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06 July 00

**RULES AND REGULATIONS IMPLEMENTING
REPUBLIC ACT NO. 8762,
AN ACT LIBERALIZING THE RETAIL TRADE BUSINESS,
REPEALING REPUBLIC ACT NO. 1180, AS AMENDED**

Pursuant to the provisions of Section 11 of Republic Act No. 8762, the following rules and regulations are hereby promulgated.

RULE I. DEFINITION OF TERMS

Section 1. For purposes of this Rules and Regulations -

- (a) **"Capital"** shall mean the working capital for sole proprietorships and partnerships, while for corporations, it shall be the paid-up capital.
- (b) **"Consumption"** shall mean the utilization of economic goods in the satisfaction of want resulting in immediate destruction, gradual decay or deterioration or transformation into other goods.
- (c) **"Farmer or Agriculturist"** refers to an individual who is personally engaged in the production of primary products such as agricultural crops, poultry, livestock, dairy products and fish, by using inputs of land and natural resources, labor and capital.
- (d) **"Foreign Retailer"**, as used under Sections 8 and 10 of the law, shall mean an individual who is not a Filipino citizen, or a corporation, partnership, association or entity that is not wholly-owned by Filipinos, engaged in retail trade.
- (e) **"Franchise"** shall mean a business relationship wherein, the franchisor grants to the franchisee a licensed right, subject to agreed-upon requirements and restrictions, to conduct business utilizing the trade and/or service marks of the franchisor, and to receive advice and assistance in organizing, merchandising, and managing the business conducted pursuant to the license.

OFFICE OF EXEC. DIRECTOR

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This type of agreement may include a licensing agreement or any similar arrangement.

- (f) **High-end or Luxury Goods** shall refer to goods which are not necessary for life maintenance and whose demand is generated in large part by the higher income groups. Luxury goods shall include, but are not limited to, products such as: jewelry, branded or designer clothing and footwear, wearing apparel, leisure and sporting goods, electronics and other personal effects sold in boutique-type stores.
- (g) To determine compliance with the **"Investment requirement per store"**, investment shall include the value of assets, tangible or intangible including but not limited to buildings, leasehold rights, furniture, equipment, inventory and common use investments and facilities such as administrative offices, warehouses, preparation or storage facilities. The investments for common-use investments and facilities shall be pro-rated among the number of stores being served.
- (h) **"Locally Manufactured Goods"** shall mean goods manufactured, processed or assembled in the Philippines, regardless of the source of the raw materials and components used in the manufacture of the product.
- (i) **"Manufacturer"** refers to a person who alters raw material or manufactured or partially manufactured products, or combines the same in order to produce finished products for the purpose of being sold or distributed to others.
- (j) **"Natural-born Filipino citizen"** are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their citizenship. Those who elect Philippine citizenship in accordance with Article IV, paragraph 3 of the 1987 Constitution shall be deemed natural-born citizens.
- (k) **"Net Worth"** shall mean total assets of a person or business less the total liabilities, except as otherwise defined in this Rules.
- (l) **"Paid-Up Capital"** shall mean the total investment in a business that has been paid-in in a corporation or partnership or invested in a single proprietorship, which may be in cash or in property. It shall also refer to assigned capital in the case of foreign corporations.

(m) **"Processor"** refers to a person who converts raw materials into marketable form by special treatment or a series of action that changes the nature or state of the product, like slaughtering, milling, pasteurization, drying, or desiccating, quick freezing and the like. Mere packing, packaging, sorting or classifying does not make a person a processor.

(n) **"Reciprocity Rights"** shall denote the relation between two states when each of them, by their respective laws or by treaty, gives the citizens or nationals of the other certain privileges, as in the undertaking of retail trade activities, on condition that its own citizens or nationals shall enjoy similar privileges in the latter state.

Notwithstanding the law allowing one hundred percent foreign ownership of retail activities subject to the capitalization requirements, a foreign retailer shall be allowed to own only up to the extent of the foreign ownership allowed for retailing in its home country."

