

ADVOCACY PAPERS

EU business in the Philippines

Supporting sustainable and inclusive economic growth



**Positions expressed in the advocacy papers that follow are the result of the activities of the 14 Sector Committees working under the EU-Philippines Business Network. However, for advocacy purposes, all papers in this book refer to ECCP.*

MESSAGE FROM THE PRESIDENT OF ECCP AND CHAIR OF THE EPBN STEERING COMMITTEE

The European Chamber of Commerce of the Philippines (ECCP), as lead coordinator of the EU-Philippines Business Network (EPBN) Project, is delighted to publish the first Advocacy Papers since the EPBN launch in early 2014.

In these Advocacy Papers, we have compiled recommendations made by European Business operating in the Philippines to address business concerns and highlight areas where obstacles need to be overcome to achieve a level playing field for European companies investing and doing business in the Philippines; as well as those European companies, including SMEs, wishing to establish themselves in the Philippines to address the Philippine market or use the Philippines as a springboard into the ASEAN Economic Community.

The Advocacy Papers contain work derived from 14 EPBN sector working groups, including cross-sector and sector-specific issues and recommendations. We firmly believe if implemented, our recommendations will greatly improve Philippine-EU economic ties, raise the Philippine competitiveness, lead to greater technology exchange for innovation and creativity and allow inclusive growth by creating synergies between Philippine and European companies, with emphasis on SMEs.

High on the list of recommendations are the Fair Competition legislation, the approval of the Customs and Tariff Modernization Act, amendments to the procurement and the BOT laws for increased transparency and fair competition; approval of the co-loading bill to reduce maritime costs; the reduction of the investment areas included in the FINL, including the practice of professions; modernization of the Philippine National Formulary – these are just some of the priorities identified by the European business community.

On behalf of ECCP and EPBN I would like to express my gratitude towards all companies, members of EPBN Committees and all those who have engaged in the constructive dialogue that has enabled the development and publishing of these first Advocacy Papers.

I wish the teams involved in converting the recommendations into ‘win-win stories’ great success as their success will equally benefit Philippine and European business.

3



Michael K. Raeuber
Michael K. Raeuber
 ECCP President
 EPBN Steering Committee Chair



Policy recommendations grid	5
Market overview	11
<i>A fast growing economy</i>	12
<i>An open economy</i>	13
Introduction	17
Cross-sector papers	19
<i>Opening up for FDIs</i>	20
<i>Enactment of a national fair competition law</i>	25
<i>Public procurement law reform</i>	27
<i>Rationalization of fiscal incentives</i>	29
<i>Customs modernization and anti-smuggling</i>	31
<i>Promoting integrity in the public and private sectors</i>	33
<i>Justice reform</i>	36
<i>Protection and enforcement of intellectual property rights</i>	38
<i>Proposed amendments to the Local Government Code of 1991</i>	40
Sector papers	43
<i>Agriculture</i>	44
<i>Automotive, parts, lubricants and fuels</i>	47
<i>Consumer goods and retail</i>	51
<i>Energy and renewable energy</i>	53
<i>Financial services</i>	59
<i>Human capital</i>	61
<i>ICT-BPM-KPM-creative industries</i>	63
<i>Infrastructure and transportation</i>	66
<i>Manufacturing</i>	69
<i>Maritime</i>	72
<i>Pharmaceuticals</i>	76
<i>Tourism</i>	81
<i>Water and environment</i>	85
Annex 1 EU-Philippines Business Network	89
Annex 2 List of abbreviations and acronyms	90
Annex 3 Cross rates of the pesos per unit of USD and EUR	94
Annex 4 Converted values of the aforementioned figures	95
Infographic	96

POLICY RECOMMENDATIONS GRID

<p>Opening up for FDIs</p>	<ul style="list-style-type: none"> a. Revision of the FINL to remove provisions including the practice of professions and foreign ownership restrictions on investment houses, lending firms, financing companies, among others (full list of proposals in position paper); b. Clear definition of what a public utility is and what it is not by the DOJ; c. Adoption of the measures contained in S.B. 2517 by the House of Representatives in a corresponding bill; d. Implementation of House Speaker Belmonte’s proposals to amend the Constitution’s restrictive economic provisions; e. Issuance of clear instructions on the application of the control test vs. the grandfather test by the SC and the SEC to determine the nationality of a corporation.
<p>Enactment of a national fair competition law</p>	<ul style="list-style-type: none"> a. Enactment of an effective fair competition law before the conclusion of the Aquino Administration.
<p>Public procurement law reform</p>	<ul style="list-style-type: none"> a. Amendments to the Government Procurement Reform Act, R.A. 9184 (detailed list of recommendations in the position paper); b. Publication of the reciprocity list by the GPPB and inclusion of the 28 EU member states; c. Participation of the Philippines in the WTO Agreement on Government Procurement, initially as an observer; d. Increased transparency in the procurement process.
<p>Rationalization of fiscal incentives</p>	<ul style="list-style-type: none"> a. Non-removal of the provision for income tax holidays (ITH); b. Inclusion of provisions in the future fiscal incentives regime which will make the Philippines attractive to investors (full list of recommendations in the position paper); c. Inclusion of a new fiscal incentive of a preferential 15% corporate income tax rate for 15 years, extendable for 15 years, as an additional option, not a replacement, to current incentives.
<p>Customs modernization and anti-smuggling</p>	<ul style="list-style-type: none"> a. Enactment of a robust Customs and Modernization Tariff Act by the 16th Congress; b. Integration of the CMTA bill and an anti-smuggling measure into one bill, taking into consideration the country’s legal obligation to comply with the provisions of the RKC.



<p>Promoting integrity in the public and private sectors</p>	<ul style="list-style-type: none"> a. Enactment of H.B. 5298 ,which seeks to amend R.A. 3019 or the Anti-Graft and Corrupt Practices Act, and introduction of a corresponding bill in the Senate; b. Passage of a Freedom of Information Act by the 16th Congress.
<p>Justice reform</p>	<ul style="list-style-type: none"> a. Timely enactment of a Whistleblower Act and strengthening the Witness Protection law during the 16th Congress; b. Streamlining and improvements to the judicial system at an operational level, including HR policies, introduction of responsive procedures, expansion of the use of <i>amici curiae</i> by the SC; c. Allocation of a reasonable percentage of the national budget to the SC, the Office of the Ombudsman and the Commission on Audit; d. Implementation and enforcement of anti-corruption measures; e. Consistency between local ordinances and national policies; f. Creation of an inventory of laws with the aim to identify and eliminate laws that have become redundant.
<p>Protection and enforcement of intellectual property rights</p>	<ul style="list-style-type: none"> a. Creation of specialized IPR courts to streamline and expedite the resolution of IPR-related cases; b. Implementation of a <i>sui generis</i> or specific geographical indication legal protection framework to ensure a higher level of protection of products.
<p>Proposed amendments to the Local Government Code of 1991</p>	<ul style="list-style-type: none"> a. Inclusion of a provision that clearly clarifies that LGUs cannot overrule national policies; b. Introduction of a lower single tax rate; c. Design of a clear framework for the allocation of revenues from PEZA companies ; d. Introduction of an administrative mechanism for appeal of the assessment of taxes by the local treasurer.
<p>Agriculture</p>	<ul style="list-style-type: none"> a. Amendments to the Draft Circular on the Rules and Regulations for the Registration of Organic Input Producers and Licensing of Organic Input Establishments (full list of recommendations in position paper); b. Harmonization of the country's organic certification rules and regulation with international standards; c. Revision of the list of controlled and regulated chemicals in line with international regulations; d. Removal of the 3% import duty on Nitrogen-Phosphorous-Potassium fertilizer (NPK); e. Inclusion of agricultural inputs in the FTA negotiations between the EU and the Philippines.

