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LEGAL ALERT

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11th Foreign Investment Negative List allows more foreign participation in several investment areas and sectors

Philippine investment policy aims to attract, promote, and welcome productive foreign investments in activities that significantly contribute to national industrialisation and socio-economic development to the extent allowed by the Constitution and relevant laws. This policy is set forth in the Foreign Investments Act of 1991, which provides for the formulation of a Foreign Investment Negative List ("Negative List"). The Negative List enumerates economic activities where foreign equity is either prohibited or limited to a certain percentage, and is amended at least every two years.

On 29 October 2018, President Rodrigo Duterte signed Executive Order No. 65 ("EO 65") to issue the 11th Foreign Investment Negative List ("11th Negative List"). The 11th Negative List updates the 10th Negative List, which was promulgated more than 3 years ago under Executive Order No. 184.

Compared to the 10th Negative List, the 11th Negative List is less restrictive since it now allows full foreign participation in 5 investment areas or activities and relaxes foreign equity restrictions by allowing up to 40% foreign participation in 3 sectors. The following table outlines the changes introduced by the 11th Negative List in the following investment areas:

Investment Area	Foreign Participation	
	10th Negative List	11th Negative List
Internet Business, which refers to internet access providers that merely serve as carriers for transmitting messages, rather than being the creator of the message/information.	0%	100% Carved out as an exception to mass media, which is strictly restricted to Filipino nationals.
Teaching at higher education levels provided that the subject being taught is a not a professional subject (i.e. included in a government board examination or bar examination).	0%	100% Carved out as an exception to practice of professions, which is strictly restricted to Filipino nationals.
Training Centres engaged in short-term high-level skills development that do not form part of the formal educational system.	Up to 40%	Up to 100% Carved out as an exception to educational institutions, which are still restricted only up to 40% foreign equity.

Insurance adjustment companies, lending companies, financing companies, and investment houses.	• Up to 40% for adjustment companies • Up to 49% for lending companies • Up to 60% for financing companies and investment houses	Up to 100%
Wellness centres	Up to 40%	Up to 100%
Contracts for the construction and repair of locally-funded public works, except: a. Infrastructure /development projects covered in Republic Act No. 7718 b. Projects which are foreign funded or assisted and required to undergo international competitive bidding.	Up to 25%	Up to 40%
Private radio communications network.	Up to 20%	Up to 40%

The foregoing is a non-exhaustive enumeration of the sectors/activities that are subject to foreign equity limitations, which have been otherwise retained by the 11th Negative List.

Meanwhile, there are pending bills in the Philippine Congress intended to lift any restriction on foreign participation in the telecommunications sector. House Bill No. 5828 and Senate Bill No. 1754 are measures aimed to exclude telecommunications from the definition of public utilities, which is still subject to a 40% foreign equity restriction.

If you have any questions or require any additional information, please contact Felix Sy or Lorybeth Baldrias Serrano or the ZICO Law partner you usually deal with.

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