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Comments on **House Joint Resolution No. 04,** Calling Congress to Convene for the Purpose of Considering Proposals to Amend or Revise the Constitution, Upon a Vote of Three Fourths of all Members

Prepared by Dr. Marife M. Ballesteros and Dr. Sonny N. Domingo

HJR 04 proposed amendments under Article XII essentially protect the tenurial access and control of Filipinos and Filipino-owned or controlled corporations over alienable lands of the public domain, and the operation of public utilities.

The proposed amendment strengthens the access and control of Filipinos and Filipino-controlled corporations to alienable lands of the public domain. Such substantially address tenurial rights for agricultural lands. However, a parallel provision is warranted for mineral lands and other lands of the public domain that are subject to resource extraction activities.

The provision on the ownership or use of public agricultural lands by private corporations, which is limited to corporations that is 60% owned by Filipino citizens, is consistent with Investment Code of the Philippines. However, it may need to be reviewed together with proposals to lift the requirement of Filipino citizenship for foreign direct investments.

On Section 7 of Article XII, the provision on the transfer or conveyance of private lands is clear as stated since a "prequalification" by law of the individual, corporations, association etc., is stated as required. Thus, adding the phrase "unless otherwise provided by law" could be redundant.

Further, the proposed amendments under Article XII expressly protect Filipino ownership and/or control over public utility operations, giving due consideration to issues relating to public welfare and national security. Everything considered, the prudent construct of HJC 04 in this section is preferable when looking at matters of national interest and security.

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Comments on **House Concurrent Resolution 01,** Proposing Amendments to Certain Provisions of the 1987 Constitution of the Republic of the Philippines Particularly on Article VI, X, XII, XIV and XVI; and **Resolution of Both Houses No. 02,** Resolution of Both Houses Proposing Amendments to Certain Economic Provisions of the 1987 Constitution of the Republic of the Philippines Particularly on Articles II, XIV, and XVI

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The amendment "unless provided for by law" in several sections of the 1987 Constitution opens up windows for legislative play as regards concessions to foreign entities. The proposed changes are subtle, but the potential impacts are immense. Although still subject to congressional discourse and translation, great caution must be exercised in protecting national patrimony and public interests while pursuing developmental goals.

I. Comments on the proposed amendments on Article X (Term and Term Limits)

The ability of elected officials to deliver on campaign promises and public goods efficiently and effectively depends on how long these have in office. Much economic literature has been focused on offering theoretical basis for selecting goods and services that should be provided (Stiglitz and Rosengard 2015). In reality, the identification of such goods does not happen in a vacuum, ceteris paribus. The selection of goods and services to be provided by government is as much a political question as to what the elected official wants to provide and happens in a political environment where the responsibility of delivering goods and services by government happens within binding term limits. The comments on the proposed Constitutional Amendments on term and term limits below focus on the sparse literature and empirical evidence on considerations and public policy effects of term and term limits of elected officials.

1. The proposed revisions on the term and term limits for the members of the Congress of the Philippines and local elective officials included in HCN No. 1 are summarized in Table 1 below:

Table 1. Term and Term Limits for National (Congress of the Philippines) and Local Elected Officials

Elected Official	1987 Constitution	Proposed Amendment as per House Concurrent Resolution (HCR) No. 01	Change in total number of years allowed in office in HCR No. 01
Senator	Two (2) six (6) year terms	Three (3) four-year terms	None
	Maximum number of consecutive years in office: twelve (12) years	Maximum number of consecutive years in office: twelve (12) years	
Representative	Three (3) three (3)-year terms	Three (3) four (4)-year terms	**Increase of three (3) years**

	Maximum number of consecutive years in office: nine (9) years	Maximum number of consecutive years in office: twelve (**12**) **years**	
Locally Elected Official	Three (3) three (3)-year terms	Three (3) four (4)-year terms	**Increase of three (3) years**
	Maximum number of consecutive years in office: nine (9) years	Maximum number of consecutive years in office: twelve (**12**) **years**	

The following are the implications for the proposed changes in term limits under HCN No. 1:

- For Senators: The maximum number of consecutive years allowed to remain in office is same though the length of term is proposed to decrease and term limits is proposed to increase. This implies that senators will campaign more frequently but serve for a shorter time period if elected.
- For the Members of the House of Representatives: Though the length of a term has increased to four (4) years and the maximum allowable terms remains at three (3), the total number of possible years in elected office is proposed to increase from nine (9) to twelve (12).
- For Locally-Elected Officials: Similar to the proposed changes for the Members of the House of Representatives, the proposed length of a term has increased to four (4) years and the maximum allowable terms remains at three (3). Therefore, the total number of possible years in elected office increased from nine (9) to twelve (12).

2. Term and term limits are varied across countries. In addition, there are no theoretically based defined and prescribed number of years for term and term limits. Some countries do not impose term limits and, some, like in the case of the US, allow States to decide on the imposition of term limits as illustrated in Table 2 below (Besley and Case 1995).

Table 2. Examples of term limits of local/subnational government elected officials in Federal countries.

Country	Position	Term Limits
United States of America	Local Government	Only some of the local governments have term limits. Also, limits vary from city to city even within same states
	Mayor	• In Philadelphia, the mayor cannot be elected three consecutive times, but there is no limit on how any individual can serve as mayor • Houston, Texas has a limit of 2 four-year terms • San Antonio, Texas has 4 two-year terms

Country	Position	Term Limits
		• Cincinnati, Ohio two successive four-year terms • New Orleans, City Council members are limited to two four-year terms • Los Angeles, mayor serves up to two four-year terms.
New Zealand	Mayor or Regional Council Chair	Elected by their district for three-year terms
	Councilors	Elected to represent their communities for three-year terms
Canada	Municipal Council Member	No Canadian municipality has a limit on the number of consecutive terms an individual may serve on its council

3. However, despite the varied stance regarding term and term limits across countries, the effect of these on public policy and, consequently, development outcomes, have been the subject of much research under the realm of political economy, asymmetric information and public choice theory. Some of the evidence examining the effects of terms and term limits include: (1) shorter terms are associated with higher campaign expenditures but also reduce campaign returns (Daniel and Lott 1997); and, (2) there are a first mover advantage of those who spend on initial campaigns and are successfully elected (Daniel and Lott 1997).

