

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

EDUCATION
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24 JUL -2 P12:35

SENATE

RECEIVED BY: _____

S. No. 2717

Introduced by Senator FRANCIS G. ESCUDERO

**AN ACT
LIBERALIZING THE LEASE OF LANDS BY FOREIGN INVESTORS,
ESTABLISHING THE STABILITY OF LONG-TERM LEASE CONTRACTS,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 7652, OTHERWISE
KNOWN AS THE "INVESTORS' LEASE ACT"**

EXPLANATORY NOTE

Attracting foreign investors has been a long-standing priority of the government, spanning several administrations. Foreign direct investment, as a source of financing, is critical in realizing socio-economic objectives such as increasing employment levels, creating decent work, infusing technology into domestic businesses, and improving the integration of local enterprises with the global market.

Recently, the Philippine Government has embarked on efforts to ease the economic stumbling blocks for attracting private sector investments, which includes the passage of laws such as the amendments to the Foreign Investments Act of 1991 (Republic Act No. 11467), Retail Trade Liberalization Act of 2000 (Republic Act No. 11595), and Public Service Act (Republic Act No. 11659), as well as the Corporate Recovery and Tax Incentives for Enterprises Act (Republic Act No. 11534).

The efforts of the government and the private sector, however, are stymied by a number of factors – among them is the unsecured property and leasehold rights that may not legally bind third parties due to lack of registrability and indefeasibility.

No less than the Constitution provides that save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain, allowing private corporations or associations to holding alienable lands of the public domain only through lease. This tenuous property and leasehold rights adversely affect investor confidence, increase legal and financial risks, hinder market activity and access to financing, and scare away large-scale investments that rely heavily on stable use of real property.

This bill seeks to address this economic roadblock by strengthening the legal framework for long-term leases provided under Republic Act No. 7652. It expands the allowable lease period to ninety-nine (99) years, subject to certain conditions and requirements.

The proposed measure also ensures that the operative act of registration of lease contracts renders the same binding against third persons and protects the lease contract from collateral attack, or from alteration, modification or cancellation unless otherwise performed through a direct proceeding in accordance with the law. It also allows investors to sublease a leasehold interest, subject to the provisions of the original contract, express consent of the lessor, and subsequent registration of qualified sublease contracts.

Finally, the bill imposes penalties in the form of fines and/or imprisonment to deter unscrupulous leasing of properties. These interventions will ensure the stability, integrity and security of lease contracts; promote ease of doing business; enhance investor confidence; and contribute to the development of the Philippine economy.

In the light of the foregoing, I humbly present this bill for Congress' immediate consideration and approval.



FRANCIS G. ESCUDERO

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

1 Section 1. Section 2 of Republic Act No. 7652, otherwise known as the
2 "Investors' Lease Act", is hereby amended to read as follows:

3 "SEC. 2. *Declaration of Policy.* – It is hereby declared the policy
4 of the State to encourage foreign investments consistent with the
5 constitutional mandate to conserve and develop our own patrimony.
6 Towards this end, the State hereby adopts a flexible and dynamic policy
7 on the granting of long-term lease on private lands to foreign investors
8 for the establishment of industrial estates, factories, assembly or
9 processing plants, agro-industrial enterprises, land development for
10 industrial[?] or commercial use, tourism, **AGRICULTURE**, and other
11 similar priority productive endeavors.

12 **IT IS THE POLICY OF THE STATE TO ENSURE THE**
13 **RELIABILITY OF INVESTORS' LEASE CONTRACTS TO**
14 **GUARANTEE STABILITY AND RETURN OF INVESTMENT."**

15 Sec. 2. Section 4 of Republic Act No. 7652 is hereby amended to read as follows:

16 "SEC. 4. *Coverage.* – Any foreign investor investing in the
17 Philippines shall be allowed to lease private lands in accordance with the

1 laws of the Republic of the Philippines subject to the following
2 conditions:

3 ~~"(1) [No]~~ **THE AGGREGATE PERIOD OF THE** lease contract shall ~~[be~~
4 ~~for a period]~~ **NOT** exceed~~[ing fifty (50) years, renewable once for a~~
5 ~~period of not more than twenty five (25) years]~~ **NINETY-NINE (99)**
6 **YEARS;**

7 "(2) The leased area shall be used solely for the purpose of the
8 investment upon the mutual agreement of the parties;

9 "(3) The leased premises shall comprise such area as may reasonably
10 be required for the purpose of the investment subject however to the
11 Comprehensive Agrarian Reform Law and the Local Government
12 Code[.];

13 **"(4) THE FOREIGN INVESTOR HAS AN APPROVED OR**
14 **REGISTERED INVESTMENT UNDER REPUBLIC ACT NO. 11534,**
15 **OTHERWISE KNOWN AS THE "CORPORATE RECOVERY AND**
16 **TAX INCENTIVES FOR ENTERPRISES ACT", REPUBLIC ACT NO.**
17 **7042, OTHERWISE KNOWN AS THE "FOREIGN INVESTMENTS**
18 **ACT OF 1991", AS AMENDED, AND UNDER OTHER RELEVANT**
19 **LAWS, OR HAS COMPLIED WITH THE INVESTMENT**
20 **REQUIREMENTS PRESCRIBED BY THE APPROPRIATE**
21 **INVESTMENT PROMOTION AGENCY (IPA) OR GOVERNMENT**
22 **AGENCY WHICH REGISTERS SPECIFIC INVESTMENT ENTITIES**
23 **AND/OR CLASSES OF PERSONS PURSUANT TO EXISTING**
24 **LAWS;**

