

PIDS Comments on the discussion points for the first public hearing of the Senate Committee on Constitutional Amendments and Revision of Codes on the matter amending or revising the 1987 Constitution

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Is there a need to amend or revise the 1987 Constitution now, given the COVID-19 pandemic and the economic downturn?

This comment refers to the proposal to insert the phrase “unless otherwise provided by law” to economic sections of the 1987 Philippine Constitution.

The Philippines is recognized as having one of the most restrictive foreign investment regimes in the world. It is also one that is not dynamic. Figure 1 reveals that the country’s regulatory environment for FDI, particularly in terms of equity restrictions, has not changed much in the last two decades compared to others in Asia. In 1997, Indonesia and China were more restrictive than the Philippines in terms of foreign equity limitations, and we were more or less at the same level as Malaysia and India. By 2019 however, the level of restrictiveness of the Philippines has changed only slightly. A similar pattern emerges when compared to other non-OECD countries (Figure 2).

A review of the Constitution of a number of Asian countries shows that the Philippines is the only country that has enshrined foreign equity restrictions in its Constitution. See Tables 1 and 2.

The proposed amendment will give the government the flexibility to adjust policies to take advantage of global market trends and technological developments as well as address the country’s economic priorities and challenges, such as the COVID-19 pandemic and the economic downturn. Even with the insertion of the phrase “unless otherwise provided by law”, it does not mean that a sector will be totally liberalized as in the case of the practice of professions.

The degree of openness is not the sole determinant of FDI. Moreover, not all FDIs are equal as some types of investment are better than others. As other countries have successfully demonstrated, there are tools that the government could employ to target

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and attract FDI that will be beneficial to the economy or would enable better screening of investments and investors to protect the public interest, for example, with respect to national security. Should the proposal be approved, the 19th Congress would be in a position to pursue a range of laws to modernize the Philippine investment regime, update the related sectoral policies, and strengthen regulatory institutions. These reforms will take time to formulate, enact, and implement. Thus, there is urgency in amending the economic provisions of the Constitution which is a necessary but not sufficient step.

What is the proposed timeline for Charter Change, given the upcoming National and Local Elections scheduled in May 2022?

Given our present situation, any proposed strategy to improve the economy and help recover the losses and opportunities last year should be accommodated. This includes the proposal to amend the economic provisions of the 1987 Constitution. However, given its political and socioeconomic implications, the discussions on this matter should be guided by prudence and the best interest of the general public.

With regard to questions on what is the ideal timeline for Charter Change considering the elections in May 2022, we would like to leave this matter to Congress and other appropriate government agencies, e.g. COMELEC.

Should the amendments or revisions be proposed by a Constitutional Convention or by Congress itself acting as a constituent assembly? Why?