<p>Automotive</p>	<ul style="list-style-type: none"> a. Strengthening of the Comprehensive Automotive Resurgency Strategy (CARS) to attract more investors (full list of recommendations included in position paper); b. Successful implementation of Euro 4 (full list of recommendations included in position paper); c. Inclusion of the vehicle sector in the EU-Philippines FTA negotiations; d. Development and implementation of more stringent customs procedures; e. Streamlining of requirements set by specific agencies; f. Full implementation of WVTAS and promulgation of IRR in line with the 19 priority UNECE regulations for ASEAN.
<p>Consumer goods & retail</p>	<ul style="list-style-type: none"> a. Approval of S.B. 2121 and a corresponding bill in the House of Representatives and passing into of those into law during the 16th Congress; b. Revision of R.A. 8762; c. Harmonization with ASEAN standards on food and beverage, also focusing on international benchmarks; d. Recognition and acceptance of internationally recognized standard certifications by FDA.
<p>Energy and renewable energy</p>	<ul style="list-style-type: none"> a. Development of a comprehensive National Energy Roadmap, with a focus on a sustainable energy mix; b. Formulation and promulgation of the RPS Rules and Regulations; c. Public-private sector cooperation, led by DOE, to identify necessary grid upgrade infrastructure projects; d. Clear definition of responsibilities for the maintenance and improvement of the grid under the TRANSCO-National Grid Company franchise agreement; e. Creation of a one-stop shop for all requirements for the approval process of privatization; f. Creation of an inventory including all available power supply capacity, both active and idle, but conditionally able to operate; g. Increase of FIT-All ceiling for wind power to 500MW; h. No changes to rates for solar power FIT-All; i. Clarification on the load capacity of the existing transmission lines, prior to the award of connection agreements by NGCP; j. 100% foreign ownership for wind, solar and biomass RE developers; k. Recognition of the advanced technology of diesel-solar hybrid application in the ERC regulation; l. No new filing with the ERC for a retrofit of solar to an existing diesel plant; m. Full implementation of the RE Act of 2008; n. Implementation of national standards for lighting in line with international standards; o. Facilitation of self-generation through targeted provisions (full set of recommendations included in position paper); p. Creation of a National Energy Council similar in structure to the National Competitiveness Council.
<p>Financial services</p>	<ul style="list-style-type: none"> a. Focus on the enforcement of measures to combat non-compliance in line with the existing legislative framework; b. Extension of the penalty system for tariff violations and proper enforcement of tariff regulations; c. Amendments to R.A. 10173 to attach the National Privacy Commission to the DOST.



<p>Human capital</p>	<ul style="list-style-type: none"> a. Removal of the practice of all professions from the FINL; b. Revisions to FINL to allow foreigners to own companies that provide services delivered by licensed professionals; c. Simplification of the system for recognition of foreign qualifications, in line with the Bologna Accord; d. Definition of stricter guidelines and accreditation procedures for online transnational education opportunities; e. Creation of a public-private sector task force, to streamline the approach by all stakeholders towards skill development and training at a nationwide, horizontal level; f. Development of programs to incentivize talent retention in the Philippines.
<p>ICT-BPM-KPM-creative Industries</p>	<ul style="list-style-type: none"> a. Creation of industry-specific short training courses, led by TESDA in cooperation with the private sector; b. Development of a career mentoring program for students in their final years of secondary education, to provide insight into the necessary skills for a career in ICT-BPM-KPM-Creative Industries; c. Establishment of a DICT; d. Introduction of a requirement for building owners to provide direct meters for individual tenants; e. Implementation of energy efficiency requirements for building to become PEZA-accredited.
<p>Infrastructure and transportation</p>	<ul style="list-style-type: none"> a. Amendments to R.A. 6957 to improve the implementation of PPP projects (full set of recommendations in position paper); b. Approval of the PPP Act by the House of Representatives; c. Improvements to the public procurement framework (full set of recommendations included in the position paper and in the cross-sector paper on procurement); d. Amendments to the IRR of PCAB, in line with the provisions of the 1987 Constitution and legal framework governing the construction sector in the Philippines.
<p>Manufacturing</p>	<ul style="list-style-type: none"> a. Development of dedicated Domestic/ Export Industrial Zones; b. Creation of one-stop shops for all investors, not just those located in PEZAs; c. Inclusion of energy efficiency equipment for PEZA-registered companies under VAT and import tax exemptions; d. Introduction of VAT exemption on electricity power for manufacturers in priority sub-sectors or investments outside the main manufacturing areas; e. Creation of a PPP Task force for a centralized and transparent approach to enforcement and monitoring of industrial practices; f. Enforcement of targeted action to eradicate smuggling, including implementation of transparency measures, the tightening of egress at freeports and SEZs, and the strict enforcement and heavy punishment of offenders; g. Infrastructure development to facilitate the transportation of goods, including road infrastructure development, improvement of the port system and decrease of domestic shipping costs.

<p>Maritime</p>	<ul style="list-style-type: none"> a. Creation of a comprehensive port infrastructure development roadmap by the Cabinet Cluster on Port Congestion; b. Disbursement of the budget which has been allocated to MARINA activities by DBM; c. Development and adoption of a long term roadmap with clear objectives and benchmarks for MARINA; d. Modernization and modification of the national ship registry to include a secondary ship registry; e. Creation of a new body within POEA to deal exclusively with the international recruitment of seafarers; f. Reform of the seafarers’ claim system to improve ruling procedures and eliminate the phenomenon of “ambulance-chasing” (detailed recommendations in the position paper); g. Approval of the co-loading bill in the House of Representatives and timely passage of the respective law; h. Further amendment of R.A. 8424 to revise CCT and GPBT provisions to cover international air and sea cargoes.
<p>Pharmaceuticals</p>	<ul style="list-style-type: none"> a. Appointment of a dedicated UHC lead, who will bring together an inter-agency task force to develop the necessary policy, budget and operational recommendations to improve UHC application; b. Modernization of the Philippine National Formulary (PNF), through an updated, fit-for purpose PNF and a transparent, efficient PNF listing process; c. Operational and strategic strengthening of the FDA, including the fast-track review of the proposed 5-year business plan; d. Adoption, implementation and enforcement of the Mexico City Principles.
<p>Tourism</p>	<ul style="list-style-type: none"> a. Extension of R.A. 10378 provisions to include the exemption of cargo from CCT and GPBT; b. Amendments to paragraph 4.3 of RR No. 15-2013, to ensure preferential income tax rates or exemption of income tax for offline carriers; c. Improvement of tourism transportation infrastructure, including air, sea, and road travel (full set of recommendation included in the position paper); d. Inclusion of specific measures for strengthened security in the IRR for the creation and operation of TIEZA zones; e. Increase and institutionalization of the “tourism-oriented police for security and safety”; f. Inclusion of the limited nature of security concerns in tourism promotion campaigns; g. Adoption of incentives for foreign players in the tourism industry, following best practices seen abroad; h. Application of more consistent and detailed data collection methodologies for the supply side of tourism by DOT.
<p>Water and environment</p>	<ul style="list-style-type: none"> a. Creation of a communication campaign targeted at awareness building for public and private sector decision makers; b. Amendment of provisions under Sec. 7, Article 1, Chapter 2 of the CWA to provide clearer responsibilities for funding of water treatment projects; c. Use of advance technologies and projected population growth for the development of water treatment projects; d. Inclusion of enforceable provisions for the prevention of the use of hazardous building material in new buildings; e. Creation of a central urban planning agency, attached to DPWH; f. Production of new tendering documents specifically for flood control projects; g. Application of long-term modelling in the planning process of flood control projects; h. Development of an integrated solid waste management solution; i. Implementation of waste management projects already approved under the BOT law without further delays; j. Amendment of the IRR of R.A. 9003 to mandate LGUs to set up professionally designed and operated recycling plants; k. Adoption and implementation at a national level of a Philippine Hazardous and Radioactive Wastes Management Act.



