



LEGISLATIVE RESEARCH SERVICE
QUICK NOTES
Second Regular Session, 19th Congress

4th Public Hearing
Committee on Constitutional Amendments and Revision of Codes
Subcommittee on Resolution of Both Houses No. 6

Subcommittee Chairperson: Sen. Sonny Angara

5 March 2024, Tuesday, 10:00 AM, Session Hall, Senate

Re: Proposed Amendments to the Restrictive Economic Provisions of the Constitution

- **Resolution of Both Houses No. 6—Sens. Juan Miguel “Migz” F. Zubiri, Loren Legarda, and Sonny Angara**

Background

- The Subcommittee conducted its third public hearing on February 20, 2024, to address proposed amendments to the restrictive economic provisions of the 1987 Constitution. The focus of the hearing was primarily on the various issues surrounding the potential increase in foreign ownership and control of higher educational institutions in the country.
- Preliminarily, Chairperson Sonny Angara clarified that it is not the intention of the authors of RBH 6 to amend basic education but to keep its ownership and control in the hands of Filipinos.¹ He urged the body to aim with greater precision at the language of the amendments.²
- *Executive Director Karol Mark Yee of the Second Congressional Commission on Education (EDCOM 2)* presented a comparative analysis of the foreign ownership policies in basic and higher education within ASEAN, to wit:
 - As regards **basic education**, the Philippines is one of the strictest countries in terms of foreign ownership in ASEAN, while Singapore, Malaysia, Vietnam, Myanmar, Laos, and Cambodia permit full foreign ownership;
 - Only the Philippines has restrictions on foreign ownership, establishment, and enrolment stipulated in the Constitution;

¹Paraphrased from the TSN of the Public Hearing of the Committee on Constitutional Amendments and Revision of Codes (Subcommittee on RBH No. 6), February 20, 2024, p. 9

² *Ibid.*, p. 9

- With regard to **higher education**, as provided under the Constitution, the maximum foreign ownership is 40%, while Malaysia, Singapore, and Thailand allow 100% foreign ownership;
- Republic Act No. 11448, also known as the Transnational Higher Education Act, permits joint ventures, while other ASEAN countries allow sole ventures; and
- The Manual of Regulations for Higher Education of 2008 expressly provides that foreign institutions may operate any degree program, directly or indirectly, in the Philippines, but no higher education shall be established exclusively for aliens, and no group of aliens shall comprise more than one-third of the enrollment.³

Highlights of the Third Public Hearing

- *Coordinating Council of Private Educational Associations of the Philippines (COCOPEA) Chairperson Fr. Albert Delvo* urged the lawmakers to proceed with caution should they decide to relax the economic restrictions as it would have long-standing and complicated effects on future generations.⁴ He said that allowing foreign ownership and control of higher educational institutions might endanger Filipino culture and values.⁵ Further, he said that higher educational institutions seem to be happy and content with the 60-40 arrangement as it serves the interest of the Filipino people.⁶

Fr. Delvo contended that introducing amendments to the Constitution could be delayed. He highlighted that the government has not yet effectively facilitated collaboration among the Committee on Higher Education (CHED), Department of Education (DepEd), Technical Education and Skills Development Authority (TESDA), and the Department of Science and Technology (DOST), nor has it sufficiently supported graduates in becoming producers, manufacturers, and shippers. Additionally, he criticized the government for imposing overly restrictive regulations on private education institutions.⁷

- *Associate Legal Counsel Joshua Alexander Calaguas of the Philippine Association of Colleges and Universities (PACU)* stated that PACU aligns with the Coordinating Council of Private Educational Associations of the Philippines (COCOPEA) and the Private Education Assistance Committee (PEAC). They urge lawmakers to exercise caution and foresight when deliberating on amendments regarding restrictions on foreign ownership and control of educational institutions. Atty. Calaguas emphasized that such amendments could potentially conflict with constitutional provisions that promote patriotism and nationalism.⁸
- *Executive Director Karol Mark Yee* presented the following for the consideration of the Committee:

³ Paraphrased from the TSN of the Public Hearing of the Committee on Constitutional Amendments and Revision of Codes (Subcommittee on RBH No. 6), February 20, 2024, pp. 17-20

⁴ Ibid., p. 11

⁵ Ibid., p. 12

⁶ Ibid., p. 13

⁷ Ibid., pp. 174-175

⁸ Ibid., p. 15

- The need to clearly set the government's vision and targets in opening up education to full foreign ownership;
 - Allowing foreign ownership is just a first step. Policy adjustments and government incentives, among others, are necessary to attract the best institutions; and
 - The need to review government regulations in a way that enables quality institutions to thrive.⁹
- *University of the Philippines (UP) President, Atty. Angelo Jimenez* argued that the current issue regarding foreign ownership is more about policy than constitutional or legal matters. He stated that UP's stance is that the wording of the Constitution provides an expansive enough zone of construction that lawmakers may not even need to amend its provisions as they currently stand.¹⁰
 - *Dr. William Padolina of the National Academy of Science and Technology* expressed support for allowing reputable foreign-owned educational institutions to enter the country. However, he emphasized the importance of establishing clear terms of reference, which should include provisions for collaborative research and development between domestic and international educational institutions.¹¹
 - *Former CHED Commissioner Dr. Patricia Licuanan* said that she is not convinced that amending the Constitution is the solution to the country's economic distress, which is why she does not favor amendments to restrictions on foreign ownership of educational institutions at any level.¹² She reminded the body of EDCOM 2's first-year report, which spelled out the crisis in Philippine education but did not even hint at a need for change in ownership policies to address its challenges.¹³
 - *Dr. Victor Limlingan, a former professor at the Asian Institute of Management*, believed that non-Filipino entities should be allowed to operate in the Philippines.¹⁴ He said that the constitutional prohibitions had been placed due to national security; hence, other safeguards could be placed by both educational institutions and national securities to replace the prohibition.¹⁵ According to him, allowing non-Filipino educational entities to operate in the Philippines could mean more choices and opportunities for Filipino students.¹⁶
 - *Ms. Raquel Perez, Chief Operating Officer of STI College*, posited the following:
 - The current problems plaguing the educational sector do not necessitate charter change but demand greater support and attention directed to education;

