



September 7, 2021

**BUSINESS LEADERS CALL ON CONGRESS TO APPROVE KEY ECONOMIC REFORMS,
ESPECIALLY AMENDMENTS TO THE PUBLIC SERVICES ACT**

Philippine business groups and foreign chambers call on Congress to pass three investment reform bills that will strengthen the Philippine economy, increase national competitiveness, generate employment, and support recovery from the ongoing pandemic. The three measures amend three older laws: the Public Service Act (PSA) (1936), the Retail Trade Act (RTA) (1954 as amended in 2000), and the Foreign Investment Act (FIA) (1991).

All three measures are far advanced in the 18th Congress and certified by President Rodrigo Duterte. They are a critical reform package - first advocated immediately after the May 2016 elections as part of the administration’s socio-economic agenda - and are prominent in the Philippine Development Plan of NEDA.

Foreign investors and foreign governments have been following the progress of these reforms closely to determine whether the Philippine economy will be more open to investors or maintain its protectionist reputation. Global FDI in 2019 reached US\$ 2 trillion but only 0.5 percent flowed into the Philippines. For decades FDI rules in the Philippines have been more restrictive than neighboring economies which receive more FDI and enjoy higher standards of living and have less poverty and OFWs. While FDI rules are not the sole reason the Philippines has fallen behind Indonesia, Malaysia, Thailand, and Vietnam, our economy is less likely to catch up unless we open up.

The House passed all three reforms in 2019 and 2020. A bicameral conference committee will soon decide the final provisions of the RTA amendments to encourage more foreign investment in retail trade. Meanwhile, the PSA and FIA amendment bills are pending final approval in the Senate, where they are expected to be decided when session resumes.

All three measures will relax FDI restrictions and together could result in many billions of new investments in future years, creating more jobs, diversifying the economy, bringing new technology, and increasing competition, and providing better services to the benefit of Filipino consumers.

Finance Secretary Carlos G. Dominguez recently urged our business sector to support these bills, telling us that “Our economy cannot be competitive in the 21st century unless we adopt 21st century policies” and amend laws made in the last century. We agree.

Our GDP is not expected to return to its 2019 size until 2023. The higher unemployment and poverty caused by the pandemic cannot be remedied by indefinite government borrowing alone. Domestic investment will remain weak for at least two years. Thus, we need to attract much more foreign capital at a time when UNCTAD predicts global FDI will be lower by 50% to less than \$1 trillion due to the pandemic.

In his April 11 message to Senate President Vicente Sotto, President Duterte certified “the immediate enactment of the three bills in order to...provide a more conducive investment climate, increase job opportunities, foster more competition, and further spur the country’s economic growth.”

Article 12 Section 11 of the Constitution contains the restriction that public utilities must be 60 percent Filipino-owned. For the first time in 86 years the PSA amendment bill provides a legal definition of a public utility in order to differentiate such from the numerous public services listed in the 1936 Public Service Act. These four natural monopolies are electricity distribution and transmission, water distribution, and sewerage pipeline systems. All other public services would be open to foreign ownership up to 100%.

The Senate debate in early August revealed that some senators support making the PSA more restrictive than when it was legislated during the Commonwealth. These senators are proposing amendments to broaden the 60-40 rule and apply it to most forms of common carriers, airports, dams, roads and railroads, seaports, and telecommunications. For justification, they selectively cite Supreme Court rulings and argue that national security will be in danger if foreigners own public services.

However, foreign firms have been allowed to own ice plants, power plants, and shipyards for some time and invested heavily in all three major telecommunication firms and the national transmission grid concession.

The bill before the Senate contains adequate provisions to protect national security concerns, similar to Australia, Japan, the United States, and many others who welcome foreign investment in public services but also apply national security reviews.

Thus, we call on the Senate to decline all amendments to the PSA that will apply the 60-40 rule to any public service not classified as public utility defined in the bill. We agree that we need 21st century laws, that we need to open our public services to more competition in the interest of consumers, and to protect our national security through Executive and Congressional oversight.

PSA amendments for 60-40 that will include industries that do not fall within the definition of a public utility as provided in Senate Bill 2094 will worsen the rank of the Philippines for restrictiveness. The country was recently ranked by the OECD as the 3rd most restrictive of 83 economies in 2020. Only Palestine and Libya are worse. That is not a reputation we want to have.

The proposed amendments will damage not strengthen our foreign investment climate and weaken foreign investor interest in the country. They would deprive Filipinos of the better public services that other countries in our region enjoy. Currently, the Philippines ranks low

in ASEAN infrastructure rankings, in part because foreign capital is prevented rather than welcomed to invest fully in public services.

Approved by the following:

ACI Philippines
American Chamber of Commerce of the Philippines
AmCham North Luzon Chapter
AmCham Visayas Chapter
Association of Certified Public Accountants in Public Practice
Australian-New Zealand Commerce of the Philippines
Bankers Association of the Philippines
British Chamber of Commerce of the Philippines
Canadian Chamber of Commerce of the Philippines
Cebu Business Club
Cebu Leads Foundation, Inc.
Dutch Chamber of Commerce in the Philippines
EU-ASEAN Business Council
European Chamber of Commerce of the Philippines
ECCP Northern Luzon Business Council
ECCP Cebu Business Council
ECCP Northern Mindanao Business Council
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Financial Executives Institute of the Philippines
FinTech Alliance Philippines
Foundation for Economic Freedom
French Chamber of Commerce and Industry in the Philippines
German-Philippine Chamber of Commerce and Industry
Institute of Corporate Directors
Investment House Association of the Philippines
Institute for Solidarity in Asia
Japanese Chamber of Commerce & Industry of the Philippines
Korean Chamber of Commerce of the Philippines
Management Association of the Philippines
Makati Business Club
Money Market Association of the Philippines
Nordic Chamber of Commerce of the Philippines
Organization of Socialized and Economic Housing Developers of the Philippines, Inc.
Philippine Association of Multinational Companies Regional Headquarters, Inc.
Philippine Life Insurance Association, Inc.
Philippines-Swiss Business Council
Philippine Business Coalition for Women Empowerment
Semiconductor and Electronics Industries in the Philippines Foundation, Inc.
Shareholders' Association of the Philippines
Spanish Chamber of Commerce in the Philippines
Tax Management Association of the Philippines
US-ASEAN Business Council
Women's Business Council Philippines