MARKET OVERVIEW

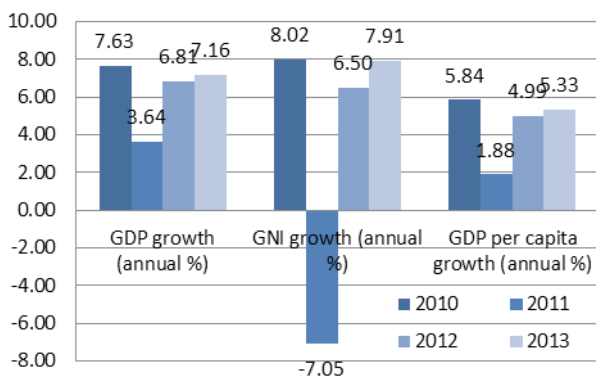


A fast growing economy

In the past years the Philippines has enjoyed significant economic growth, through extended international trade relations, increased FDI and rising domestic consumption. In fact, in 2013 the Philippines showed one of the highest rates of economic growth in ASEAN; at 7.2%, the Philippines enjoyed the same growth rate as Cambodia, with only Myanmar and Laos PDR growing faster.¹ Despite economic growth decelerating to 6.1% in 2014, it continues to compare favorably to other countries in the region.²

In the period from 2010 to 2013, average GDP growth rate was 6.31%, while GDP per capita grew at an average annual rate of 3.84% and GNI at 4.51%.³

Graph 1: Economic growth rates (2010–2013)



Source: World Bank Data

During the same period, the average inflation rate of consumer prices was 3.65%.⁴ Inflation rates for 2014 have seen a slight increase, with an average annual inflation rate of 4.1%.⁵

The most significant drivers of growth for the Philippines are exports of goods and services, FDI and private consumption, fueled by the growing remittances by overseas workers and the income of over 1 million Filipinos employed by the fast expanding ICT, BPM and KPM sector.⁶

1 ADB (2014), Philippines: Economy, Asian Development Outlook 2014 Update, <http://www.adb.org/countries/philippines/economy>.

2 NSCB (2015), Philippine Economy grew by 6.1 percent in 2014: NSCB 4th quarter update 2014, <http://www.nscb.gov.ph/sna/default.asp>.

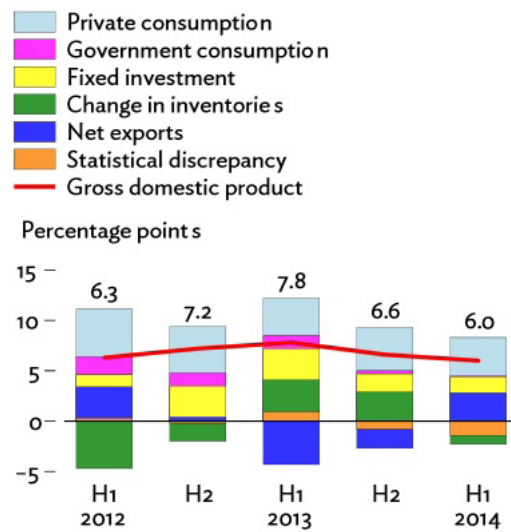
3 World Bank Group (n.d.), Global Economics Prospects – Forecasts, <http://data.worldbank.org/country/philippines>.

4 Ibid.

5 NSCB (n.d.), Consumer price index for all income households and headline inflation rates, http://www.nscb.gov.ph/secstat/d_price.asp.

6 AFP (September 2014), Industry: Outsourcing, a flourishing industry, <http://www.mb.com.ph/industry-outsourcing-a-flourishing-industry>.

Graph 2: Demand side contributions to growth



Source: Asian Development Bank Outlook 2014

At an ASEAN level, the upcoming AEC, which will be fully implemented by the end of 2015, will certainly become a game changer for regional economic and trade relations. While there will be many opportunities for the Philippines to take advantage of further economic integration with fellow ASEAN members, it remains a challenge to ensure that it maintains a comparative advantage and does not lose valuable resources, such as skilled labor, to competing markets in the region.

One of the Philippines' main comparative advantages as an investment destination is its labor force. With a total median age of 23.5, literacy rate of 95.4% and widespread proficiency in English,⁷ the Philippines provides a large pool of skilled labor.

The Philippines ranks 32nd worldwide based on its GDP rate and just 165th based on GDP per capita.⁸ In the WEF's Global Competitiveness Report 2014–2015, the Philippines ranked 52nd out of 144 countries. The Report focuses on 12 pillars which it identifies as crucial to the competitiveness of any economy. The Philippines proved most competitive in the third pillar which relates to the macroeconomic environment, where it ranked 26th, and least competitive in the fourth pillar relating to health and primary education, where it ranked 92nd.⁹

7 CIA (n.d.), The World Fact Book: Philippines, <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html>.

8 See CIA (n.d.), The World Fact Book: Philippines.

9 World Economic Forum (n.d.), Global Competitiveness Report: Philippines, <http://reports.weforum.org/global-competitiveness-report-2014-2015/economies/#economy=PHL>.

Similarly, the World Bank Doing Business 2015 report ranked the Philippines 95 out of 189 countries. This is a leap of 13 places compared to 2014. The most significant increases in its ranking were seen in the Getting Credit (a leap of 40 places compared to 2013) and Resolving Insolvency (60-place increase compared to 2013) pillars.¹⁰

The current administration is recognized for undertaking significant work in areas which have long been deterrents to economic growth. Anti-corruption is a prime example of this, which President Aquino has set as a priority to be addressed during his administration. The government is making efforts to increase transparency and efficiency of public services and infrastructure and apply reforms which are friendly to social and economic development. An example is the flagship PPP, where collaboration between private and public sector on vital infrastructure projects is intended; implementation, however, remains slow. The private sector is also leading initiatives, such as the Integrity Initiative led by the ECCP and the Makati Business Club, to support further transparency and less corruption in business-to-government and business-to-business activities. The Philippines was ranked 85th in Transparency International's 2014 Corruption Perceptions Index. This represents a substantial improvement from previous years; in fact, in 2013 the Philippines was ranked 94th worldwide, while in 2012 it was just 105th.¹¹

An open economy

One of the key contributing factors to the country's high economic growth rates is its integration in global markets and supply chains.

The growth of FDI inflows has been a significant factor in the Philippines' economic growth in the past years. In 2013, net FDI inflows reached approximately 163.84 billion PhP, an equivalent to 1.42% of national GDP.¹² This represented just 3.08% of FDI inflow to Southeast Asia, which amounted to 5.33 trillion PhP the same year.¹³

¹⁰ World Bank Group (2015), *Ease of doing Business in Philippines*, <http://www.doingbusiness.org/data/exploreconomies/philippines>.

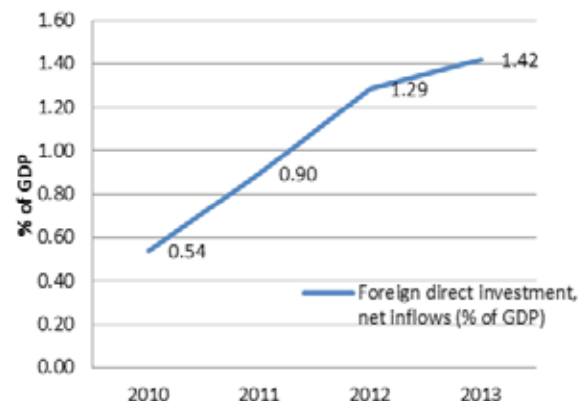
¹¹ Transparency International (n.d.), *Corruption by Country/Territory*, <http://www.transparency.org/country#PHL>.

¹² World Bank Group (n.d.), *Global Economics Prospects – Forecasts*, <http://data.worldbank.org/country/philippines>.

¹³ Knoema (2014), *World Investment Report*, <http://knoema.com/WINVR2014/world-investment-report-2014?region=1001250-east-and-south-east-asia>.

Available data for 2014, which consists of the January to November 2014 period, shows that net FDI inflows amounted to 253.05 billion PhP, a 61.6% YOY increase.¹⁴ However, it still remains weak compared to other ASEAN-6 economies; in this context, it is important to look at the factors that deter the Philippines from benefitting from its full potential as an FDI destination.

Graph 3: Foreign direct investment, net inflows (2010-2013)



Source: World Bank Data

Despite ongoing obstacles to foreign investment, both tariff and non-tariff, there are initiatives to facilitate FDI in the country. Key examples are the PEZA-owned and/or -managed economic zones which operate throughout the country.

Both foreign and domestic companies are eligible to locate in a PEZA zone, as long as they export 70% of their production and their activities fall into one of the eligible sectors.¹⁵ Companies located in economic zones enjoy both fiscal and non-fiscal incentives, such as income tax exemptions, tax and duty free imports of raw materials, and simplified procedures.

