FOREIGN INVESTMENTS WATCH PHILIPPINES

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AMENDMENTS TO THE RETAIL TRADE LIBERALIZATION ACT OF 2000

FOREIGN INVESTMENTS TAX WATCH PHILIPPINES

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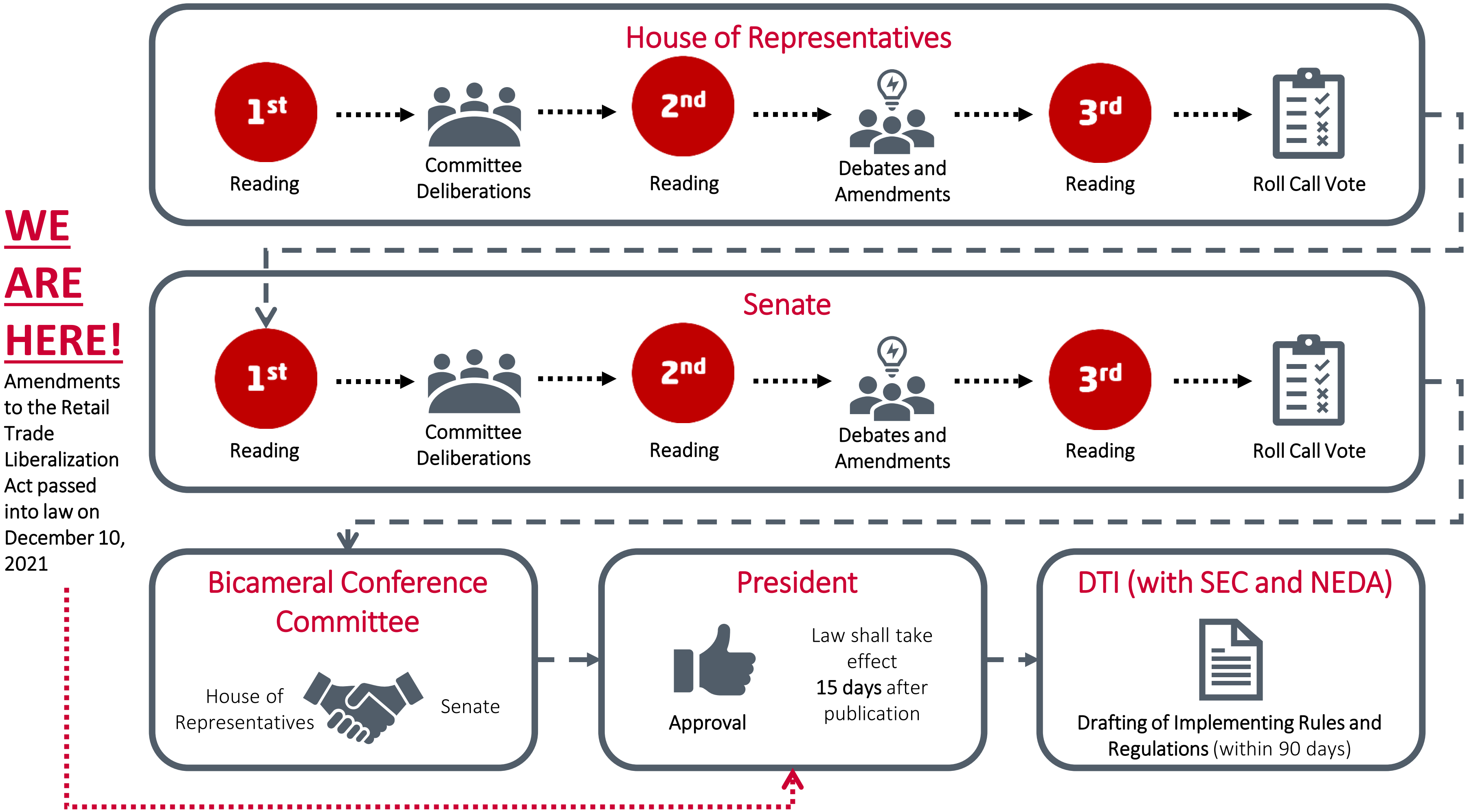
Legislative Process: Where are we and what is next?



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SALIENT AMENDMENTS

I. Foreign Equity Participation (Section 5)

Prior to the amendment, foreign equity participation in the retail trade business is determined by categories based on the amount of paid-up capital. Now, foreign equity participation depends upon compliance with certain conditions:

- Minimum paid-up capital of P25,000,000.00
- Foreign retailer's country of origin does not prohibit entry of Filipino retailers
- If engaged in retail trade through more than 1 physical store, the minimum investment per store must be at least P10,000,000.00; PROVIDED:
  - This shall not apply to foreign investors/retailers who are legitimately engaged in retail trade and were not required to comply with the minimum investment per store at the time of effectivity of the amendment; and
  - Proof of qualification to engage in retail trade under the Retail Trade Liberalization Act is submitted to the DTI

N.B. The *minimum investment per store* shall include the value of the gross assets, tangible and intangible, including common use investments and facilities (*i.e.* administrative offices, warehouses, storage facilities), among others. The investments for common use and facilities shall be pro-rated among the number of stores being served.

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SALIENT AMENDMENTS

I. Foreign Equity Participation (Section 5)

Further, the foreign retailer shall be:

- Required to maintain the paid-up capital in the Philippines at all times unless the SEC or DTI, whichever is appropriate, is notified of the foreign retailer's intention to repatriate its capital and cease operations in the Philippines. Failure to do so shall subject the foreign retailer to penalties or restrictions on any future trading activities/business in the Philippines.

- Monitored by the SEC or DTI, whichever is appropriate, in relation to the actual use of the minimum paid-up capital in Philippine operations.

- Required to submit to the SEC or DTI, whichever is appropriate, upon registration:
  - a certification from the BSP of the inward remittance of its capital investment; or
  - such other proof certifying that its capital investment is deposited and maintained in a bank in the Philippines.

SALIENT AMENDMENTS

II. Review of Minimum Paid-up Capital Requirement (Section 6)

The provision on foreign investors acquiring shares of stock of local retailers was deleted and replaced with a provision mandating a review of the minimum paid-up capital requirement.

Under the amendment, the DTI, SEC, and NEDA shall review the minimum paid-up capital requirement every three (3) years.

III. Labor Policy (Section 7)

The provision on public offering of shares of stock was deleted and replaced with a provision on labor policy.

Under the amendment, employment of foreign nationals shall comply with the provisions of the Labor Code on the determination of nonavailability of a competent, able and willing Filipino citizen before engaging the services of a foreign national.

SALIENT AMENDMENTS

IV. Promotion of Locally Manufactured Products (Section 8)

The provision on qualifications of foreign retailers was deleted and replaced with a provision on promotion of locally manufactured products.

Under the amendment, foreign retailers are encouraged to have a stock inventory of Philippine-made products.

V. Implementing Agencies; Rules and Regulations (Section 10 [renumbered)

Prior to the amendment, the DTI is the sole implementing agency and that the BSP is included in the formulation of the implementing rules and regulations. Now, monitoring and regulation shall be the responsibility of:

- SEC – with respect to partnerships, associations, and corporations; and
- DTI – with respect to single proprietorship.

Further, formulation of the implementing rules and regulations shall be the responsibility of the DTI, in coordination with SEC and NEDA.

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SALIENT AMENDMENTS

VI. Penalties (Section 11 [renumbered])

The penalties imposed for violations were increased as follows:

- Imprisonment of not less than 4 years to 6 years; and
- Fine of not less than P1,000,000 but not more than P5,000,000

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