25 **"(5) THE LEASE CONTRACTS SHALL BE REGISTERED WITH THE**
26 **REGISTRY OF DEEDS OF THE PROVINCE OR CITY WHERE THE**
27 **LEASED AREA IS LOCATED AND ANNOTATED ON THE TITLE TO**
28 **THE LAND; AND**

29 **"(6) THE REGISTER OF DEEDS SHALL REGISTER A LONG-TERM**
30 **LEASE CONTRACT UPON COMPLIANCE WITH THE FOLLOWING**
31 **CONDITIONS:**

1 (A) THE INVESTOR PRESENTS PROOF OF AN APPROVED
2 AND/OR REGISTERED INVESTMENT UNDER
3 SUBPRARAGRAPH 4 HEREOF;

4 (B) THE DATE OF COMMENCEMENT AND MAXIMUM
5 DURATION OF THE LEASE ARE CERTAIN;

6 (C) THE EXACT LOCATION, METES, AND BOUNDS OF THE
7 PROPERTY SUBJECT OF THE LEASE ARE IDENTIFIED;
8 AND

9 (D) THERE IS A PROVISION IN THE LEASE CONTRACT
10 PROVIDING FOR ITS TERMINATION FOR FAILURE TO
11 COMMENCE THE INVESTMENT PROJECT WITHIN THREE
12 (3) YEARS FROM SIGNING OF THE CONTRACT.

13 "The leasehold right acquired under long-term lease contracts entered
14 into pursuant to this Act may be sold, transferred, or assigned, **OR MAY**
15 **SERVE AS SECURITY FOR A LOAN:** *Provided,* That when the buyer,
16 transferee, or assignee is a foreigner or a foreign-owned enterprise, the
17 conditions and limitations in respect to the use of the leased property as
18 provided for under this Act shall continue to apply."

19 Sec. 3. A new Section 4-A is hereby inserted after Section 4 of Republic Act No.
20 7652, to read as follows:

21 "SEC. 4-A. **OPERATIVE ACT OF REGISTRATION. – THE**
22 **REGISTRATION OF THE LONG-TERM LEASE CONTRACT SHALL**
23 **BE THE OPERATIVE ACT THAT RENDERS THE LEASE BINDING**
24 **AGAINST THIRD PERSONS. REGISTRATION SHALL BE MADE IN**
25 **ACCORDANCE WITH THE PROVISIONS OF PRESIDENTIAL**
26 **DECREE NO. 1529, AS AMENDED.**

27 **THE REGISTERED LEASE CONTRACT SHALL NOT BE**
28 **SUBJECT TO COLLATERAL ATTACK. IT CANNOT BE ALTERED,**
29 **MODIFIED, OR CANCELLED EXCEPT IN A DIRECT PROCEEDING**
30 **IN ACCORDANCE WITH LAW."**

1 Sec. 4. Section 5 of Republic Act No. 7652 is hereby amended to read as
2 follows:

3 "SEC. 5. *Limitations.* – (1) Foreign individuals, corporations,
4 associations, or partnerships not otherwise investing in the Philippines
5 as defined herein shall continue to be covered by Presidential Decree
6 No. 471 and other existing laws in lease of lands to foreigners[-];

7 "(2) Withdrawal of the approved investment in the Philippines within the
8 period of the lease [agreement] **CONTRACT** entered into under this
9 Act, or use of the leased area for the purpose other than that authorized,
10 shall warrant the *ipso facto* termination of the lease [agreement]
11 **CONTRACT** without prejudice to the right of the lessor to be
12 compensated for the damages [he] **THE LESSOR** may have suffered
13 thereby[-];

14 "(3) Any lease agreement under this Act which is renewable at the
15 option of the lessee subject to the same terms and conditions of the
16 original contract shall be interpreted to mean as renewable upon the
17 mutual agreement of the parties[-];

18 "(4) In addition to the conditions for the renewal of a lease agreement
19 [~~after the period of fifty (50) years as provided herein~~], the foreign lease
20 shall show that it has made social and economic contributions to the
21 country[-]; **AND**

22 "(5) In the case of tourism projects, lease of private lands by foreign
23 investors qualified herein shall be limited to projects with an investment
24 of not less than five million (5M) US dollars, seventy percent (70%) of
25 which shall be infused in said project within three years from the signing
26 of the lease contract."