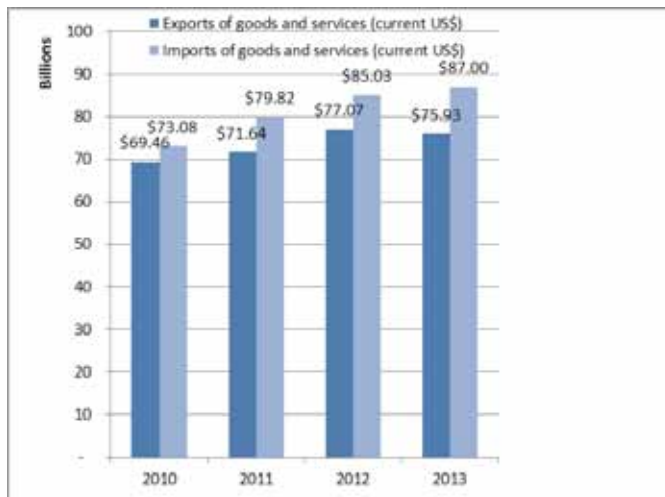
In terms of international trade, the Philippines registered imports in goods and services of a value of 3.69 trillion PhP in 2013, while exports were valued at 3.23 trillion PhP. This represented a trade deficit of approximately 466.91 billion PhP. In the first semester of 2014, exports increased by 8.3% to 1.32 trillion PhP, from the previous year's 1.22 trillion PhP. Imports, on the other hand, also increased by 5.7%, amounting to 1.40 trillion PhP, while 2013 saw 1.26 trillion PhP worth of imports.¹⁶

¹⁴ Philstar (Feb 12th, 2015), *News Analysis: Philippines cites surge in FDI inflows and exports in 2014* <http://www.philstar.com/business/2015/02/12/1423283/news-analysis-philippines-cites-surge-fdi-inflows-and-exports-2014>

¹⁵ Eligible sectors include export manufacturing, IT service export, tourism, medical tourism, agro-industrial export manufacturing, agro-industrial bio-fuel manufacturing, logistics and warehousing services.

¹⁶ Philippine Statistics Authority (2014), *Foreign Trade Statistics of the Philippines: First Semester Report 2014*, <http://census.gov.ph/content/foreign-trade-statistics-philippines-first-semester-2014>.

Graph 4: Philippine international trade (2010–2013)



Source: World Bank Data

The Philippines’ key trade partner is China, followed by Japan, the US and the EU. Philippine exports are dominated by electronic products, followed by machinery and transport equipment.¹⁷ However, substantial increases were seen in the export of minerals, wood products, garment and processed food in 2013.¹⁸ Mineral fuels, lubricants and related materials, electronic and transport equipment top the list of imported products.¹⁹

The Philippines currently has seven FTAs, of which six with ASEAN countries, signed and in effect;²⁰ through such FTAs companies enjoy preferential rates for exports to and imports from the Philippines. The Philippines and the EU have started the scoping exercise with the aim to enter into an FTA within the foreseeable future. European business is looking forward to the conclusion of FTA negotiations to level the playing field for European companies.

The Philippine economy is largely integrated both at a regional and international level. In addition to the FTAs, it is also a member of AFTA, APEC, ASEAN, the WTO, G33 and G20 among others. As an ASEAN member it will also become part of the AEC, which will come into full application by the end of 2015 and foresees an increasingly integrated intra-ASEAN economy.

17 Philippine Statistics Authority (2014), National Quickstat for 2014: Accounts from January - December 2014, <http://web0.psa.gov.ph/statistics/quickstat/national-quickstat/2014>.

18 ADB (2014), Asian Development Outlook 2014 Update, <http://www.adb.org/sites/default/files/pub/2014/ado2014update.pdf>.

19 Philippine Statistics Authority (September 2014), National Quickstat for 2014: September, web0.psa.gov.ph/statistics/quickstat/national-quickstat/2014/*

20 ARIC-ADB (n.d.), Free Trade Agreements, <http://aric.adb.org/fta-country>.

As the Philippines increasingly looks towards international trade and foreign investment as a key driver for continued economic growth, adherence to international standards becomes ever more relevant if the country is to remain a competitive player in international and regional markets while continuing to guarantee overarching benefits for end consumers in the domestic market.

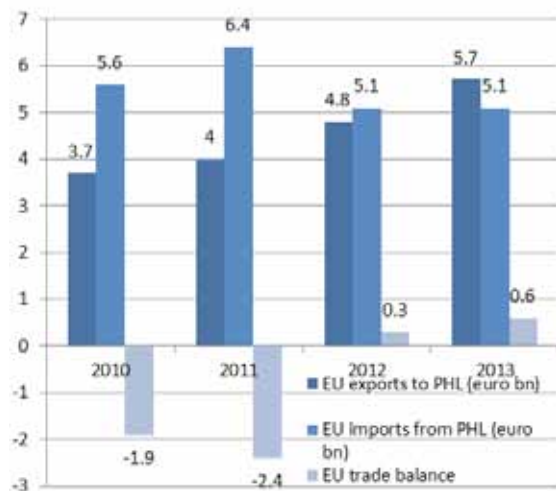
The need for comprehensive standards which ensure the high quality of products and consumer safety, while also facilitating compliance through simplified procedures is highlighted by ASEAN’s focus on harmonization of standards in 20 priority sectors in preparation for AEC.

There have indeed been improvements in the past years in the Philippines, with efforts by government and its agencies to harmonize with international and ASEAN standards; for example, cosmetics have been harmonized at an ASEAN level and the Philippines has already adopted and implemented these standards through A.O. No. 2005-0015 or the Adoption of the ASEAN Harmonized Cosmetic Regulatory Scheme and ASEAN Common Technical Documents and A.O. No. 2005-0025 or the Implementation of the ASEAN Harmonized Cosmetic Regulatory Scheme and ASEAN Common Technical Documents, respectively.

The EU and the Philippines have longstanding trade and investment relations which continue to be important for both actors. In fact, in 2013 two-way trade in goods between the EU and the Philippines reached 609.06 billion PhP, with an annual growth rate of 9%.²¹

21 See The Delegation of European Union in the Philippines (2013), EU-Philippines trade and investment factfile 2013.

Graph 5: Trade in goods EU-PHL (2010–2013)



Source: EU-Philippines trade and investment factfile 2013

The Philippines is currently the only ASEAN middle income country with which the EU has a trade of goods surplus.

In 2013, the five top products imported from the EU were electronic products, transport equipment, industrial machinery and equipment, medicinal and pharmaceutical products and other food and live animals. In terms of exports to the EU, the top five goods were electronic products, other manufactures, machinery and transport equipment, coconut oil and finally, tuna.²²

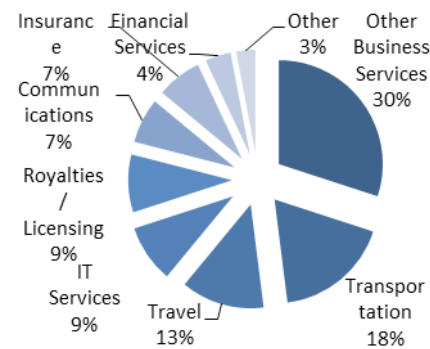
Trade in services, where the Philippines has a trade surplus, is also significant between the EU and the Philippines. In 2012, trade in services between the two grew by 14% bringing the total value of trade to 174 billion PhP.²³

The main exports of services from the Philippines to the EU are transportation, travel services and other business services, which include BPMs. In fact, Europe is the second largest export destination of BPM services for the Philippines after the US. Philippine imports from the EU are similarly dominated by other business services, transportation and travel; however, IT services, royalties and licensing and other areas also account for a significant percentage of trade.

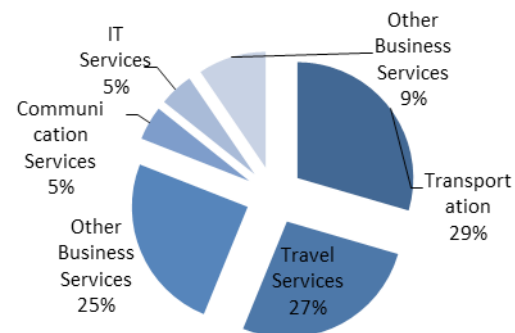
²² Philippine Statistic Authority (2014), Foreign Trade Statistic of the Philippines: 2013 Report, <http://web0.psa.gov.ph/content/foreign-trade-statistics-philippines-2013>.