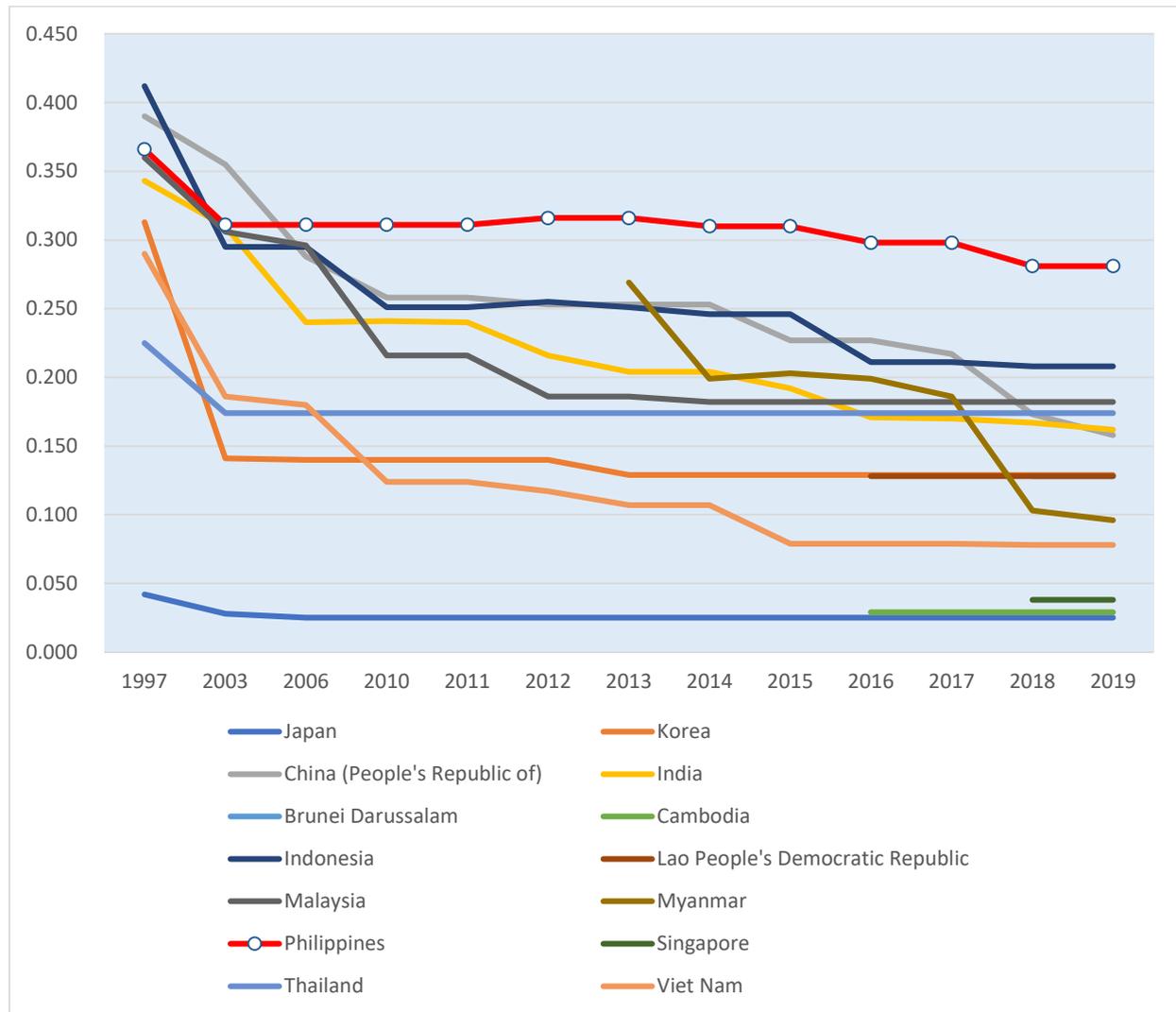
While we are supportive of the proposed amendments to the economic provisions of the Constitution, we will have to defer to the wisdom of Congress and legal experts on whether the said amendments should be proposed by a Constitutional Convention or by Congress itself as a constituent assembly. Both processes are provided under Section 01, Article XVII of the 1987 Constitution, wherein it is stated that any amendment or revision to the Constitution may be proposed by either the Congress, upon a vote of three-fourths of all its members, or by a Constitutional Convention.

If Congress convenes as a constituent assembly for the purpose of amending or revising the Constitution, should the Senate and the House of Representatives vote jointly or separately?

On whether the Senate and the House of Representatives acting as a constituent assembly should vote jointly or separately on the proposed amendments to the Constitution, we will also have to leave this matter to Congress. The Senate and the House of Representatives, being the duly elected leaders and representatives of the people, are in the best position to discuss and decide on this matter. We trust that like what it conscientiously did in the past, the Congress will adhere to its mandate of legislating

policies that is based on informed public discourse and sound empirical evidence that will best respond to the present and future needs of the Filipino people.