(o) A former natural born Filipino citizen is deemed **"residing in the Philippines"** if he physically stays in the country for at least one hundred eighty (180) days within a given year.

(p) **"Retail Store"** shall mean, as the context requires under Section 5, last paragraph & Section 6 of the law, the company that owns the store.

(q) **"Retail Trade"** shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption.

(r) **"Start of operations"** shall mean the date when the particular enterprise actually starts selling its inventory.

(s) **"Store/Branch"** shall mean an outlet where goods are sold on a retail basis.

(t) For purposes of determining the **"track record"** as used in Rule IV, Section 1, the past business operation in the retail business of the applicant foreign retailer, its predecessors, its principal stockholders, affiliates, subsidiaries or its management team, may be considered.

Section 2. Sales Not Considered As Retail. – The following sales are not considered as retail:

- (a) Sales by a manufacturer, processor, laborer, or worker, to the general public of products manufactured, processed or produced by him whose capital does not exceed One hundred thousand pesos (P100,000.00);
- (b) Sales by a farmer or agriculturist selling the products of his farm, regardless of capital;
- (c) Sales arising from restaurant operations by a hotel owner or inn-keeper irrespective of the amount of capital, provided, that the restaurant is incidental to the hotel business
- (d) Sales to the general public, through a single outlet owned by a manufacturer of products manufactured, processed or assembled in the Philippines, irrespective of capitalization;
- √ (e) Sales to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or produce or manufacture of goods which are in turn sold by them; or
- (f) Sales to the government and/or its agencies and government-owned and controlled corporations.

RULE II. RIGHTS OF FORMER NATURAL BORN FILIPINOS TO ENGAGE IN RETAIL TRADE

Section 1. Rights of Former Natural born Filipinos. - Any natural born Filipino citizen who has lost his Philippine citizenship and who has legal capacity to enter into a contract under Philippine laws may be allowed to engage in retail trade, provided that he resides in the Philippines.

Section 2. Documentary Evidences. - Any person who meets the requirements provided for under the preceding paragraph shall be considered as a Filipino citizen for purposes of this Act, upon showing any of the following documents:

1. Copy of birth certificate (i) certified by the local civil registrar or the National Statistics Office; or (ii) for those born abroad, certificate of birth from the appropriate government agency of the country where the birth is recorded showing the father or mother to be a Filipino at the time of birth or if the citizenship of

the parents is not indicated, additional proof that the parent/s is a Filipino citizen or has not lost his/her Filipino citizenship at the time of the applicant's birth; or (iii) those born before 17 January 1973 of Filipino mothers must additionally submit all of the following: certified true copies of his/her sworn statement of election of Filipino citizenship, oath of allegiance from the civil registrar where the documents were filed and/or forwarded, and identification certificate issued by the Bureau of Immigration;

2. In case of loss and/or destruction of the record of birth or non-registration of birth, a (i) Certificate of non-availability of birth certificate on account of loss and/or destruction of birth record from the local civil registrar and/or appropriate government agency if birth was registered abroad; or (ii) copy of birth certificate of mother or father certified by the local civil registrar or the NSO; and (iii) affidavit of two (2) disinterested persons attesting to their personal knowledge that at the time of the applicant's birth, the child was born of a Filipino mother or father.

Any document executed or issued abroad must be authenticated by the Philippine Embassy/Consulate having jurisdiction over the place of execution or issuance of the document.

RULE III. CAPITALIZATION AND EQUITY REQUIREMENTS

Section 1. Foreign Equity Participation. – Partnerships, associations and corporations, partially or wholly-owned by foreigners, formed and organized under the laws of the Philippines may upon registration with the Securities and Exchange Commission (SEC), or in case of foreign-owned single proprietorships, with the Department of Trade and Industry (DTI), may 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\$2,500,000.00) 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 Philippines Pesos of Two million five hundred thousand US dollars (US\$2,500,000.00) but less than Seven million five hundred thousand

US dollars (US\$7,500,000.00) may be owned up to 60% by foreigners for the first two (2) years after March 25, 2000.