²³ See The Delegation of European Union in the Philippines (2013), EU-Philippines trade and investment factfile 2013.

Graph 6: Exports of services from PHL to EU (2013)



Graph 7: Imports of services PHL from EU (2013)



Source: EU-Philippines trade and investment factfile 2013

Europe is currently the largest investment partner in the Philippines, with approximately 30% of total FDI in the country originating from EU countries; total FDI stocks from the EU increased by 11.16 billion PhP in the first half of 2014 and 21.54 billion PhP in 2013.²⁴ There are approximately 600 European companies based in the Philippines, employing 400,000 employees.²⁵

Finally, the EU and the Philippines also have strong employment ties, with a large number of OFWs employed by EU companies. In fact, the European maritime industry is the largest employer of Filipino seafarers worldwide, while it is estimated that there are approximately 706,000 OFWs based in EU countries.²⁶ Taking into account the significance of remittances by OFWs as part of the national GDP,

²⁴ The Delegation of the European Union in the Philippines (2014), Impact of EU investment on the Philippines economy and employment, http://eeas.europa.eu/delegations/philippines/documents/more_info/publications/impact_of_eu_investment_on_the_ph_economy_and_employment.pdf

²⁵ Philexport (2014). European investors keen to do business in PHL, <http://www.philstar.com/business-usual/2014/06/16/1335145/european-investors-keen-to-do-business-phl>.

²⁶ See The Delegation of European Union in the Philippines (2013), EU-Philippines trade and investment factfile 2013.



this also serves as a strong link in the economic ties between the two parties.

It should be noted that since December 25th 2014, the Philippines is a beneficiary of the EU GSP+ program, a development tool which offers tariff free access to EU countries for over 6,000 products produced in the Philippines. GSP+ substantially extends the benefits for Philippine products, as compared to the standard GSP scheme which was previously in application. Taking into account the recent termination of GSP in Thailand and Malaysia, GSP+ offers an important comparative advantage to the Philippine economy and its development prospects. The utilization rate of GSP in 2013 was estimated at 63%.²⁷ An EU-Philippines FTA is also being discussed (as mentioned above), and it is trusted that significant progress will be seen in 2015.

The importance of bilateral economic and trade relations between EU countries and the Philippines is increasingly recognized by both business and government sectors, as indicated by increasing visits in both directions by government and business missions. A highlight was President Aquino's visit to a number of EU countries in Autumn 2014, during which increasing trade and investment relations with European governments and businesses was one of his main priorities.

²⁷ Data sourced from the EU Delegation in the Philippines.

EU business in the Philippines supporting sustainable and inclusive economic growth

As the regional, and national, economic landscape rapidly changes due to the upcoming AEC, it becomes ever more important for the EU and the Philippines to strengthen their economic and trade ties and work together towards mutually beneficial and sustainable economic growth.

Continued openness for Philippine products entering the EU, transfer of knowledge and technology to the Philippines, increased FDI from European investors, provisions to ensure continued employment of land- and sea-based OFWs by EU companies, technical assistance to support the growth of industries with export potential; these are just some of the benefits that the Philippines can reap from ongoing collaboration.

At the same time, to achieve this, it is important that the necessary measures are taken from the Philippine side to ensure a level playing field for European investors and products through streamlining and facilitating accreditation procedures, opening up key sectors to foreign investors, ensuring fair competition, as well as focusing on the promulgation and implementation of legislative measures that will make it easier to do business in the Philippines.

Addressing problems through solutions which will create win-win situations for all stakeholders is imperative. This means solutions which will allow easier market access and facilitate a level playing field for EU companies on the one hand, while creating strong foundations for sustainable and inclusive growth in the Philippines through employment generation, fair competition and skill development on the other.

As EU-Philippine ties are strengthened further through the implementation of GSP+, it is a unique opportunity to highlight the overarching benefits that increased trade and investment ties with Europe can mean for the Philippine economic environment. A large consumer base, with high average expenditure on the one hand and quality investments which adhere to international rules, regulations and standards, respecting the environment, labor force and long-term development of the country on the other, are instrumental to long-term, sustainable, and inclusive economic growth for the Philippines.

It is with this vision of a strong trade and investment relationship between the EU and the Philippines towards long term sustainable and inclusive economic growth that ECCP, its EPBN partners, and European companies in the Philippines present the recommendations in this book. It is a vision, but also a realistic objective, provided that the appropriate legislative and operational measures are implemented, and will allow the Philippines to become internationally competitive and play a role as a hub for European investment to the AEC in the coming years.



CROSS-SECTOR PAPERS

19



OPENING UP FOR FDIs

I. FOREIGN INVESTMENT NEGATIVE LIST

Introduction

It is internationally recognized that FDIs are imperative for both developed and developing economies. Benefits can be seen across the spectrum of activities not only with respect to investible resources but also their corresponding capital formation. As investments drive economic productivity, create jobs, raise income levels, transfer production technology and innovative capacity, and create access to international marketing networks, countries are competing for their share of FDIs by launching industrial development programs, reforming their institutions and offering various investment incentives to influence the location decisions of investors.

The adoption of R.A. 7042 or the Foreign Investment Act of 1991 (FIA), as amended by R.A. 8179 (1996),²⁸ has liberalized the national policy framework aimed at facilitating the inflow of investments from foreign entities into the Philippine economy.

20

Generally, foreign entities may be entitled to up to 100% ownership of domestic market enterprises except in cases where foreign ownership is restricted or limited by the constitution, specific laws, and listed in the FINL. Stipulated under Section 8 of the FIA, the FINL specifies investment activities reserved to Philippine nationals and lists certain economic activities wherein foreign investments are restricted or limited to a particular percentage.

While the FINL is reviewed biennially, significant reforms that would have lessened the number of foreign investment restrictions in the list have been substantially absent over the last two decades. The 9th FINL embodied in E.O. 98 issued in October 2012 has not made any progressive changes, instead it introduced four more new restrictions.²⁹ The only major reforms made so far include:

R.A. 8762 or the Retail Trade Liberalization Act of 2000, which allows foreign retail trade firms bringing in at least 2.5 million USD worth of investment to do business locally; and,

²⁸ The mandate of the FIA does not cover the country's banking and financial institutions since they are regulated by the Bangko Sentral ng Pilipinas.

²⁹ Restrictions on foreign ownership and practice added to the 9th FINL were imposed following the passage of these laws: Real Estate Service Act of 2009 (R.A. 9646), Philippine Respiratory Act of 2009 (R.A. 10024), Philippine Psychology Act of 2009 (R.A. 10029), and Lending Company Regulation Act of 2007 (R.A. 9474).

E.O. 158 (series of 2010), which permits 100% foreign equity in gambling enterprises in zones administered by PEZA.

Revising the FINL

According to the World Bank's Investing Across Borders 2010, the Philippines continues to have in place more legal restrictions to foreign equity ownerships in comparison to its more dominant neighboring countries in ASEAN. Significant positive changes to the FINL will therefore strengthen the competitiveness of the Philippines as a viable foreign investment destination vis-à-vis stronger competitor economies in the region. A less restrictive FINL will facilitate an increased inflow of FDIs which will spur domestic employment generation and infrastructure development.

Eliminating hurdles to investments through FINL amendments will also develop the country's international economic relations as it will help the Philippines prepare for the imminent formation of the AEC and meet the requirements for a more relaxed cross-border investment climate in consideration of the country's bid to close trade agreements with the EU, EFTA, and Trans-Pacific Partnership. A more liberalized investment environment in the Philippines will make it easier and more cost-effective for potential foreign investors to expand their markets to our shores.