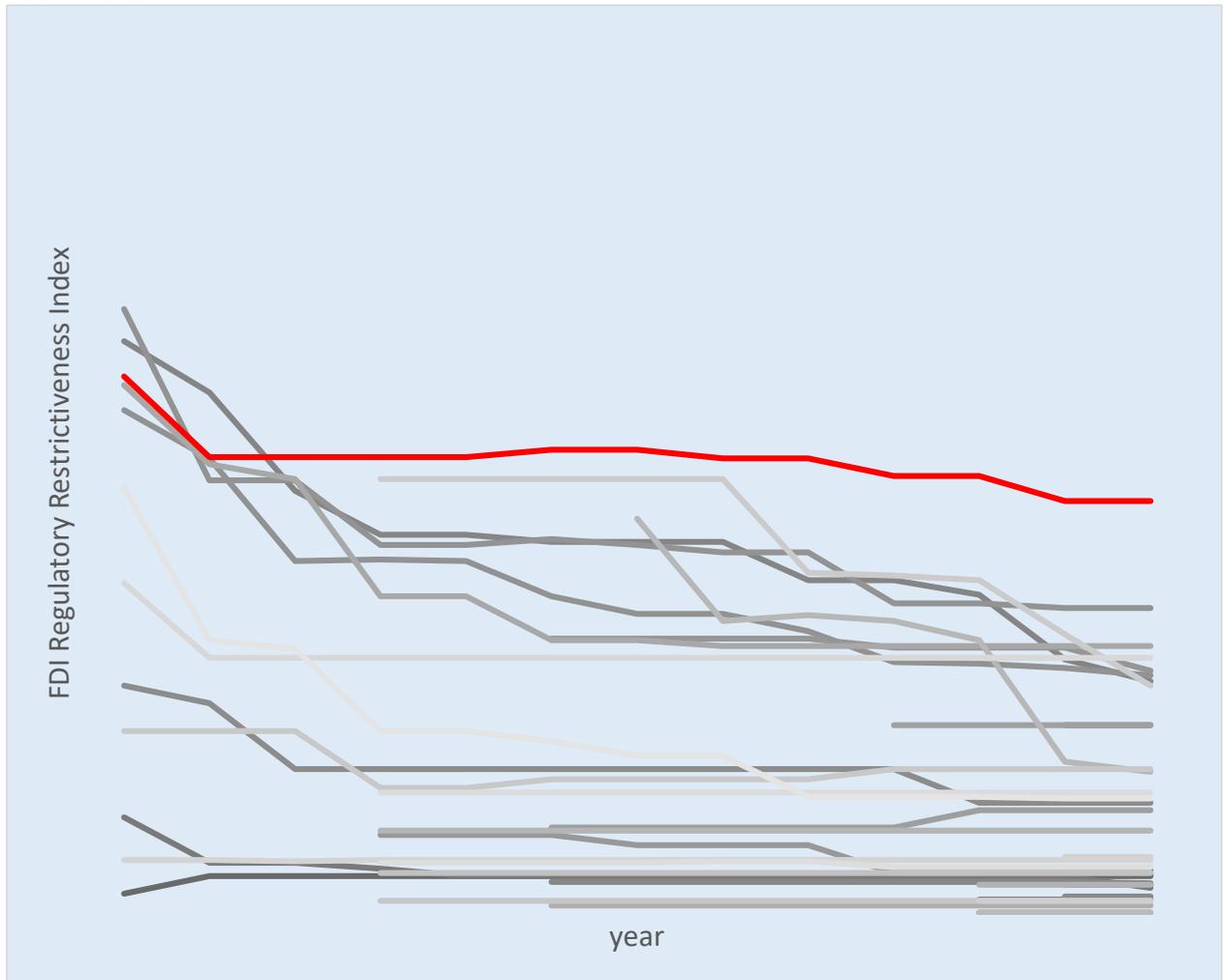
Figure 1. FDI Regulatory Restrictiveness Index – Equity Restriction, Selected Asian Countries, 1997-2019



Note: Closed = 1; Open = 0

Source: <https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#> (Accessed on 25 January 2021)

Figure 2. FDI Regulatory Restrictiveness Index: Equity Restriction, non-OECD countries, 1997-2019



Note: Closed = 1; Open = 0

Non-OECD countries: Albania, Algeria, Argentina, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Cambodia, China (People's Republic of), Costa Rica, Croatia, Egypt, Georgia, India, Indonesia, Jordan, Kazakhstan, Kosovo, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Libya, Malaysia, Moldova, Mongolia, Montenegro, Morocco, Myanmar, North Macedonia, Palestinian Authority or West Bank and Gaza Strip, Peru, **Philippines**, Romania, Russia, Saudi Arabia, Serbia, Singapore, South Africa, Tajikistan, Thailand, Tunisia, Ukraine, Uruguay, Uzbekistan, and Viet Nam.

Source: <https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#> (Accessed on 25 January 2021)

Table 1. Policy on foreign investment, foreign ownership in public utilities, and practice of profession.

