixty percent (60%) of total equity.]

[Category C - Enterprises with a paid-up capital of the equivalent in Philippine Pesos of Seven million five hundred thousand US dollars (US$7,500,000) or more may be wholly owned by foreigners: *Provided, however,* That in no case shall the investments for establishing a store in Categories B and C be less than the equivalent in Philippine Pesos of Eight hundred thirty thousand US dollars (US$830,000).]

[Category D - Enterprises specializing in high-end or luxury products with a paid-up capital of the equivalent in Philippine Pesos of Two hundred fifty thousand US dollars (US$250,000) per store may be wholly owned by foreigners.]

The foreign investor shall be required to maintain in the Philippines the full amount of **ITS** [the prescribed minimum] capital, **OR, IN CASE ANY PART OF THE CAPITAL IS SOLD TO A CITIZEN OF THE PHILIPPINES, OR TO A PARTNERSHIP, ASSOCIATION OR CORPORATION OWNED AND CONTROLLED BY CITIZENS OF THE PHILIPPINES, THE UNSOLD AMOUNT OF ITS CAPITAL,** unless the foreign investor has notified the SEC and the DTI of its intention to repatriate its capital and cease operations in the Philippines. The actual use in Philippine operations of the inwardly remitted [minimum] capital [requirement] shall be monitored by the SEC.

Failure to maintain the [full] amount of [the prescribed minimum] capital **REQUIRED IN THE IMMEDIATELY PRECEDING PARAGRAPH,** prior to notification of the SEC and the DTI, shall subject the foreign investor to penalties or restrictions on any future trading activities/business in the Philippines.

Foreign retail stores shall secure a certification from the Bangko Sentral ng Pilipinas (BSP) and the DTI, which will verify or confirm inward remittance of **ITS** [the minimum required] capital investment."

Sec. 2. Section 6 of Republic Act No. 8762 is hereby deleted.

Sec. 3. Section 7 of Republic Act No. 8762 is hereby deleted.

Sec. 4. Section 8 of Republic Act No. 8762 is hereby amended to read as follows:

"SEC. 8. *Qualifications of Foreign Retailers.* – [No foreign retailer shall be allowed to engage in retail trade in the Philippines unless all the following qualifications are met:

a. A minimum of Two hundred million US dollars (US$200,000,000) net worth in its parent corporation for Categories B and C, and Fifty million US dollars (US$50,000,000) net worth in its parent corporation for Category D;

b. Five (5) retailing branches or franchises in operation anywhere around the world unless such retailer has at least one (1) store capitalized at a minimum of Twenty-five million US dollars (US$25,000,000);

c. Five (5)-year track record in retailing; and

d.] Only nationals from, or juridical entities formed or incorporated in countries which allow the entry of Filipino retailers shall be allowed to engage in retail trade in the Philippines.

The DTI is hereby authorized to pre-qualify all foreign retailers, subject to the provisions of this Act, before they are allowed to conduct business in the Philippines.

The DTI shall keep a record of qualified foreign retailers who may, upon compliance with law, establish retail stores in the Philippines. [It shall ensure that the parent retail trading company of the foreign investor complies with the qualifications on capitalization and track record prescribed in this section.]

The Inter-Agency Committee on Tariff and Related Matters of the National Economic and Development Authority (NEDA) Board shall formulate and regularly update a list of foreign retailers of high-end or luxury goods and render an annual report on the same to Congress."

SEC. 5. ***Repealing Clause.*** – Republic Act No. 8762, and all laws, decrees, executive orders, proclamations, rules and regulations, and issuances, or parts thereof which are inconsistent with the provisions of this Act, are hereby repealed, amended or modified accordingly.

SEC. 6. ***Separability Clause.*** – If any provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain in full force and effect.

SEC. 7. ***Effectivity.*** – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation in the Philippines.

Approved,