As the FINL is presently under review in an attempt to make the list less negative, the NEDA Board should carefully draft amendments to the FINL after consultations with stakeholders and determine whether the restrictions on the list remain to be in the nation's best economic interests and consider the following proposals:

1. The minimum paid-up capital requirement of 2.5 million USD for retail trade enterprises in Section 5 of R.A. 8762 should be lowered and made more consistent with the minimum provisions set in Section 8 of the FIA, as follows: Small and medium-sized domestic market enterprises, with paid-in equity capital less than USD200,000 are reserved to Philippine nationals, provided that if: (1) they involve advanced technology as determined by the Department of Science and Technology or (2) they employ at least 50 direct employees, then a minimum paid-in capital of USD100,000 shall be allowed to non-Philippine nationals.

2. The provision on “the practice of all professions” should be excluded from the FINL. Section 3 of the FIA defines the FINL as a “list of areas of economic activity whose foreign ownership is limited to a maximum of 40% of the equity capital of the enterprises engaged therein.” Clearly, the practice of all professions is neither an investment area nor an activity that involves equity. Moreover, its inclusion creates ambiguity since specific profession-related laws permit non-Philippine nationals to practice in the country by virtue of reciprocity agreements as provided under R.A. 5181. In the event that not all professions are removed, it is necessary to include a provision allowing foreigners to own companies that provide services as long as these services are delivered by licensed professionals.
3. The FIA should be amended to lower the minimum paid-up capital for foreign equity and remove the following: foreign investment employment requirement, discrimination against foreign investors for incentives from the BOI, and divestiture requirement for foreign investors.
4. The definition of “public utility” in the 1987 Constitution should be reviewed and the list of public services in C.A. 146 or the Public Services Act narrowed.
5. Rigid and limiting foreign ownership restrictions on investment houses,³⁰ lending firms,³¹ financing companies,³² adjustment companies,³³ deep sea commercial fishing,³⁴ private recruitment offices,³⁵ private security agencies,³⁶ pyrotechnic products,³⁷ and private radio communications network³⁸ should be amended to allow 100% foreign equity ownership on the aforementioned economic areas.
6. The definition of “condominium” in Section 5 of R.A. 4726 or the Condominium Act should be broadened to allow foreign entities to own up to 40% of the capital stock of horizontal condominiums, industrial estates, tourism estates, and retirement villages.
7. The divestiture requirement for foreign investors in the areas of rice and corn should be deleted from Section 5 of P.D. 194 (series of 1973).
8. Foreign ownership restriction on sauna and steam bathhouses, massage clinics and other similar activities regulated by law should be removed from the FINL to help boost tourism investments in this specific segment of the service industry.

Advocacy

ECCP is in dialogue with the NEDA Board and the Cabinet Economic Cluster to introduce the suggested amendments to the 10th FINL. ECCP has also encouraged the DOJ to clearly define what a public utility is and what it is not in order to address foreign investor anxiety on rules concerning public utility regulation.

In addition, European businesses support the passage of S.B. 1424, which seeks to amend the FIA by removing the practice of professions from the FINL and by reducing the employment threshold requirement to 15 direct employees for foreign investors bringing in at least 100,000 USD in small and medium-sized domestic market enterprises. The timely passage of S.B. 2517, which calls for the removal of restrictions on adjustment companies, lending companies, financing companies and investment houses from the FINL, is an important step in making the negative list more positive to facilitate the entry of investments into these economic segments. Given the highly limited time left before the conclusion of the 16th Congress, it is recommended that the House of Representatives adopt the measures contained in S.B. 2517 in a corresponding bill.

II. AMENDING THE RESTRICTIVE ECONOMIC PROVISIONS OF THE 1987 PHILIPPINE CONSTITUTION

Introduction

Further economic liberalization is critical to promote inclusive growth and spur economic development by encouraging more foreign investments and creating more jobs. Philippine policymakers and local business organizations recognize the importance of reviewing proposals to change the restrictive language of the economic provisions of the 1987 Constitution. The leadership of both Houses of Congress supports the amendment of the Constitution notwithstanding the opposition of President Aquino to economic charter change.

³⁰ Section 5, P.D. 129, as amended by R.A. 8366.

³¹ Section 6, R.A. 9474.

³² Section 6, R.A. 5980, as amended by R.A. 8556.

³³ Section 23, P.D. 612, as amended by P.D. 1814.

³⁴ Section 27, R.A. 8550.

³⁵ Article 27, P.D. 442.

³⁶ Section 4, R.A. 5487.

³⁷ Section 5, R.A. 7183.

³⁸ Section 4, R.A. 3846.



Proposed legislative measure

Introduced to Congress by House Speaker Belmonte, Joint House Resolution 1 seeks to amend Articles 12, 14 and 16 through an Act of Congress or acting as a Constituent Assembly by adding the phrase “unless otherwise provided for by law” to the specific provisions on:

1. Exploration, development and utilization of natural resources (Section 2, Article 12);
2. Ownership of agricultural lands (Sections 3 and 7, Article 12);
3. Ownership of corporations (Section 10, Article 12);
4. Ownership of public utilities (Section 11, Article 12);
5. Ownership of educational institutions (Section 4, Article 14); and
6. Ownership and management of mass media (Section 11, Article 16).

This “surgical” amendment to the foregoing provisions will give the legislature more flexibility to pass specific laws in order to ease constitutional restrictions on certain traditionally nationalized economic activities. If passed by both Houses of Congress, the resolution will require ratification by a majority vote in a national referendum.

Advocacy

In line with our joint advocacy in creating a level playing field for foreign investors and in promoting the economic competitiveness of the Philippines, the European business community stands behind the initiative of House Speaker Belmonte and trusts that members of the 16th Congress will support proposals to rewrite the restrictive economic provisions of the Constitution. It should be noted that local business organizations like the Makati Business Club, the Management Association of the Philippines, and the Philippine Chamber of Commerce and Industry are also vocal in favor of amending the Constitution’s economic provisions.

III. 60-40 NATIONALITY REQUIREMENT

Introduction

Section 11, Article XII of the 1987 Constitution stipulates that:

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...

The foregoing constitutional provision on nationality requirements concerning the operation and management of public utilities is consistent with the declared policy of the state in developing “a self-reliant and independent national economy effectively controlled by Filipinos”³⁹ by recognizing the importance of public utilities to the national economy and limiting foreign participation in the capital ownership of such utilities to 40%.

Public utilities

Although there is at present no specific law that defines and identifies what constitutes a public utility, a survey of Philippine jurisprudence provides a working definition of public utility, taken to mean “a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service,” as cited in a 2003 resolution of the Supreme Court.⁴⁰ This working definition, together with the list of public services described in C.A. 147 of 1936 or the Public Services Act,⁴¹ has served as a benchmark for the classification of public utilities.

³⁹ Section 19, Article II, the 1987 Philippine Constitution.

⁴⁰ *JG Summit Holdings, Inc. vs. Court of Appeals*, G.R. No. 124293, 24 September 2003.

⁴¹ Section 13 (b), C.A. 147 considers as public services the following: common carrier, railroad, street railway, traction railway, sub-way freight or passenger motor vehicle, freight or carrier service of any class, express service, steamboat or steamship line, pontines, ferries, and water craft, shipyard, marine railways, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat, water supply, power, petroleum, sewerage system, wire or wireless communications system, wire or wireless broadcasting stations, and other similar public services.

In addition, there are certain economic activities that are not considered public utilities by operation of law and thus do not restrict full foreign ownership: power generation,⁴² supply of electricity to the contestable market,⁴³ shipyard,⁴⁴ and refining of imported crude oil.⁴⁵

Control test vs. grandfather rule

There are two methods used to establish the compliance of corporations to the constitutional 60-40 requirement regarding the ownership of nationalized or partially nationalized businesses: control test and grandfather rule.

Under the control test, a corporation is considered a Philippine national if at least 60% of its capital stock outstanding is owned by Philippine citizens and at least 60% of the members of its board of directors are Filipino citizens. On the other hand, the grandfather rule determines the nationality of a corporation based on the nationality of its stockholders and looks at the cascade of companies and their ownership to establish voting rights in the “public utility”.

