Inputs on Amending the Economic Provisions in the Philippine Constitution

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The HOR Committee on Constitutional Amendments asked three questions:

1. Whether or not it is necessary to amend the Constitution;
2. If in the affirmative, what is the preferable mode of amendment; and
3. What are the proposed specific amendments, if any?

My brief answers are: to the first question, yes; to the second question, Constitutional Convention; and to the third question, amendment to the economic provisions by inserting "unless otherwise provided by law" in the specific provisions on foreign ownership restrictions in Articles XII, XIV, and XVI as this will establish an incremental approach in liberalization. Allow me to explain further.

It has been well established in the economics literature (e.g., Loungani and Razin 2001) that foreign direct investments (FDI) to developing countries bring economic gains that can take the following forms: by allowing the transfer of technology to host countries, particularly technology transfers that cannot be achieved through mere trade in goods and services; by making available to the host country's human resources the training, business operation techniques, and business ethics that foreign direct investments bring in, and thereby contributing to domestic human capital development; and by generating tax revenues for the host country in the form of corporate income taxes and higher revenue tax base due to larger economic activities. It is for these same reasons that the Philippines needs FDI.

If we are to focus specifically on liberalizing restrictions to FDI, we can also find studies that find positive impacts of FDI entry liberalization. The famous cases are the case of China and Russia. Chen (2018) presented an overview of the liberalization of FDI in China since 1978 and covered policies on contractual joint ventures, equity joint ventures, wholly foreign-owned enterprises, land use rights for foreign firms, mergers with and acquisition of domestic enterprises by foreign investors, unifying tax rates for both domestic and foreign enterprises, and many others. Citing previous studies, Chen also enumerated the ways in which FDI impacted China's economic growth, namely, FDI increased total capital formation in China, FDI supported China's growth

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through diffusion of knowledge and ideas, and FDI complemented rather than crowded out domestic investment. In Russia, Jensen and Tarr (2004) studied Russia's liberalization of barriers to FDI as a result of its accession to the World Trade Organization and found positive impacts in terms of improved domestic resource allocation, improved market access, lower cost of doing business domestically, and productivity improvement for users of goods. They also estimated that the largest gains are derived from liberalizing the entry of multinational service providers.

It is also well known that in helping foreign equity holders decide where and how much to invest and in facilitating the countries' benchmarking against each other, the FDI restrictiveness of countries are being analyzed and monitored by investment advisors (albeit often as private proprietary information) and multilateral agencies (as publicly available information). One reference for monitoring is the Organization for Economic Cooperation and Development (OECD)' assessment of the FDI restrictiveness of economies.[2] In its latest assessment, which covers 85 economies and used 2020 data or the latest available for the economy, the Philippines ranked third most restrictive, with an FDI restrictiveness index of 0.374. It is preceded by Libya as most restrictive, with a restrictiveness index of 0.713, and the Palestinian Authority or West Bank and Gaza Strip as second most restrictive, with a restrictiveness index of 0.388 (OECD 2023). Among ASEAN members, in the same OECD ranking, the Philippines ranked first in terms of restrictiveness (see Table 1).

Table 1. FDI Restrictiveness in ASEAN, 2020

ASEAN Member	FDI Restrictiveness Index
Philippines	0.374
Indonesia	0.347
Thailand	0.268
Malaysia	0.257
Laos	0.192
Brunei	0.146
Viet Nam	0.130
Myanmar	0.112
Singapore	0.059
Cambodia	0.054

Note: Based on 2020 data or the latest available.
Source: OECD (2023).

By amending the economic provisions in the 1987 Constitution and specifically by inserting the phrase "unless otherwise provided by law" in the provisions on foreign ownership restrictions in

[2] The FDI restrictiveness index of the OECD takes the values 0 for open and 1 for closed. The OECD assesses FDI restrictiveness "by looking at four main types of restrictions: foreign equity restrictions; discriminatory screening or approval mechanisms; restrictions on key foreign personnel and operational restrictions. Implementation issues are not addressed and factors such as the degree of transparency or discretion in granting approvals are not taken into account." (OECD 2023).

Articles XII, XIV, and XVI, an **incremental approach** to liberalization can be adopted. This is not the feared immediate 100% liberalization that certain stakeholders expressed before this Committee. Requiring legislation for the liberalization of FDI entry in certain sectors will entail deep scrutiny of each sector and will mean that prioritization will have to be employed by our Congress. There will have to be an investigation first of which sectors urgently need a liberalization law, and then the priority sectors have to be the first to be liberalized. It may well also be the case that the last to be liberalized is land ownership, or long-term land use rights ownership (as is the case in China where 70-year land use rights can be granted to foreign firms).

The incremental approach can also take into consideration the safeguards that will allay the concerns of various stakeholders. This is because there are various factors that can be designed in a legislation relaxing foreign equity restrictions, e.g., capital requirement, specific technology transfers, equal treatment provisions (reciprocity requirements), and others. History can also be our guide in deciding which sectors to liberalize first. This is because lessons from the history of relaxing barriers to entry of foreign firms can already be gleaned from our economic sectors which have already been liberalized, such as the financial services sector and the electric power industry sector.

Surely, there are other factors that can influence the attractiveness of a country for inward foreign direct investments, such as: the rule of law in the country or the effectiveness of the legal and judicial frameworks, the quality of infrastructure, the availability and affordability of domestic materials and labor if links to domestic industries are needed, and the level of ease of dealing with subnational or LGU-level institutions if subnational links are needed. But reforms in all these aspects can be pursued while liberalizing the entry of foreign capital.

Put differently, foreign capital entry liberalization is a reform that is not sufficient on its own. For instance, ensuring good quality infrastructure will facilitate more FDI. Asongu and Odhiambo (2019) studied how information and communication technology (ICT) in 25 countries in Sub-Saharan Africa during the period 1980-2014 modulated the effect of FDI on economic growth. They found that "both internet penetration and mobile phone penetration overwhelmingly modulate FDI to induce overall positive net effects on economic growth." In a study of 46 developing countries using data over the period 2000-2016, Saidi et al. (2020) also found that transport and logistics infrastructure positively contributes to the attractiveness of FDI and sustains economic growth.

On the mode of amending the Constitution, doing it through a Constitutional Convention is preferable. Trust will be built in the process. Trust-building is likely to ensue from wider consultations and greater sectoral and geographical representation. With trust in the representation, consultations, and draft outputs, the amendments will have a greater chance of success.

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Note: As requested by the Committee, copies of the materials referenced in this position paper are being sent to the Committee. Copies of PIDS studies (Albert et al. 2015 and Sicat and Maddawin 2018) that touched on political dynasties are also being sent to the Committee.