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Philippines

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Foreign investment negative list

The Philippine Foreign Investments Act provides for the formulation of a regular foreign investment negative list (FINL) covering investment areas or activities that are open to non-Philippine investors. On May 29 2015, President Aquino issued, through Executive Order 184, the tenth FINL, which replaced the ninth FINL issued in 2012.

The tenth FINL reiterates foreign investment restrictions in areas of activity such as: land ownership; mass media; and, exploitation of natural resources. However, there are several noticeable items in the new FINL.

While the ninth FINL enumerated 47 professions that are restricted to Philippine nationals, the tenth FINL trimmed down the list and only retained pharmacy, radiologic and x-ray technology, criminology, forestry and law as the professions that are absolutely reserved for Philippine nationals. The tenth FINL did away with restrictions of foreign nationals' practice of, inter alia, engineering, medicine, and accountancy. Under the tenth FINL, a foreigner is allowed to practice his or her profession in the Philippines if the foreigner's country permits Filipinos to practise the same profession within such country's territorial limits.

Foreign equity in companies engaged in the operation of public utilities remains set at a maximum of 40%. Conversely, the tenth FINL removed the management of public utilities from the list. This does not mean, however, that foreigners can now manage public utilities. Under existing laws, foreign investors could only participate in the governing body of a public utility (as

directors) to the extent that their proportionate share in the capital (which is currently capped at 40%), and in no event can they be executive and managing officers of the public utility. In this regard, the tenth FINL likewise enshrines a 40% foreign equity limitation on facility operators of an infrastructure or a development facility requiring a public utility franchise.

Unlike in the ninth FINL, project proponents of an infrastructure or a development facility requiring a public utility franchise are no longer listed under the tenth FINL as required to have at least 60% Filipino ownership. However, it is likely that the deletion was made because of redundancy – as noted above, there is still a 40% foreign equity limitation in companies engaged in the operation of public utilities.

Many of the restrictions on foreign ownership stem from the Philippine Constitution. Until it is amended, it is not expected that there will be a significant reduction of activities listed in the FINL.

Hector de Leon Jr and Levi Anthony Malaylay