Thereafter, enterprises with a minimum paid up capital of the equivalent Philippine pesos of US\$2.5 million may be 100% foreign-owned.

Category C – Enterprises with a paid-up capital of the equivalent in Philippine Pesos of Seven million five hundred thousand US dollars (US\$7,500,000.00) or more may be wholly owned up to 100% by foreigners.

Two years after March 25, 2000, Category C shall no longer be applicable.

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\$250,000.00) per store may be owned up to 100% by foreigners.

For purposes of this section, a mere investor need not organize a corporation, partnership or association under Philippine laws before it may invest in the retail trade business.

Section 2. Branches/Stores. Opening of branches/stores by the registered foreign retailer shall be allowed, provided that the investments for each branch/store established by registered foreign retailers falling under Categories B and C must be no less than the equivalent in Philippine Pesos of Eight hundred thirty thousand US dollars (US\$830,000.00).

RULE IV. PREQUALIFICATION OF FOREIGN RETAILERS

Section 1. Prequalification Requirements. - Before a foreign retailer is allowed to establish or organize an entity that will engage in the retail trade business or invest in a retail store in the Philippines, it must possess all of the following qualifications:

- a) A minimum of Two hundred million US dollars (US\$200,000,000.00) net worth of the registrant corporation for Categories B and C, and Fifty million US dollars (US\$50,000,000.00) net worth of the registrant 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\$25,000,000.00):

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

For purposes of determining compliance with the above requirements, the net worth, existence of branches and franchises, track record as well as the domiciles of the registrant's parent company, its subsidiaries, its affiliate companies as well as their predecessors shall be considered. Moreover, for publicly traded companies, net worth may be determined by the number of outstanding shares multiplied by the shares' annual average trading price.

Section 2. Application for Pre-Qualification. - A request for pre-qualification duly signed and acknowledged under oath by an authorized officer of the foreign retailer mentioned in the preceding section, must be submitted to the Board of Investments before filing a formal application to engage in retail or invest in a retail store. Said request for pre-qualification must be accompanied by the following documents:

- a) Latest audited annual financial statements, incorporating an income statement and a balance sheet or their equivalents;
- b) Certification by a responsible officer of the applicant-foreign retailer stating that:
 - i. it has been engaged in retailing for the past five years; and
 - ii. has at least five (5) retailing branches anywhere in the world, or at least one branch is capitalized at a minimum of Twenty-five million US dollars (US\$25,000,000.00);
- c) Certification from the responsible officer of the applicant of the existence of franchise or licensing agreements if the applicant fails to meet the preceding requirement of at least five (5) retailing branches; and
- d) Certification by the proper official of the home state of the applicant-foreign retailer or the local embassy/consulate of the home country of the said applicant-foreign retailer to the effect

that the laws of such state allows or permits reciprocal rights to Philippine citizens and enterprises together with the extent of participation allowed.

All of the foregoing documents and their corresponding attachments shall be duly authenticated by the Philippine Embassy/Consulate stationed in the home country of the applicant.

Section 3. Issuance of Certificate of Compliance with Prequalification. - The Board of Investments (BOI), shall issue, within ten (10) working days from submission of all necessary documents, after evaluation and verification, a Certification that the foreign retailer meets the qualifications prescribed by law,

The Certificate of Compliance shall be valid for a period of one (1) year from date of issuance.

Section 4. List of Qualified Foreign Retailers. - The DTI through the Board of Investments (BOI) shall keep a record of foreign retailers who have been pre-qualified to establish retail stores or invest in a retail store in the Philippines.

Section 5. Foreign Investors which are not foreign retailers. - Foreign investors which are not foreign retailers shall not be required to satisfy the prequalification requirements under Rule IV hereof.