Country	Investment	Public utilities	Work/profession
Philippine Constitution 1987	"The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments" (Philippine Constitution 1987, art. XII, § 10).	"No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years" (Philippine Constitution 1987, art. XII, § 11).	"The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law" (Philippine Constitution 1987, art. XII, § 14).
Brunei Darussalam Constitution 1959 (rev. 2006)	*	*	*
Cambodia Constitution 1993 (rev. 2008)	*	*	*

Country	Investment	Public utilities	Work/profession
<p align="center">China (People's Republic of) Constitution 1982 (rev. 2018)</p>	<p>"The People's Republic of China permits foreign enterprises, other foreign economic organizations and individual foreigners to invest in China and to enter into various forms of economic cooperation with Chinese enterprises and other economic organizations in accordance with the law of the People's Republic of China. All foreign enterprises and other foreign economic organizations in China, as well as joint ventures with Chinese and foreign investment located in China, shall abide by the law of the People's Republic of China. Their lawful rights and interests are protected by the law of the People's Republic of China." (People's Republic of China Constitution 1982, rev. 2018, ch. 1, art. 18)</p>	<p align="center">*</p>	<p align="center">*</p>
<p align="center">India Constitution 1949 (rev. 2016)</p>	<p align="center">*</p>	<p align="center">*</p>	<p align="center">*</p>
<p align="center">Indonesia Constitution 1945 (reinst. 1959, rev. 2002)</p>	<p align="center">*</p>	<p align="center">*</p>	<p align="center">*</p>
<p align="center">Japan Constitution 1946</p>	<p align="center">*</p>	<p align="center">*</p>	<p align="center">*</p>
<p align="center">Korea (Republic of) Constitution 1948 (rev. 1987)</p>	<p align="center">*</p>	<p align="center">*</p>	<p align="center">*</p>
<p align="center">Lao PDR Constitution 1991 (rev. 2015)</p>	<p align="center">*</p>	<p align="center">*</p>	<p align="center">*</p>
<p align="center">Malaysia Constitution 1957 (rev. 2007)</p>	<p align="center">*</p>	<p align="center">*</p>	<p align="center">*</p>

Country	Investment	Public utilities	Work/profession
Myanmar Constitution 2008 (rev. 2015)	*	*	*
Singapore Constitution 1963 (rev. 2016)	*	*	*
Thailand Constitution 2017	*	<p>"In respect of the basic structure or network of basic public utility services of the State which are essential for the people's subsistence or for security of the State, the State shall not conduct any act which renders the ownership to be under the private sector or the ownership of the State to be less than fifty one percent" (Thailand Constitution 2017, Ch. V, § 56).</p> <p><i>(NOTE: This section is about state vs. private ownership rather than national vs. foreign ownership).</i></p>	*
Viet Nam Constitution 1992 (rev. 2013)	*	*	*

Note: *no reference to foreign ownership was found.

Table 2. Policy on foreign ownership in educational institutions, mass media, and advertising.

Country	Educational institutions	Mass media	Advertising
Philippine Constitution 1987	"Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens" (Philippine Constitution 1987, art. XIV, § 4, no. 2).	"The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens" (Philippine Constitution 1987, art. XVI, § 11, no. 1).	"Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry" (Philippine Constitution 1987, art. XVI, § 11, no. 2).
Brunei Darussalam Constitution 1959 (rev. 2006)	*	*	*
Cambodia Constitution 1993 (rev. 2008)	*	*	*
China (People's Republic of) Constitution 1982 (rev. 2018)	*	*	*
India Constitution 1949 (rev. 2016)	*	*	*
Indonesia Constitution 1945 (reinst. 1959, rev. 2002)	*	*	*
Japan Constitution 1946	*	*	*
Korea (Republic of) Constitution 1948 (rev. 1987)	*	*	*
Lao PDR Constitution 1991 (rev. 2015)	*	*	*

Country	Educational institutions	Mass media	Advertising
Malaysia Constitution 1957 (rev. 2007)	*	*	*
Myanmar Constitution 2008 (rev. 2015)	*	*	*
Singapore Constitution 1963 (rev. 2016)	*	*	*
Thailand Constitution 2017	*	*	*
Viet Nam Constitution 1992 (rev. 2013)	*	*	*

Note: *no reference to foreign ownership was found.

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