4. The literature also looks at the differences in policies implemented by incumbent officials in their last term of office, i.e. lame-duck incumbent. Some evidence include: (1) higher state income taxes and per capita expenditures are associated with lame-duck governors where applicable in the US; and, (2) the magnitude in the change in State tax and expenditures depend on the party affiliation of the governor (Besley and Case 1995). For the Philippines there has been evidence of: (1) how binding term limits constitute critical junctures in which dynastic women are 240% more likely to access political office with no difference in gender policy outcome (Labonne, Parsa and Querubin 2017); and (2) different spending priorities of an incumbent official who is facing his last term in office, depending on his or her membership in a political dynasty (Sicat and Maddawin 2018).

A. With respect to the proposed changes to term and term limits:
    a. The proposed shortening of the term of office of a Senator must be explained. There is some evidence that shows that there is a tendency of higher campaign expenditures and reduced campaign returns which may prove to be a disincentive to officials elected for this position.
    b. The proposed lengthening of the term of office of both a member of the House of Representative and locally-elected officials to four (4) years is understandable since this

would provide another year for the official to be able to set-up and implement desired policy and reforms in one term. This is also aligned, as converse, to the evidence of shortening of terms.

c. However, the proposal to lengthen the maximum allowable consecutive years in office to twelve (12) from nine (9) needs to be justified. Sparse evidence on term limits shows that politicians reaching term limits impose different tax and expenditure policies from their first years in office which also depends on certain political affiliations. There is hardly any evidence of improved development outcomes with elected officials that have rendered maximum term limits.

B. With respect to the amendment to Sec. 8: "The term of office of elective officials [, except for barangay officials, which shall be determined by law,]"

a. If the square brackets indicate a deletion of the enclosed phrase, i.e. including barangay officials in the definition of elective officials, then this proposed amendment enhances efficiency, equity and certainty in public service by treating all elective officials the same as well as creating certainty in the term of office and reducing the cost for having to hold barangay elections separate from local elections.

II. Comments on the proposed amendments on Article XII (Economic Provisions)

A. Proposed amendments related to natural resource

All the proposed amendments involve a simple clause, UNLESS PROVIDED BY LAW. So the key point is whether Congress should be given the flexibility to decide on whether the nationality restriction should be lifted or not.

Allowing Congress to legislate laws on nationality in the utilization of natural resources is a better way to deal with the issue than by the way of the Constitution. Complex technical, social, and economic issues related to resource use cannot be resolved by a fundamental law, but it can certainly be addressed by a suitably crafted law with IRRs.

Mining industry

Article XII Section 2 enshrines the Regalian doctrine with the state owning all lands and natural resources of the public domain. Although co-production, joint venture, and production sharing arrangements can be made with 40% foreign-owned corporations, the State retains in theory full control and supervision over the management, development and utilization of such resources.

However, Financial or Technical Assistance Agreement (FTAA), as provided for in the Philippine Mining Act of 1995 (RA 7942) allowed the participation of foreign corporations with less than 50% Filipino ownership. This legislative provision liberalized in effect largescale mining in the country. The Supreme Court supposedly voided this provision in 2004 (but reversed its decision the same year), initially with the recognition that it violated section 2 of the 1987 constitution. Current issues like the renewal of FTAA of OceanaGold put the same concerns in the limelight.

The proposed amendment opens up more avenues for the participation of foreign-owned companies/corporations in mining or extractive industries, not only in largescale operations but also for small scale or artisanal ones.

The above concerns present both economic and security issues as the mining sector of the country may be deluged or overwhelmed by foreign-led extraction/mining activities. Although the sector may benefit through the infusion of resources and novel technologies from outside the country, local operators, particularly citizens of the republic, must be protected from resource, power and competitive imbalances/disparities. The Supreme Court expressed the same in 2004, when it referred to the evils/ issues that the framers of the 1987 constitution sought to eradicate.

Public lands

Further, Section 3 and Section 7 amendments on Article XII open up windows for legislative play as regards ownership of foreign entities, lease and hereditary succession of lands within the public domain. The same protection against resource disparities between local and foreign entities must be considered in discussing this proposed revision.

The 1987 Constitution allows for the disposal and use of public agricultural lands for private use. The Public Land Act and the Agrarian Reform Law provide for ownership and other usufruct rights of public agricultural lands to private corporations. Thus, adding the phrase "Unless Otherwise Provided by Law" is consistent with the current practice and regulations with regard to the disposal and use of public agriculture lands. This will also clarify the consistency of the 1987 Constitution with other land laws of the country.

The Section 10 amendment on Article XII does not have much bearing as it is already provided for that the stated provisions will only be in effect when national interest dictates and upon recommendation of the economic and planning agency. This section is protective in nature as it provides due advantage to Filipinos and Filipino-controlled/owned corporations in issues concerning national patrimony and economy. Inserting "unless provided for by law" will only water-down the implied protective mandate of Congress implicit in this constitutional provision.

Lastly, Section 11 amendments on Article XII open up avenues for Foreign-owned or controlled entities to participate in the operation of public utilities, and have controlling participation in governing bodies. Albeit still subject to congressional discourse in terms of legislative translation, prudence has to be exercised when matters of national security and interests are on the line. Particular attention must be given to communication or ICT infrastructure where data privacy and national security concerns apply.

B. Proposed amendments related to education, science and technology, and the service industries

The proposed amendment on Article XIV, par. 1, no. 2, section 4 of the 1987 Philippine Constitution, only inserted the phrase, "unless otherwise provided by law."

This proposal will give Congress the power to legislate laws that could liberalize the ownership of educational institutions in the Philippines. The 1987 Philippine Constitution currently provides that at

least 60% of educational institutions should be owned by Filipinos, other than those established by religious groups and mission boards.