RULE V. INVESTMENTS IN EXISTING RETAIL STORES

Section 1. Foreign Investments in Existing Stores. - Foreign investors or foreign retailers may acquire shares in retail stores existing and operating at the time of the effectivity of the law, whether or not publicly listed, whose net worth is in excess of the peso equivalent of Two million five hundred thousand US dollars (US\$2,500,000.00); provided that, only up to a maximum of sixty percent (60%) of the total outstanding capital of such existing retail stores may be acquired within the first two (2) years from March 25, 2000. Thereafter, the company may be 100% owned by foreign investor/s.

Section 2. Pre-qualification Requirements. - The prequalification requirement in Section 8 of the law shall apply whenever a foreign investor is also engaged in retail trade and such foreign investor acquires 51% or more of the outstanding capital stock of an existing retail store. No transfer of shares to any such foreign investor in a retail store shall be recorded by

the Corporate Secretary in the corporate books thereof, unless a Certificate of Compliance with Pre-qualification is presented.

Section 3. Investment Per Store. – Section 2, Rule III on investment requirement of at least US\$830,000 per store or branch shall be complied with if at least 51% of the outstanding capital stock of any existing retail store is acquired by a single foreign retailer.

RULE VI. HIGH-END OR LUXURY GOODS

Section 1. List of Retailers Selling High-End or Luxury Goods. – An annual list of foreign retailers selling high-end or luxury goods shall be formulated and regularly updated by the Inter-Agency Committee on Tariff and Related Matters of the National Economic Development Authority (NEDA) Board, in coordination with the relevant organizations and the private sector concerned.

The same Inter-Agency Committee shall issue a separate Guidelines on the formulation of the said list and submit a copy to the BOI and SEC.

Section 2. Annual Report to Congress. – The Inter-Agency Committee on Tariff and Related Matters of the National Economic Development Authority (NEDA) Board shall report to Congress annually the list of foreign retailers selling high-end or luxury goods.

RULE VII. APPLICATION FOR REGISTRATION

Section 1. Registration. Domestic corporations, partnerships, or associations which shall engage in retail shall register with the Securities and Exchange Commission (SEC) or the DTI through its Regional and Provincial Offices, in the case of single proprietorships.

Section 2. Certificate of Compliance with Pre-qualification Requirements. – No corporation/partnership/association or sole proprietorship owned wholly or partially by foreign retailers may be allowed to register with the SEC/DTI without securing the necessary certificate of compliance with the prequalification conditions from the Board of Investments.

Section 3. BSP Certification. – Foreign retail stores shall secure a certification from the Bangko Sentral ng Pilipinas (BSP), to be submitted to

the SEC, in the case of corporations/partnerships/associations and the DTI, in the case of sole proprietorship.

Section 4. Establishment of Stores/Branches. – All registered foreign retailers under Categories B & C that will establish additional stores/branches shall be required to secure an approval from the DTI. They must show proof of compliance with the US\$830,000 investment requirement per branch.

Section 5. Reporting Requirements. – Every registered foreign retail enterprise shall submit annually to the Department of Trade and Industry (DTI), a Certification by a responsible officer of the company reflecting the:

- a) Number and location of store/s of the enterprise and the status of its operation; and
- b) Maintenance of the required minimum capital unless the foreign investor has notified the SEC and the DTI of its intention to cease operations in the Philippines and repatriate its capital.

RULE VIII. PROHIBITED ACTIVITIES OF QUALIFIED FOREIGN RETAILERS

Section 1. Prohibited Modes of Retailing. - Qualified foreign retailers shall not be allowed to engage in certain retailing activities outside their accredited stores through the use of mobile or rolling stores or carts, the use of sales representatives, door-to-door selling, restaurants and sari-sari stores and such other similar retailing activities.

Section 2. List of Prohibited Activities. - A detailed list of other prohibited activities may be formulated by the DTI.