SC and SEC rulings

A clear definition of capital is fundamental in evaluating the nationality requirement on ownership of public utility corporations. The SC had an opportunity in 2011 to clarify that the term “capital” as mentioned in Section 11, Article XII of the Constitution “refers only to shares of stock entitled to vote in the election of directors ... and not to the total outstanding capital stock comprising both common and non-voting preferred shares.”⁴⁶

In an entry of judgment on its previous ruling, the SC asserted later in 2012 that the constitutional 60-40 ownership nationality requirement in favor of Filipino citizens applies not only to the voting control of the corporation, but also to the beneficial ownership

⁴² Section 6, R.A. 9136 or the Electric Power Industry Reform Act of 2001 stipulates that power generation shall not be considered a public utility operation.

⁴³ Section 29, R.A. 9136 stipulates that supply of electricity to the contestable market shall not be considered a public utility operation.

⁴⁴ Once considered as a public service operation under C.A. 147, shipyard is no longer considered as a public utility following statutory repeals. See *JG Summit Holdings, Inc. vs. Court of Appeals*, G.R. No. 124293, 24 September 2003.

⁴⁵ Refining of imported crude oil, as opposed to refining petroleum indigenous to the Philippines, is not considered as one of the public utility activities under Section 7 of R.A. 387 or the Petroleum Act of 1949, as decided in *Bagatsing vs. Committee on Privatization*, G.R. No. 112399, 14 July 1995.

⁴⁶ *Gamboa vs. Teves et al.*, G.R. No. 176579, 28 June 2011.

of the corporation. The high court ruled that the nationality requirement must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.⁴⁷

In 2013, the Securities and Exchange Commission issued the guidelines on compliance with the Filipino-foreign ownership requirement and ruled that the required percentage of Filipino ownership shall be applied to both the total number of outstanding shares of stock entitled to vote in the election of directors and the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.⁴⁸

Advocacy

ECCP has raised this issue as part of its advocacy to create a level playing field for foreign investors. A clarification on foreign equity policy relating to public utility regulation is critical in addressing the anxiety of foreign businesses to locate their investments in the Philippine economy especially because foreign investments play a crucial role in completely or partially funding priority public infrastructure and development projects. In this regard, the DOJ should write a legal opinion on what a public utility is and what it is not. Such opinion should address the issue of the application of the control test vs. grandfather rule and the different rulings of the SC and the SEC. It may be interesting to take a close look at a recent decision of the high court⁴⁹ which applied the grandfather rule to determine the nationality of corporations interested to engage in the exploration, utilization and development of Philippine natural resources, but concluded that the use of the control test should prevail unless there is doubt about the 60-40 Filipino ownership.

Despite the fact the both Houses of Congress have suggested to amend the restrictive economic provisions of the Constitution in order to further open up the economy to foreign investments, the executive branch of government follows the directive of the President that no amendment to the Constitution shall be made.

Notwithstanding the lack of political consensus on economic charter change, ECCP supports the

⁴⁷ *Heirs of Gamboa vs. Teves et al.*, G.R. No. 176579, 9 October 2012.

⁴⁸ Section 2, SEC Memorandum Circular No. 8 (series of 2013).

⁴⁹ *Narra Nickel Mining and Development Corp., Tesoro Mining And Development, Inc., and Mcarthur Mining, Inc. v. Redmont Consolidated Mines*, G.R. No. 195580, 21 April 2014.



recommendation of House Speaker Belmonte to “surgically” amend the Constitution by moving the decision on liberalization to Congress through the introduction of the phrase “unless otherwise provided for by law” to certain economic provisions in the Constitution.

ENACTMENT OF A NATIONAL FAIR COMPETITION LAW

Introduction

While competition policies are government policies that create a relevant influence on the safeguard and promotion of competition in a free market economy, competition laws are legal measures that maintain or promote fair market competition through the specific regulation of anti-competitive corporate practices including, but not limited to, collusion and cartels, dominance and monopoly, uncompetitive mergers and acquisitions, and intellectual property infringements.

At present, there are more than 30 Philippine competition laws and policies that provide for legal restrictions on anti-competitive practices. Some of the major examples of these laws include:

- The 1987 Constitution, which prohibits monopolization and combination in restraint of trade;
- Article 186 of the Revised Penal Code of the Philippines and R.A. 3247, which prohibit monopolization and combination in restraint of trade and prescribe applicable penalties;
- R.A. 165 or the Patent Law and R.A. 166 or the Trademark Law, which prescribe appropriate enforceable civil actions and penalties for violations;
- P.D. 49 or the Decree on the Protection of Intellectual Property, which penalizes copyright infringements;
- R.A. 386 or the Civil Code of the Philippines, which provides for the collection of damages arising from unfair competition;
- R.A. 7581 or the Price Act, which provides protection to consumers by illegalizing price manipulation of specific commodities through hoarding, profiteering and cartels in cases of emergency;
- R.A. 7394 or the Consumer Act of the Philippines, which penalizes unfair sales practices in goods and credit transactions;
- the Philippine Corporation Code, which provides the rules and proceedings for the approval of mergers, consolidations and combinations under the SEC; and

- E.O. 45 (series of 2011), which created the Office for Competition under the DOJ as the country's primary competition authority.

Fair competition legislation

There is an urgent need for a comprehensive Philippine competition law as the main instrument under a sound competition policy framework to encourage efficiency, enterprise and innovation; uphold consumer welfare by fostering wider choices of products and services at competitive costs; and address unfair market practices such as the wielding of extensive market power and influence through market dominance, thereby limiting the entry of new players, especially SMEs.

Giving priority to the enactment of a Philippine competition legislative measure is important because competition laws have already been in place in more than 100 jurisdictions over the last decades—or as early as the late 19th century in the case of the US and Canada—in advanced economies in North America, Europe, and Asia; emerging countries like Brazil, Russia, India, China, South America, and Turkey; and most developing countries in South America, Africa, and Asia.

The Philippines should live up to its commitment in the ASEAN Economic Community Blueprint that calls for the introduction of competition policy in all ASEAN member states by 2016. Thailand, Indonesia, Singapore, Vietnam and Malaysia have already enacted national competition laws, meaning that the Philippines is the only country of the ASEAN-6 which is yet to do so.

Since the early 1980s, there have been numerous unsuccessful proposals on competition legislation. President Aquino, in his State of the Nation Address in 2010, emphasized the need for a competition law to uphold fair market competition and provide opportunities to SMEs to participate in and contribute to the nation's economic development. Consequently, the national legislature of the 15th Congress put forward and deliberated on proposed comprehensive competition legislation but unfortunately failed to have any bill passed.

A timely enactment of a comprehensive Philippine fair competition law should be prioritized before the conclusion of the 16th Congress on account of the approval on third and final reading of S.B. 2282 or the



Philippine Fair Competition Act of 2014 by Senator Paolo Benigno Aquino IV and the approval of H.B. 5286 as a substitute bill to 11 proposals including H.B. 1133⁵⁰ or the Philippine Fair Competition Act of 2013 by Speaker Belmonte.

Both H.B. 5286 and S.B. 2282 provide, among others, for the creation of an independent Philippine Fair Competition Commission tasked to investigate and prosecute those allegedly involved in the commission of unfair trade practices; the identification of prohibited unfair practices including anti-competitive conduct, abuse of dominant position, and anti-competitive mergers; enforceable sanctions and penalties for violations; and a leniency program for any qualified individual or firm with credible information or evidence relevant to the prosecution of uncompetitive corporate activities.

Advocacy

ECCP fully supports the swift passage of a national competition law by the 16th Congress to ensure a level playing field for businesses, protect consumer welfare, and make the Philippine economy more competitive, especially in the context of satisfying high-level commitments to components such as fair competition under potential FTAs with the EU and EFTA as well as the Trans-Pacific Partnership. We are pleased to note that there is clear indication from the legislature in fast-tracking the enactment of an effective fair competition law before the conclusion of the Aquino Administration.

In addition, ECCP is working closely with the DOJ Office for Competition, which is supported by the EU Delegation to the Philippines through the provision of training to Philippine experts and prosecutors under the EU–Philippines Trade-Related Technical Assistance Project 3. ECCP welcomes the advocacy undertaken by Assistant Secretary Geronimo Sy’s team in the ports, telecommunications and energy sectors that are crucial to consumers and where ensuring competitive processes plays a particularly important role, and hopes that the emphasis can be expanded to other equally significant segments including retail.