As a matter of principle, the Philippines should open up the ownership of educational institutions and even professions to foreigners in order to further improve the competition landscape of the country. Congress might want to examine the constitutions of other ASEAN members, and analyze why the education and business sector of some countries without ownership restrictions on educational institutions continue to flourish.
Amending the Constitution to provide Congress the power to propose legislation on these matters could be a double-edged sword. On one hand, it gives the government ample time to study the implications of liberalizing the ownership of educational institutions. However, on the other hand, there is also a danger that these proposed measures might suffer the same fate of other constitutionally mandated laws, which languished in the committee level of Congress for decades, e.g. the establishment of an independent national planning agency, definition/regulation of political dynasties, etc.

The proposed amendments will also liberalize the limitations imposed by the 1987 Constitution on foreign ownership in other service industries (see Table).

Constitutional limitations on foreign participation in the services sector

Sector	Maximum allowed foreign ownership	Section
Mass media	0%	Art. XVI, Sec.11.1
Advertising	30%	Art. XVI, Sec. 11.2
Public utilities*	40%	Art. XII, Sec. 11
Educational institutions	40%	Art. XIV, Sec. 4

*currently includes telecommunications as well as transport and auxiliary services.

Art. XII, Sec. 14. also restricts the practice of all professions in the country to Filipino citizens, *save in cases prescribed by law.* The proposed amendments seek to include the same clause in the relevant sections identified above. Through these amendments, policymakers will be able to respond and adjust our foreign investment policy to the changing economic priorities and conditions.

In the case of service industries, technological developments have diminished the effectiveness of foreign ownership restrictions as a means to protect public interest. With information and communications technologies, education services, advertising services and mass media can now be delivered digitally and supplied across borders. The cross border supply of a service (Mode 1 of Service Trade) can substitute the supply of a service through commercial presence (Mode 3 of Services Trade). With Mode 1 however, the benefits from foreign direct investment such as domestic job creation and other spillover effects are not enjoyed by the country.

Moreover, technological disruptions cause industries to emerge, converge, and disappear. With digitization for example, boundaries between industries are becoming indistinct creating new types of industries and services (Atluri, et al. 2017). Ownership restrictions not only limit foreign investment and competition, the different regulations applied (in this case, on foreign equity) to increasingly

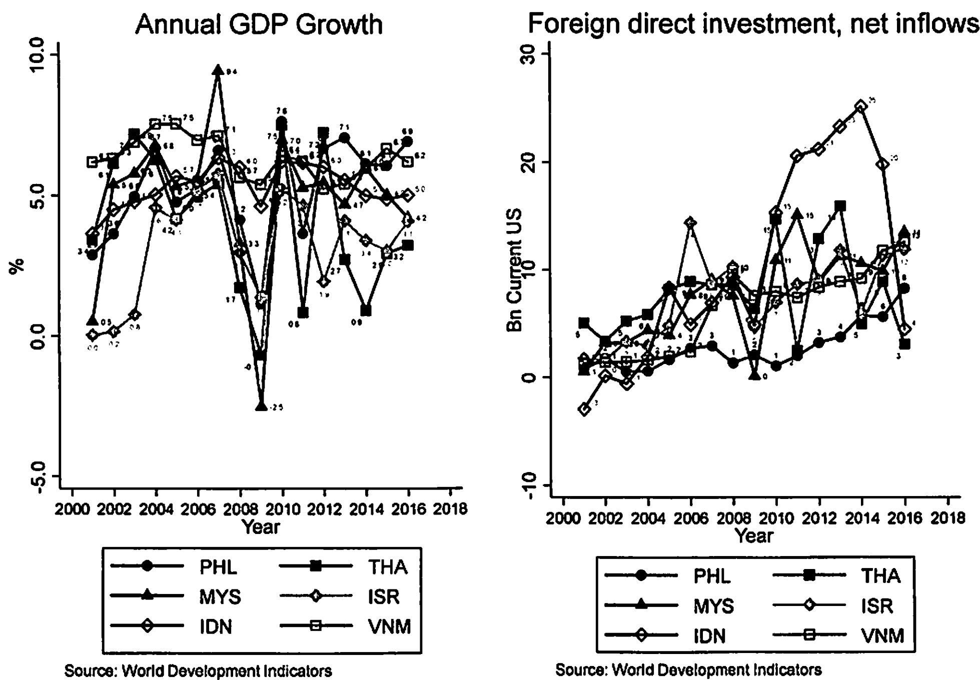
converging industries leads to confusion and uncertainty discouraging innovation and the introduction of new products and business models.

Policies and regulations must be able to keep up with changes in technology and market conditions. The proposed amendments are therefore necessary.

C. Restrictiveness of the Philippine Economy

Despite rapid GDP growth, the Philippines lags behind some ASEAN neighbors in attracting FDI. Philippine GDP growth rate has been, on average, the highest in the region since 2012. GDP growth rate in 2016 is at 6.9 percent. As GDP continues to grow, net FDI inflows have also been exhibiting a positive trend since 2008. Despite this, the Philippines volume of FDI inflows in the country lags behind its neighbors in Asia. The country is only able to register foreign direct investment inflows of about Bn $8.0. In contrast, Viet Nam which grew at 6.2 percent in 2016 was able to attract FDI inflows of Bn $13.0.

Figure 1. Annual GDP growth and FDI net inflows in selected Asian countries



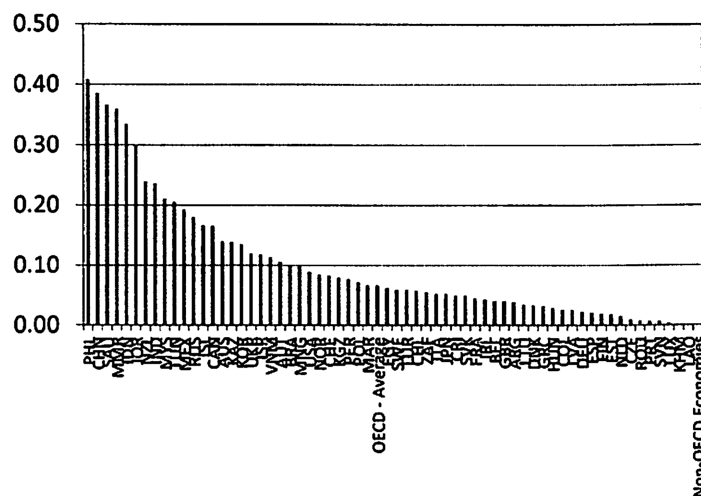
What are the factors that could explain the trend of Philippine FDI inflows? Alburo's (n.d.) analysis of FDI inflows during the Asian financial crisis proposed the following factors affecting FDI inflows: "First there is the role of **domestic markets** not only as a basis for sales but more importantly as potential for backward linkages, the procurement of local supplies and the availability of trainable workers. As the rationale for FDI changed from a desire to overcome protectionist barriers to a globalized production operation, domestic markets became less important than availability of complementary resources from skilled labor to local capital. Second, there is the importance of a **stable long-term policy environment** that is conducive of globalized production, marketing, and

