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SENATE
RESOLUTION OF BOTH HOUSES NO. 1

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[Signature]

Introduced by SEN. WIN GATCHALIAN

A RESOLUTION OF BOTH HOUSES OF CONGRESS
PROPOSING AMENDMENTS TO CERTAIN RESTRICTIVE
ECONOMIC PROVISIONS IN THE 1987 CONSTITUTION
OF THE REPUBLIC OF THE PHILIPPINES
SPECIFICALLY ON ARTICLES XII, XIV AND XVI THEREOF

WHEREAS, the Philippines has become one of the fastest growing economies in the region, and continues to show strong potential for further growth amid improvements in governance and the business environment, but its economy is still characterized by constitutional restrictions¹ such as limits to foreign equity in the ownership and operation of public utilities, educational institutions, mass media, and advertising;

WHEREAS, to sustain the growth of the Philippine economy, these restrictions need to be amended, as they have constrained foreign direct investments (FDIs). Under the *OECD Investment Policy Reviews: Philippines 2016*,² the Philippines is one of the countries with the most restrictions on foreign investments. We have one of the lowest FDI levels over the years in the Association of Southeast Asian Nations (ASEAN) region at USD 5.7 million in 2015, compared to USD 7.062 billion for Thailand, and USD 11.8 billion for Vietnam;

WHEREAS, increased FDI inflows to a country can create several positive economic effects. Economic theories suggest that participation in regional and global production networks provides domestic firms not only with access to export markets but also to newer technologies which can generate substantial positive spillovers and externalities. This kind of FDI can be effective in supporting economic integration, fostering linkages with

¹PIDS, Economic Issue of the Day: Amending the Economic Provisions of the 1987 Constitution, 2014, p. 1.

²See https://read.oecd-ilibrary.org/finance-and-investment/oecd-investment-policy-reviews-philippines-2016_9789264254510-en. Accessed on July 3, 2019.

domestic firms, and improving export competitiveness by exposing local firms to foreign technologies, thereby increasing economic growth;³

WHEREAS, the entry of foreign firms into the Philippine economy has the potential to bridge existing gaps in the domestic value chain, specifically, through increased competition that spur greater investments in research and development, increased knowledge within the labor market, and agglomeration among firms. The innovations generated from competition and development of new linkages with regional and global chains will improve the diversity of the Philippines' foreign trade portfolio and ultimately increase worker productivity. This makes the proposed resolution a means, not only to attract foreign investments, but also to enable local firms to progress, invest, and expand to help contribute to inclusive and sustainable development;

WHEREAS, the Constitution provides that the goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged;⁴

WHEREAS, it is crucial to amend the restrictive economic provisions of the Constitution which take the form of laws that are almost immutable – “*iron laws of economic protection*” that have caused binding constraints to the growth and productivity of the economy;⁵

NOW THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE PHILIPPINES, upon a vote of three-fourths (3/4) of all its Members, with each House voting separately, to propose amendments to Articles XII, XIV and XVI of the 1987 Constitution of the Republic of the Philippines, with the following proposals:

SECTION 1. Paragraph 1, Section 10 of Article XII (National Economy and Patrimony), is amended to read as follows:

“Sec. 10. 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, **UNLESS OTHERWISE PROVIDED BY LAW**. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly-owned by Filipinos.”

“X X X”

³ *Id.* at 2.

⁴ Section 1, Article XII.

⁵ *Supra* Note 2 at 1.

SEC. 2. Paragraph 1, Section 11 of Article XII (National Economy and Patrimony), is amended to read as follows:

“Sec. 11. 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, **UNLESS OTHERWISE PROVIDED BY LAW**; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. [The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.]”

SEC. 3. Paragraph 2, Section 4 of Article XIV (Education, Science and Technology, Arts, Culture and Sports), is amended to read as follows:

“Sec. 4. (1) x x x

“(2) 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, **UNLESS OTHERWISE PROVIDED BY LAW**. [The Congress may, however, require increased Filipino equity participation in all educational institutions.]

The control and administration of educational institutions shall be vested in citizens of the Philippines, **UNLESS OTHERWISE PROVIDED BY LAW**.

No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrollment in any school, **UNLESS OTHERWISE PROVIDED BY LAW**. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

“(3) x x x”

“(4) x x x”

SEC. 4. Paragraph 1, Number 1 and Paragraph 2, Number 2, Section 11 of Article XVI (General Provisions), is amended to read as follows:

“Sec. 11. (1) 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, **UNLESS OTHERWISE PROVIDED BY LAW.**”

“x x x”

“(2) The advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare.

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, **UNLESS OTHERWISE PROVIDED BY LAW.**

The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines, **UNLESS OTHERWISE PROVIDED BY LAW.**

SEC. 5. Transitory Provision. – Following the ratification of this Resolution of Both Houses amending Articles XII, XIV and XVI of the 1987 Constitution, all provisions of existing laws, rules and regulations imposing protectionist or nationality prohibitions on the grant of congressional franchises, ownership and operation of public utilities, ownership, control and administration of educational institutions, and ownership and management of mass media and advertising, shall remain in full force and effect unless otherwise provided by law.

Adopted,



WIN GATCHALIAN