⁹ Paraphrased from the TSN of the Public Hearing of the Committee on Constitutional Amendments and Revision of Codes (Subcommittee on RBH No. 6), February 20, 2024, pp. 23-24

¹⁰ Ibid., pp. 27-28

¹¹ Ibid., pp. 49-50

¹² Ibid., p. 53

¹³ Ibid., pp. 53-54

¹⁴ Ibid., p. 60

¹⁵ Ibid.

¹⁶ Ibid.

- The nation's history, values, and Constitution are best instilled by Filipino educators who understand the nuances of the country's cultural heritage; and
 - The country must remain vigilant against the dangers of commercialization, brain drain, and widening socioeconomic disparities.¹⁷
- *Dr. Jazmin Llana, Chairperson of the Committee on National Issues and Concerns of De La Salle University*, stated that the country does not need any constitutional change to address the educational crisis.¹⁸
 - *Dr. Raul Destura of UP Manila* suggested that the country should be more open to accepting what is new and vital to make it grow instead of trying to put walls into the institution of learning.¹⁹
 - *Dr. Joel Cuello, a professor at the University of Arizona*, opined that opening the country to global investments in education would help provide a steady pipeline of students who would major in science and technology, thus contributing to building the country's science and technology innovation ecosystem.²⁰
 - *Atty. Arjay Rosales of the Professional Regulations Commission (PRC)* suggested that allowing foreign ownership in the educational sector could help address the challenge of international alignment. He noted that local institutions could benefit from the expertise and advanced technology brought in by foreign institutions.²¹
 - *Atty. Melisa Comafay from the PRC* sought clarification regarding the proposed liberalization of foreign ownership limits. She pointed out that foreign investors anticipate establishing tertiary and technical vocational schools that would comply with foreign institute standards. This move aims to reduce trade and service barriers, consequently lessening or eliminating the need for bridging programs for Filipino professionals working overseas.²²
 - *Sen. Risa Hontiveros* highlighted inconsistencies in the formulation of education provisions in RBH 6, noting the absence of the qualifier "basic" in the last sentence, which potentially allows for the liberalization of basic education. She questioned the necessity of charter change given the existence of RA 11448, or Transnational Higher Education Act, which permits academic franchising and other arrangements. The Senator further raised concerns about foreign-owned corporations acquiring local universities and colleges or becoming master franchisers if the proposal is approved. She also asked about the impact of RBH 6 on government funds for higher education institutions.²³
 - *Atty. Peter Lloyd Carpio of CHED* explained that foreign higher education institutions could establish Philippine companies with a 60% share, employ up

¹⁷ *Ibid.*, pp. 65-67

¹⁸ Paraphrased from the TSN of the Public Hearing of the Committee on Constitutional Amendments and Revision of Codes (Subcommittee on RBH No. 6), February 20, 2024, p. 105

¹⁹ *Ibid.*, p. 112

²⁰ *Ibid.*, p. 118

²¹ *Ibid.*, p. 120

²² *Ibid.*, p. 123

²³ *Ibid.*, p. 155

to 80% foreign faculty, and have 40% foreign administrative personnel. He also said that foreign institutions would not receive government subsidies.²⁴

- *Sen. Joel Villanueva* asked what the impact of allowing foreign-owned schools and lifting the foreign ownership limitation would be on the overall quality of education in the country.
- *Dr. Cynthia Bautista of the UP* opined that the entry of foreign institutions would only affect the quality of education, and she feared the negative impact of an open market since this would add to the lower quality of Philippine education.²⁵
- *Sen. Win Gatchalian* queried whether opening education ownership to foreign investors would attract foreign direct investments. The Senator also asked about jurisdictions allowing 100% foreign ownership in educational institutions and their benefits or drawbacks. *Dr. Bautista* favored targeted liberalization over full liberalization. She cited Singapore's selective approach and strategic partnerships as an example.²⁶

Possible Points for Discussion

Continuation of the discussions on:

1. Implications of amending economic provisions in the Constitution, specifically paragraph 2, Section 4 of Article XIV (1987 Constitution);
2. Pros and cons of limiting foreign ownership in the education sector;
3. Monitoring compliance with economic provisions: Mechanisms for ensuring adherence to paragraph 2, Section 4 of Article XIV (1987 Constitution);
4. Impact of restrictions on foreign ownership in education: Comparing effects on the economy to increasing foreign ownership. Current statistics on foreign-owned higher educational institutions;
5. Comparative analysis: Foreign equity restrictions in neighboring countries' higher education sectors; and
6. International investment incentives: Lessons for attracting foreign investments to the domestic higher education industry.

²⁴Ibid., p. 163

²⁵ Ibid., pp. 183-184

²⁶ Ibid., pp. 214-215