distribution operations among firms located in different countries. The policy environment relating to trade and investment, among others, is especially crucial for the flows of FDI to be smooth over a long horizon. Finally, of equal importance is the **adequacy of infrastructure for foreign investors to work in**, ranging from port facilities to telecommunications. These are the ancillary services and industries that support the evolution of FDI into these countries."

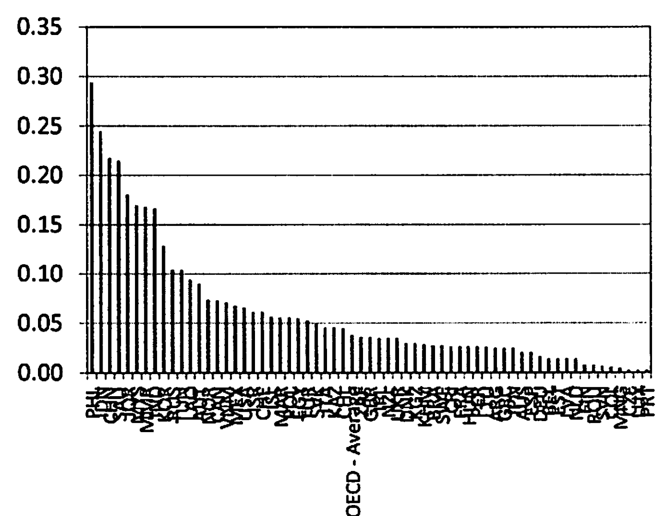
As the Philippines has one of the most restricted environment for foreign investment, we support the call for studying areas where the Philippines can relax investment restrictions. In general, the Philippines is the most restricted among the 62 countries included in the OECD FDI regulatory restrictiveness index (Figure 2)[1]. With a score of about 0.41, the Philippines is the only country scoring above 0.40. The country is more restricted than China (0.386), Saudi Arabia (0.36), Myanmar (0.36) and Indonesia (0.31). Other countries in the southeast Asia can be considered liberalized with scores less than 0.2.

Figure 2. Restrictiveness ranking in 2016

Total FDI Index, all types of restrictions, all sectors, 2016



Total FDI Index, equity restriction, all sectors



Zooming in on foreign equity restrictions, the Philippines is the most restricted country in terms of equity restrictions[2] for all sectors. It is the only country scoring more than 0.25 in the FDI

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[1] The FDI Regulatory Restrictiveness index looks into the statutory restrictions of 62 countries. The index covers 22 sectors covering the major sectors of the economy. Four types of measures: (1) foreign equity restrictions, (2) screening and prior approval requirements, 3 rules of key personnel and (4) other restrictions on operation of foreign enterprises comprise the FDI regulatory restrictiveness index. The FDI restrictiveness index provides a score ranging from 0 (completely open) to 1 (completely closed) to each sector in each country by analyzing the overt regulations on FDI. The index excludes other aspects of the regulatory framework like informal restrictions, regulatory framework and actual enforcement of the restrictions.

[2] Scoring of foreign equity limits follows the following general rule: if no foreign equity is permitted, the score is 1 signifying that the sector is closed. If majority foreign control is not allowed, the score is 0.5 and if there is a requirement of a domestic minority, the score is 0.25. Adjustments are applied depending

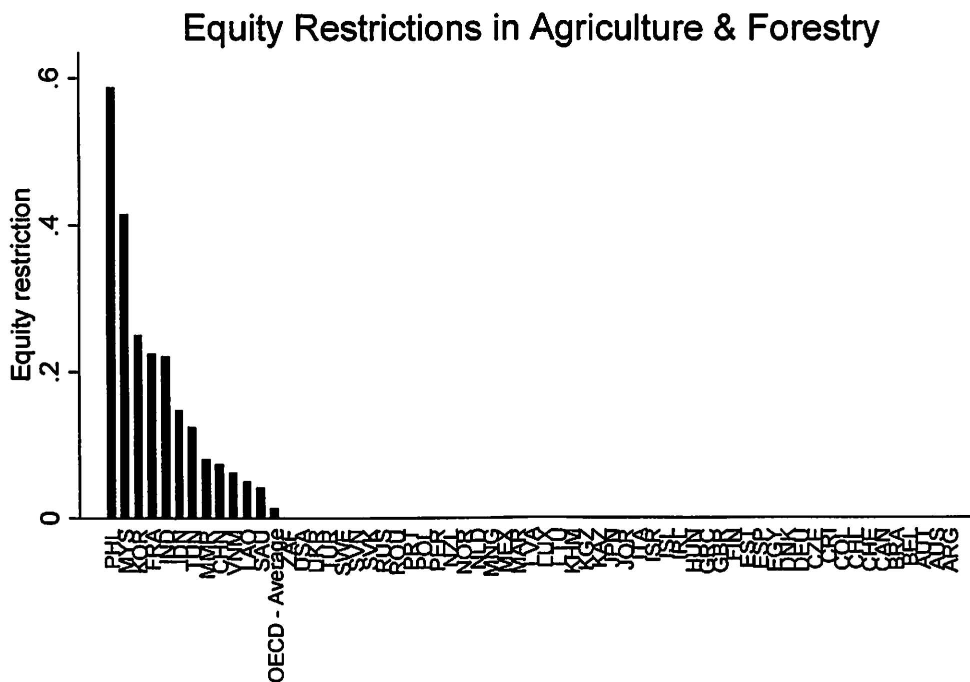
restrictiveness index scale. Indonesia which comes in at second place scores only 0.24 while China (0.22) and Saudi Arabia (0.22) are virtually tied for 3rd place (Figure 2, panel B). Most of the ASEAN countries included in the database, viz., Myanmar, Lao PDR and Vietnam tend be restricted as well with scores higher than the OECD average. Only Cambodia scored lower than the OECD average (Figure 3).