27 Sec. 5. A new Section 5-A is hereby inserted after Section 5 of Republic Act No.
28 7652, to read as follows:

29 "**SEC. 5-A. SUBLEASE. – UNLESS THERE IS AN EXPRESS**
30 **PROHIBITION IN THE CONTRACT, THE LESSEE MAY SUBLET**
31 **THE PROPERTY WITH THE CONSENT OF THE LESSOR. THE**

1 **CONDITIONS UNDER SECTION 4 OF THIS ACT SHALL APPLY TO**
2 **THE SUBLEASE CONTRACT.”**

3 Sec. 6. A new Section 5-B is hereby inserted after the new Section 5-A of
4 Republic Act No. 7652, to read as follows:

5 **“SEC. 5-B. REGISTRATION OF SUBLEASE CONTRACTS. –**
6 **SUBLEASE CONTRACTS WITH A TERM OF TWENTY-FIVE (25)**
7 **YEARS OR MORE SHALL BE REGISTERED WITH THE REGISTRY**
8 **OF DEEDS AND ANNOTATED ON THE TITLE TO THE LAND.**
9 **SUBLEASE CONTRACTS WITH A TERM OF LESS THAN TWENTY-**
10 **FIVE (25) YEARS ARE EXEMPT FROM MANDATORY**
11 **REGISTRATION BUT MAY BE REGISTERED VOLUNTARILY FOR**
12 **LEGAL PROTECTION AND PUBLIC NOTICE.”**

13 Sec. 7. Section 6 of Republic Act No. 7652 is hereby amended to read as
14 follows:

15 ~~“SEC. 6. Termination of Lease Contract. – [The Secretary of~~
16 ~~Trade and Industry shall terminate any lease contract entered into under~~
17 ~~the provisions of this Act, if the investment project is not initiated within~~
18 ~~three (3) years from the signing of the lease contract.]~~ **FAILURE TO**
19 **INITIATE THE INVESTMENT PROJECT WITHIN THREE (3)**
20 **YEARS FROM THE SIGNING OF THE LEASE CONTRACT SHALL**
21 **TERMINATE THE LEASE, REVOKE ALL ENTITLEMENTS GRANTED**
22 **UNDER THIS ACT, AND CAUSE THE AUTOMATIC REVERSION OF**
23 **THE PROPERTY TO THE LESSOR/LANDOWNER.”**

24 Sec. 8. Section 7 of Republic Act No. 7652 is hereby amended to read as
25 follows:

26 ~~“SEC. 7. Penal Provision. – Any contract [or agreement] made or~~
27 ~~executed in violation of any of the following prohibited acts shall be null~~
28 ~~and void ab initio and both contracting parties shall be punished by a~~
29 ~~fine of not less than [One hundred thousand pesos (P 100,000.00)]~~
30 **ONE MILLION PESOS (PHP 1,000,000.00) [nor] BUT NOT** more
31 ~~than [One million pesos (P 1,000,000.00)]~~ **TEN MILLION PESOS**

1 **(PHP 10,000,000.00)**, or imprisonment of six (6) months to (6) years,
2 or both, at the discretion of the court:

3 "(1) Any provision in the lease [~~agreement~~] **CONTRACT**
4 stipulating a lease period in excess of that provided in paragraph
5 (1) of Section 4;

6 "(2) Use of the leased premises for the purpose contrary to
7 existing laws of the land, public order, public policy, morals, or
8 good customs;

9 "(3) Any agreement or agreements resulting [~~is~~] **IN** the lease of
10 land in excess of the [~~area~~] approved **AREA** [~~by the DTI~~]:
11 *Provided*, That, where the excess of the totality of the area leased
12 is due to the acts of the lessee, the lessee shall be held solely
13 liable therefor [~~∴ Provided, further, That, in the case of~~
14 ~~corporations, associations, or partnerships, the president,~~
15 ~~manager, director, trustee, or officers responsible for the~~
16 ~~violation hereof shall bear the criminal liability~~].

17 **"IN THE CASE OF CORPORATIONS, ASSOCIATIONS, OR**
18 **PARTNERSHIPS, THE PRESIDENT, MANAGER, DIRECTOR,**
19 **TRUSTEE, OR RESPONSIBLE OFFICERS SHALL BE HELD**
20 **CRIMINALLY LIABLE.**

21 **"THE PENALTIES PROVIDED UNDER THIS SECTION SHALL BE**
22 **APPLICABLE TO ALL SUBLEASE CONTRACTS."**

23 *Sec. 9. Implementing Rules and Regulations.* – Upon the effectivity of this Act,
24 the Board of Investments, the Fiscal Incentives Review Board, and the Land
25 Registration Authority, in consultation with other concerned government agencies and
26 stakeholders, shall promulgate the necessary implementing rules and regulations for
27 the effective implementation of this Act.

28 *Sec. 10. Separability Clause.* – If any provision of this Act is declared
29 unconstitutional, the remainder thereof not otherwise affected shall remain in full force
30 and effect.

1 Sec. 11. *Repealing Clause.* – All laws, presidential decrees, executive orders,
2 letters of instruction, proclamations, or administrative regulations that are inconsistent
3 with the provisions of this Act are hereby repealed, amended, or modified accordingly.

4 Sec. 12. *Effectivity Clause.* – This Act shall take effect after fifteen (15) days
5 following its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,