RULE IX. COMPLIANCE REQUIREMENTS

Section 1. Maintenance of Prescribed Minimum Capital. The foreign investor shall be required to maintain in the Philippines the full amount of the prescribed minimum capital, unless the foreign investor has notified and secured approval from the SEC and the DTI of its intention to cease operations in the Philippines and repatriate its capital.

The SEC shall establish mechanisms to monitor the actual use in Philippine operation of the inwardly remitted minimum capital requirement.

Failure to maintain the full amount of the prescribed minimum capital prior to the notification and approval from the SEC and the DTI, shall subject the foreign investor to penalties provided in Section 7 hereof or restrictions on any future trading activities/business in the Philippines.

Section 2. Public Offering of Shares of Stock. – All registered retail enterprises under Categories B and C in which foreign ownership exceeds eighty percent (80%) of equity shall offer a minimum of thirty percent (30%) of their equity to the public through any stock exchange in the Philippines within eight (8) years from their start of operations, provided that with respect to existing enterprises as of March 25, 2000, the period shall run from the date of registration of the retail enterprise with the DTI under Rule VII hereof.

Compliance with this requirement shall be supervised and monitored by the DTI.

Section 3. Promotion of Locally Manufactured Products. – For ten (10) years from March 25, 2000, at any given time, locally manufactured goods should account for at least thirty percent (30%) of the aggregate cost of the stock inventory situated in the Philippines of foreign retailers falling under Categories B and C and ten percent (10%) for Category D.

All registered foreign retailers shall be required to maintain books of accounts showing the inventory situated in the Philippines and its origin at all times and these books may be examined at any time, by the duly authorized representative of the Department of Trade and Industry.

Furthermore, these registered foreign retailers shall be required to submit quarterly statements under oath certifying the ratio of their local and imported inventory.

Section 4. Visitorial Powers. – In the public interest and/or for the enforcement of any applicable law, rules and regulations, the DTI/BOI, SEC or any government office having jurisdiction on the matter may, through any of its duly authorized representatives, conduct necessary examination of records, inventory and books of accounts of the registered foreign retail enterprise in the Philippines, make pertinent inquiries from its officials and take such action as may be necessary for the proper exercise of its authority.

Section 5. Implementing Agency. – The monitoring and regulation of foreign sole proprietorships, partnerships, associations, or corporations allowed to engage in retail trade shall be the responsibility of the DTI. This shall include resolution of conflicts, through mediation.

Section 6. Closure of Stores/Branches. - Applications for closure of stores/branches shall be filed with the DTI, through its Regional or Provincial Offices. However, in cases of closure of both the company that owns the stores/branches and the said retail stores/branches, the SEC shall be notified by DTI of the withdrawal or closure of such foreign retail establishments.

Section 7. Penalties. - Any person who shall be found guilty of violation of any provision of RA 8762, its implementing rules and regulations, or other terms and conditions of its registration, shall be punished by imprisonment of not less than six (6) years and one (1) day but not more than eight (8) years, and a fine of not less than One million pesos (P1,000,000.00) but not more than Twenty million pesos (P20,000,000.00).

In the case of associations, partnerships or corporations, the penalty shall be imposed upon its partners, president, directors, managers and other officers responsible for the violation. If the offender is not a citizen of the Philippines, he shall be deported immediately after service of sentence. If the Filipino offender is a public officer or employee, he shall, in addition to the penalty prescribed herein, suffer dismissal and permanent disqualification from public office.

RULE X. REPEALING AND EFFECTIVITY CLAUSES

Section 1. All other rules and regulations or parts thereof, inconsistent with the foregoing rules and regulations are repealed, amended or modified accordingly.

Section 2. These Rules shall take effect fifteen (15) days upon publication in two (2) newspapers of general circulation.

APPROVED



MARoxas
Secretary
Department of Trade & Industry



RAFAEL BUENAVENTURA
Governor
Bangko Sentral ng Pilipinas



LILIA R. BAUTISTA
Chairman
Securitles and Exchange Commission



FELIPE MEDALLA
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