What sectors contribute to the relatively high rank of the Philippines in terms of equity restrictions in the FDI restrictiveness index?

A. Primary

Three major sectors are analyzed in the primary sector: agriculture and forestry, fisheries and mining and quarrying (including oil extraction).

Figure 3. Equity restrictions in agriculture and forestry, 2016



The Philippines is the most restricted country in terms of equity restrictions in the agriculture and forestry sector. It scored close to 0.6 in FDI restrictiveness (Figure 3). This high score is explained by the complete (100 percent) prohibition in the practice of profession related to forestry while foreign capital of up to 40 percent is allowed in the exploration, development and utilization of natural resources (with some exemptions). Agricultural activities related to rice and corn (culture, production,

on the score of the foreign equity limits and for special cases (e.g. rules on startups and acquisitions and restrictions on the purchase of land).

milling, processing and trading) allow up to 40 percent foreign equity in the country which somehow could have prevented the complete closure of this sector from foreign equity.

With regard to the fisheries sector, the Philippines is less restricted relative to Saudi Arabia and China which has scored 1 for this sector. Indonesia also scored more than 0.5 indicating a restricted fisheries sector in terms of foreign equity. The Philippines is in the company of the USA, Sweden, New Zealand, Norway, Morocco, Korea, Italy, Iceland, Great Britain, Chile and Canada all scoring 0.5 (Figure 4). This is probably because of two provisions in the 10th FINL. The first provision completely prohibits foreign capital in business activities that would utilize the marine resources in archipelagic waters, territorial sea, and exclusive economic zones. The small-scale utilization of natural resources in rivers, lakes, bays, and lagoons is also completely closed to foreign capital. However, there are provisions that allow foreign capital in marine activities in the country. Up to 40 foreign equity is allowed in the operation of deep sea commercial fishing vessels.

Considering the Mining and quarrying sector, the Philippines is the third most restricted economy. Saudi Arabia scored with a 1.0 while Indonesia is a distant second with a score of 0.55. The Philippines closely follows Indonesia with a score of 0.5 (Figure 5). Foreign equity of up to 40 percent is allowed in activities related to the exploration, development and utilization of natural resources which include mining and quarrying while small-scale mining is completely closed to foreign equity. These two provisions quite possibly explain the relatively high score of the country related to this sector.

Figure 4. Equity restrictions in fisheries, 2016

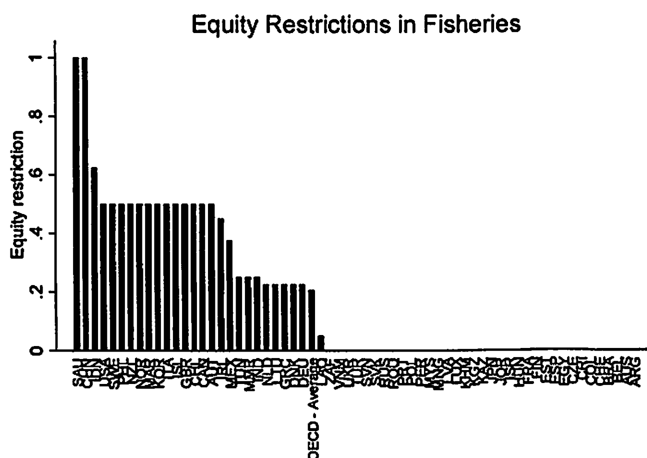
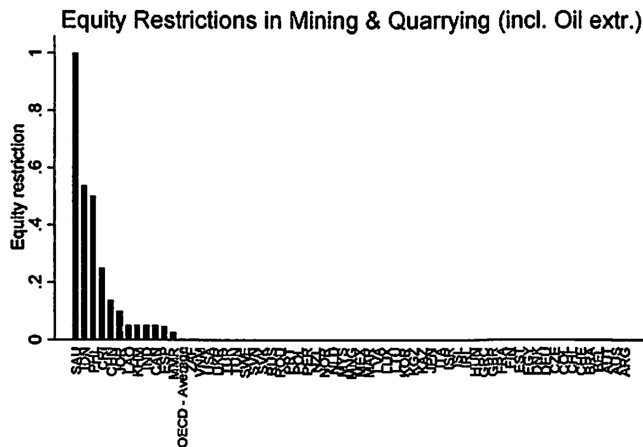


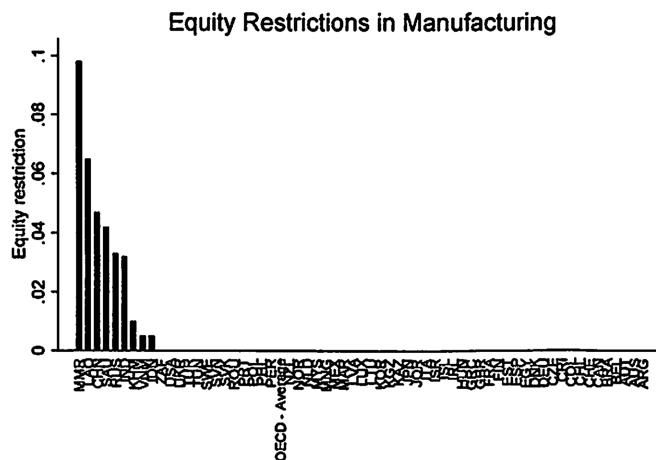
Figure 5. Equity restrictions in mining and quarrying (including oil extraction), 2016



B. Secondary

The Secondary sector comprises of manufacturing, electricity (generation and distribution) and construction. The Philippines scored 0 in the equity restrictions for the manufacturing sector. The country fared relatively better than most of its ASEAN neighbors like Myanmar (.01), Cambodia (0.015), Vietnam (0.01) and Indonesia (0.01) (Figure 6). There are manufacturing sectors that remain completely closed in the country but these are mostly related to security. Foreign capital is prohibited in the Manufacture nuclear, biological, chemical and radiological weapons and anti-personnel mines. The manufacture of firecrackers and other pyrotechnic devices is also closed to foreign equity.

Figure 6. Equity restrictions in manufacturing, 2016



Unlike the manufacturing sector, the Philippines has imposed equity restrictions on electricity (Figure 7) and construction (Figure 8). The Philippines has scored 0.19 for electricity ranking the 7th most restricted among the 62 countries for which the OECD has data. Austria ranks the highest with a close (1.0) electricity sector. Malaysia, Israel and Switzerland are tied for second place with a score of 0.5 Iceland and Korea are relatively more restricted than the Philippines in terms of equity restrictions for

this sector. According to the 10th FINL, Up to 40 percent foreign equity is allowed for businesses engaged in the operation and management of public utilities which includes the distribution of electricity provides an explanation for the Philippine ranking.

Egypt ranks as the top most-restricted economy in terms of equity restrictions imposed on foreigners engaging in construction. Jordan ranks as second while the Philippines ranks as third. Two provisions in the 10th FINL pertain to construction. First, construction contracts related to locally-funded public works are only allowed up to 25 percent foreign participation. Second, contracts related to the construction of defense-related infrastructure is also allowed only up to 25 percent of foreign participation. Apart from these two provisions that are directly related to construction, other provisions may indirectly make the sector closed to foreign equity. For instance, foreign engineers, architects and master plumbers are not allowed to practice their profession in the country which may also make it difficult for foreign companies to undertake construction activities.

Figure 7. Equity restrictions in electricity, 2016

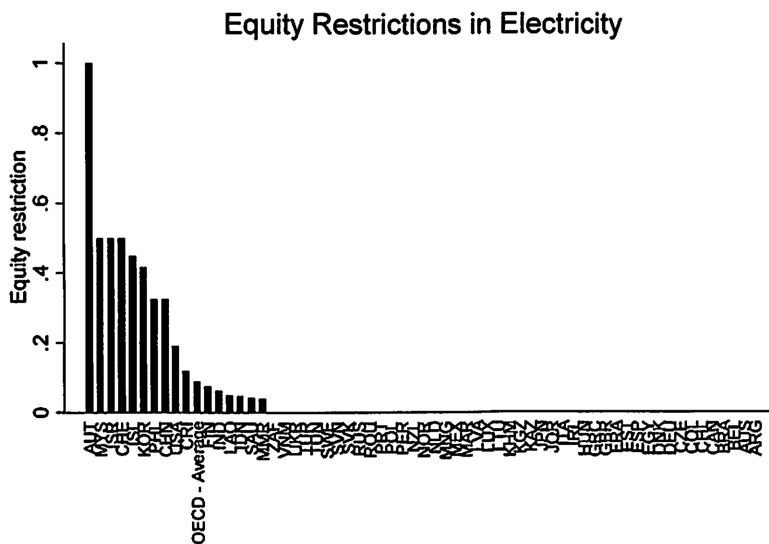


Figure 8. Equity restrictions in Construction, 2016

C. Tertiary

The distribution sector is relatively open for the Philippines in terms of equity restrictions. In contrast, some of its ASEAN neighbors have imposed equity restrictions in this sector. Indonesia (0.3) is the most restricted ASEAN country followed by Lao PDR, Malaysia, Vietnam and Myanmar (Figure 9).

Figure 9. Equity restrictions in distribution, 2016

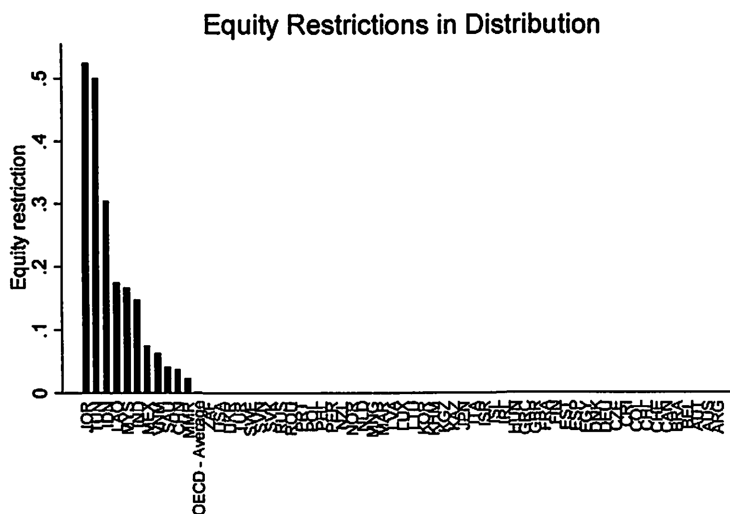
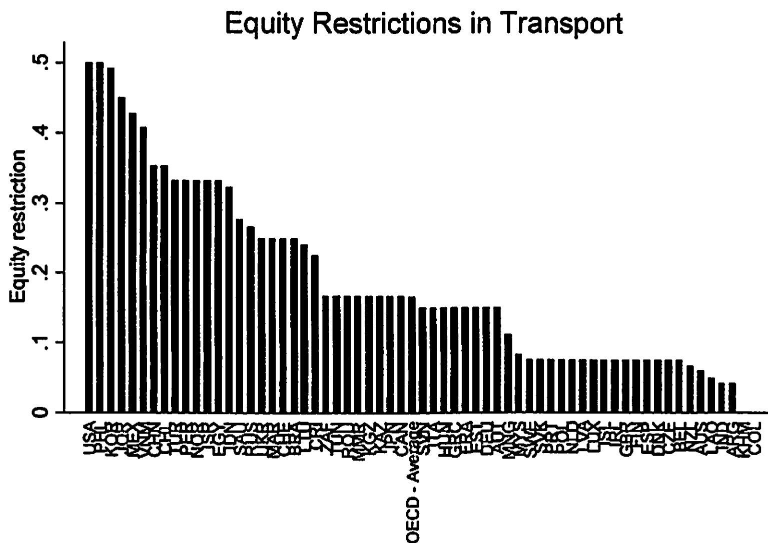


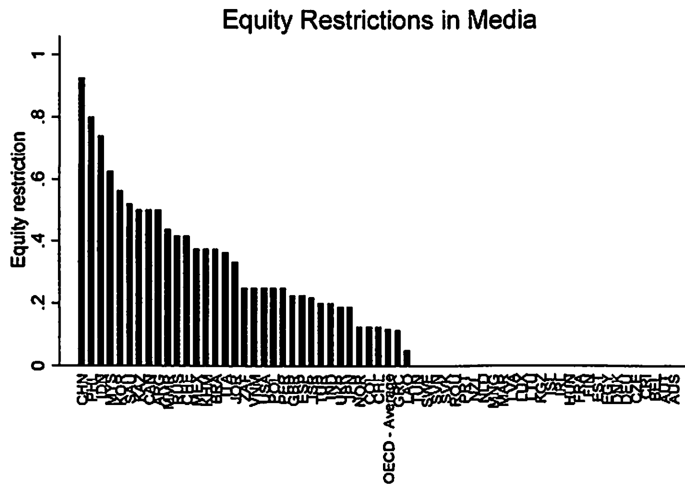
Figure 10. Equity restrictions in transport, 2016



Equity restrictions abound in the transport sector (Figure 10). Only Cambodia and Colombia scored 0 for this sector among the 62 countries included in the database. The USA (0.5) and the Philippines (0.5) are tied for the most restricted sector in terms of equity restrictions. The restriction in transport is alluded to in the 10th FINL through the provision on operation and management of public utilities. The 10th FINL defines in footnote 7 a public utility as a business that regularly supplies the public with some commodity or service of consequence. The footnote further provides examples such as: electricity, gas, water, telephone, telegraph and transport services. Footnote 6 provides additional restrictions on the management of public utilities by limiting the share of foreign investors in the governing body of public utility enterprise to the proportion of its share to capital. Furthermore, all the managing and executive officers of public utility enterprise must be Filipino citizens.

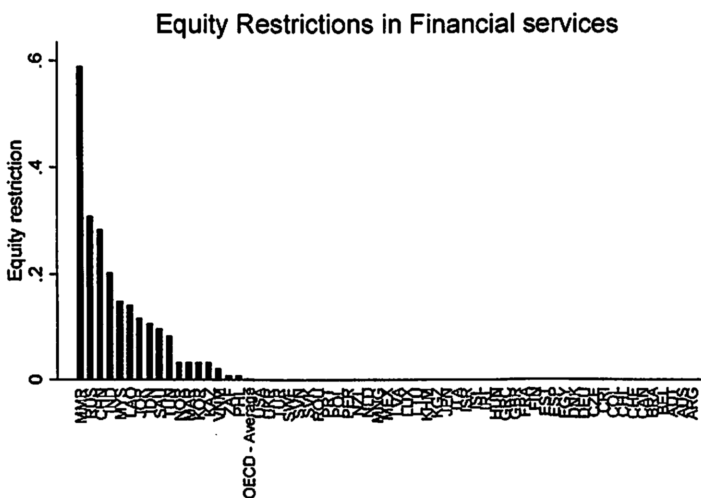
In terms of media services, China has the most restricted equity limits scoring about 0.95. Philippines, Indonesia, Malaysia and Korea complete the 5 most restricted countries in terms of media services (Figure 11). According to the 10th FINL, mass media except for recording services in the country is completely closed to foreign equity. No specific provision prescribes the allowable ratio of foreign equity for recording services in the 10th FINL which could imply 100 full foreign participation is allowed in the sector.

Figure 11. Equity restrictions in media, 2016



Financial services in the country have become more liberalized in terms of equity restrictions. Although not completely open, the Philippines restrictiveness is close to zero which is just slightly higher than the OECD average (Figure 12). A cursory look at the 10th FINL shows no provision specifically pertaining to the financial sector however, footnote 4 specifies the sectors in the financial sector in which foreign equity is limited. This includes lending companies that are regulated by SEC, Financing companies and investment houses also regulated by the SEC. Lending companies are allowed of up to 49 percent foreign equity participation while financing and investments housed are allowed up to 60 percent foreign equity participation.

Figure 12. Equity restrictions in financial services, 2016



Kyrgyztan registered 0.5 FDI restrictiveness score for equity restrictions in the Hotel and restaurants sector. A distant second would be the Philippines which scored 0.25. Lao PDR, Jordan and South Africa complete the 5 most restricted countries in terms of equity restrictions in hotels and restaurants (Figure 13). No specific provision in the FINL explicitly refers to hotels and restaurants but this might be covered in the provision on retail trade and in the ownership of land.

The Philippines and China top the economies in terms of equity restrictions in communications services (Figure 14). Similar to transportation, the provision in the 10th FINL that relates to communication services is the provision on public utilities. Telecommunication and telegraph services are allowed up to 40 percent of foreign equity according to the provision. The indirect restriction on the governance board and executive and managing directors also applies to this sector.

The Philippines also tops the economies in terms of equity restrictions in the business services. It is worth noting that the business services sector of the Philippines is completely closed to foreign equity as reflected by the score of 1 in the restrictiveness index. India (0.58) and Indonesia (0.5) follow as second and third place, respectively (Figure 15). While no specific provision on business services is identified in the 10th FINL, one can assume that the restrictiveness of business services sector in the country is related to the practice of professions. This is because key professions related to business services are only reserved to Filipinos. These include accountancy, customs brokerage, real estate services, architecture, engineering and interior design.

Figure 13. Equity restrictions in hotels and restaurants, 2016

Figure 14. Equity restrictions in communications, 2016

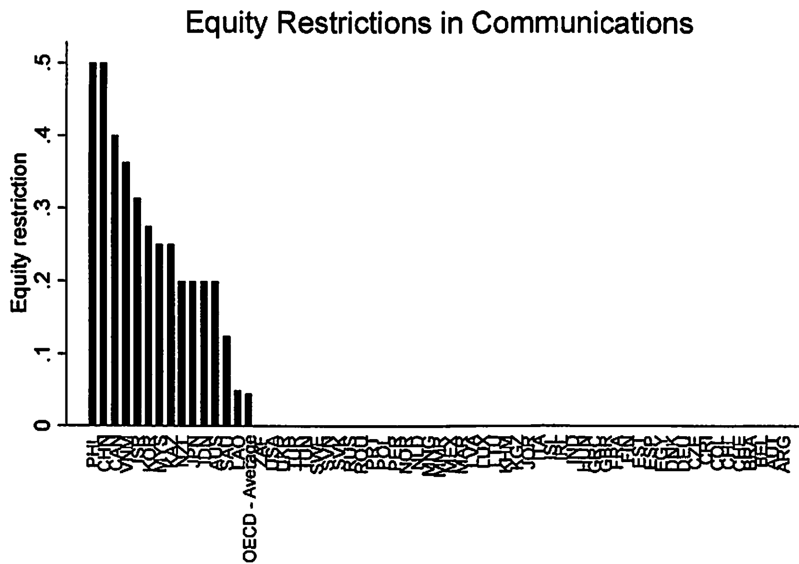
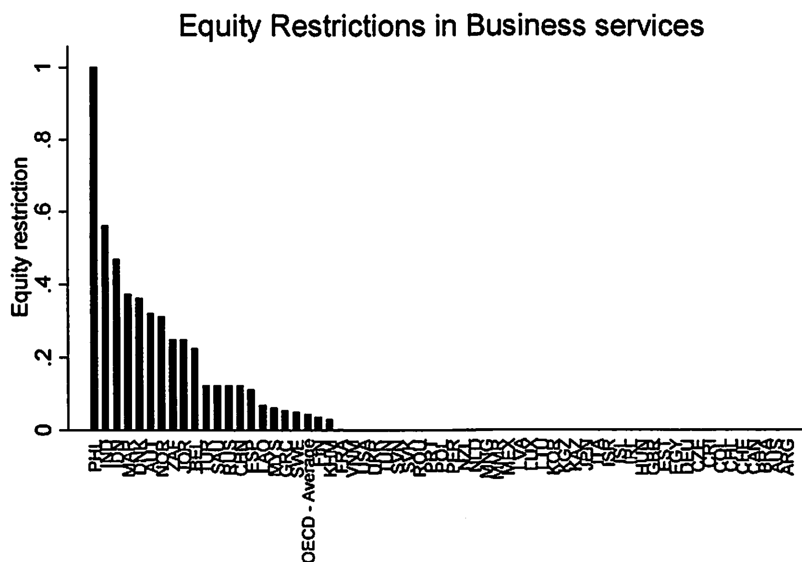


Figure 15. Equity restrictions in business services, 2016



It is equally important to address other determinants of FDI particularly competitiveness, domestic markets and adequacy of infrastructure. To make the Philippines a haven for investment, improving competitiveness is key. This has been the findings of Aldaba (1994), Alburo (n.d.), Aldaba (2006), Aldaba and Aldaba (2010).

Aldaba (1994) "found a strong positive correlation between FDI inflows and **trade policy** using effective protection rate as its indicator. Her results also revealed significant positive relationships between FDI and the stock of public investment (**measure of infrastructure availability**), real gross domestic product (**market size indicator**), and real effective exchange rate (**competitiveness** indicator with a real depreciation of the peso affecting FDI flows positively). As expected, the results showed a significant negative relationship between FDI and political stability. **No significant relationship between FDI and government investment incentive policies was found."**

"To attract foreign investors to locate in the country, we tried to compete with other countries in providing tax incentives. However, these efforts resulted in a complicated investment incentive system. A complex investment incentive system combined with poor investment climate explain why the Philippines has performed badly in attracting FDI inflows relative to its neighbors. This tends to show that **in the absence of fundamental factors such as economic conditions and political climate, tax incentives alone are not enough to generate a substantial effect on investment decisions of investors nor can they make up for the fundamental weaknesses of the country**." (Aldaba 2006 p. 29)

We also support the need to **amend the constitutional provisions** on foreign ownership restrictions. Villegas (2016) provided an explanation for the presence of economic restrictions in the 1987 constitution.

"Consciously or consciously, the members of the Philippine Commission of 1986 were drafting an anti-Marcos Constitution. In a word, they wanted to make sure that an authoritarian ruler like Ferdinand Marcos would never be allowed to lead the Philippines ever again. There was also a great distrust of legislators because of the perception that the former members of the Batasan were easily manipulated by the former President. The result of this mental state that affected most of the Commissioners was a proliferation of provisions in the Constitution that were meant to counter whatever perceived abuses there were during the Marcos regime. For example, if President Marcos was too friendly to foreign investors, there was the resolve of the majority of the Commissioners to make it more difficult for foreign investors to own what they considered vital or strategic industries, such as mining or public utilities. Also, the majority of the Commissioners were either left-leaning (part of the rainbow coalition that put Mrs. Aquino into power) or protectionists still very much influenced by the Filipino First policy that characterized post-war economic policy.

Without presenting myself as the only enlightened person, the records of the deliberations will show that I stood firmly in favor of an open economy as the Chairperson of the National Economy and Patrimony Committee that drafted the economic provisions. I was, however, constantly outvoted by the nationalists and the leftists. The result was a Constitution that left very little elbow room for future legislators to open up the economy to more Foreign Direct Investments."

Llanto (2014) supported the inclusion of the phrase "unless otherwise provided by law" to the foreign ownership restrictions of the Constitution particularly Articles XII, XIV and XVI. By the inclusion of this phrase, economic provisions in the constitution including foreign limits to capital are placed within the control of the legislature. Unfortunately, moves to amend even just the economic provisions of the constitution have not flourished.

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