50 H.B. 1133, a re-filed measure of H.B. 4835 of the 15th Congress; it was approved by the Committee on Appropriations on 28 October 2014. H.B. 4835 was in substitution of 12 bills and was co-authored by Rep. Rufus Rodriguez. This failed to pass during the 15th Congress due to time constraints.

PUBLIC PROCUREMENT LAW REFORM

Introduction

Codifying relevant laws and rules governing government procurement and enacted by the 12th Congress in 2003, R.A. 9184 or the Government Procurement Reform Act provides for the modernization, standardization and regulation of procurement activities of the government and all its instrumentalities.⁵¹

One of the salient provisions of the law includes the establishment of the GPPB responsible for, among others, the formulation and amendment of the IRR of R.A. 9184 and other corresponding standard forms for procurement as well as the annual review of the effectiveness of the law and recommending necessary amendments thereto.⁵²

To promote transparency and efficiency, the law provides for the use of a Philippine Government Electronic Procurement System (PhilGEPs) as the primary online source of information on all government procurement.⁵³

All procuring entities are required to establish a single BAC responsible for the advertisement, evaluation, processing and recommendation of bids.⁵⁴ R.A. 9184 furthermore mandates that all government procurement shall be made through competitive bidding⁵⁵ except when alternative methods of procurement may be resorted to as stipulated in the law.⁵⁶

Another development is the creation of the Procurement Transparency Board through E.O. 662 in 2007 in an effort to enhance the transparency measures under R.A. 9184.

Despite the introduction of reforms to the Philippine government procurement framework, it is recognized by policymakers that the law has not been sufficient to prevent corrupt procurement practices and institutionalize reforms in all levels of government.⁵⁷

⁵¹ R.A. 9184 applies to the procurement activities of the national government, its departments, bureaus, offices and agencies, including state universities and colleges, GOCCs, government financial institutions, and LGUs.

⁵² Article XX, R.A. 9184.

⁵³ Section 8, R.A. 9184.

⁵⁴ Article V, R.A. 9184.

⁵⁵ Article IV, Section 10, R.A. 9184.

⁵⁶ Article XVI, R.A. 9184.

⁵⁷ Senate Economic Planning Office, Senate of the Philippines, Policy Brief: Plugging the Loopholes of the Philippine Procurement System, 2008.

Proposed amendments

There have been numerous measures lodged in Congress to improve R.A. 9184 to ensure integrity, efficiency, and equity in the country's public procurement system.

H.B. 148 and S.B. 782 and 1069 clarify the scope and application as stated in Section 4 of R.A. 9184 by providing that the law applies to all locally and foreign-funded government procurement activities and that only treaties or international or executive agreements entered into by the government prior to its enactment in 2003 shall be exempt from its coverage as foreign lending institutions argue that projects which they have funded through a loan agreement with the Philippine government are exempt from the coverage of the law.

S.B. 478 extends the coverage of R.A. 9184 to private institutions, NGOs, peoples' organizations and other private entities that receive funding from the government.

S.B. 1657 seeks to allow negotiated procurement for major defense equipment when domestic suppliers are not available and on account of certain defense strategic considerations, as deemed appropriate and urgent by the Secretary of National Defense.

S.B. 433 makes R.A. 9184 applicable to the procurement of infrastructure projects, goods and consulting services funded by loan or credit under R.A. 8182 or the Official Development Assistance Act, as amended. The bill also proposes to strengthen and advance transparency by requiring the posting of the decisions of the BAC concerning the criteria, ratings and calculations of bids on the website of the procuring agency or the GPPB, and by inviting observers in all procurement proceedings of the BAC.

S.B. 76 broadens the list of punishable offenses under R.A. 9184 to ensure that the procurement process will not be used as a means for corruption.

S.B. 477 mandates the video recording of all procurement-related conferences to strengthen public monitoring of the procurement process.

H.B. 1432 and S.B. 1509 withdraw all references to LGUs from the scope and application of R.A. 9184 and argue that the procurement activities of LGUs shall be governed by the LGC, which has already laid out the detailed process of supply management at the local levels.



Advocacy

Promoting the creation of a level playing field that does not limit government procurement to Philippine companies to bring in more competition and reduce the cost of procurement, ECCP seeks to eliminate discrimination against foreign firms in Philippine government procurement laws, regulations, and practices. Under the present law, although goods may be procured by the government from domestic and foreign suppliers alike, preference may be given to locally produced and manufactured goods that meet the specified criteria.⁵⁸ In addition, government contracts can be awarded to GOCCs without going through the competitive bidding process. The revised IRR of R.A. 9184 issued in 2009 also contain provisions that favor domestic goods and local service providers.

The publication of the reciprocity list by GPPB, as provided in the IRR of R.A. 9184 will also serve to increase transparency and make it easier for international bidders to participate in procurement projects. The inclusion of the 28 EU Members States in the reciprocity list will also serve to attract more FDIs.

28 R.A. 9184 subjects the procurement of infrastructure projects, goods and consulting services of the government to C.A. No. 138 or the Flag Law of 1936, which gives preference to the purchase of domestic products for government use and, in the case of public bidding, allows the award to be given to the domestic entity offering the lowest bid. ECCP recommends the repeal of C.A. 138 and has already submitted a draft bill to both Houses of Congress.

ECCP will also study the best practices in procurement in Southeast Asia, such as those in Singapore, and consider how these practices can be embodied in the IRR of R.A. 9184 in consideration of the need to be competitive in the areas of public and private procurement within the AEC framework. The Philippines should also consider participating, initially as an observer state, in the WTO Agreement on Government Procurement, which regulates the procurement of goods and services by the public authorities of the parties to the Agreement, based on the principles of openness, transparency and non-discrimination. Presently, Singapore is the only ASEAN country which is a party to the Agreement while Indonesia, Malaysia and Vietnam are observer states.

⁵⁸ Section 43, Article XII, R.A. 9184.

Procurement reform is also needed for the Philippines to comply with requirements when negotiating an FTA with the EU or EFTA as well as accession to the Trans-Pacific Partnership.

In addition, ECCP sees the need for a public-private sector task force to review R.A. 9184 and the processes and initiatives of the GPPB and the DBM on how to improve and make government procurement more transparent; this review will include the bidding processes for government procurement, including the activities of the Road Board with special reference to technical standards.

We are also studying how an earlier DOH decision allowing foreign companies to participate in government procurement for healthcare infrastructure needs can be adopted in public bidding processes in other sectors. Depending on the terms and conditions of government procurement projects, foreign companies may be allowed to participate in public bidding as provided for by the reciprocity provision under R.A. 9184.

Furthermore, the European business community welcomes the government's initiative aimed at modernizing and ensuring the integrity of the PhilGEPs through the installation of additional functionalities such as facilities for e-bidding, uploading of agencies' procurement plans, and e-payment. This development is seen to facilitate the entry of more FDI from the EU and elsewhere.

ECCP also supports the introduction of international standards and increased transparency in procurement processes to avoid "pre-determined" procurement winners.

RATIONALIZATION OF FISCAL INCENTIVES

Introduction

Considering that proposed legislative measures on the rationalization of fiscal incentives were introduced to Congress as early as 1995 and have been pending since then; the need for a Philippine tax incentives policy is greater now than ever before as it will help boost the competitiveness of the country in view of the ever-increasing globalization of national economies, especially in the context of the upcoming economic integration in the Southeast Asian region.

Compared to its neighbors, the Philippines remains a laggard in attracting FDIs. In 2013, net FDI inflows reached approximately 163.84 billion PhP.⁵⁹ This represented just 3.08% of FDI inflow to Southeast Asia, which amount to 5.33 trillion in the same year.⁶⁰

A sound fiscal incentives regime is crucial to encouraging increased local and foreign investment without sacrificing government revenue needed for public sector programs and activities, and should be reflected in the BOI's annual IPP.

Proposed fiscal incentives rationalization bills

Approved on third and final reading in the House of Representatives in August 2011 during the 15th Congress but pending at the Senate committee level due to the fundamental differences between the DOF and the DTI over the executive version of the measure, H.B. 4935 or the Investments and Incentives Code of the Philippines seeks to confer power to the BOI as the lead agency responsible for industry development, policy formulation, investment promotion, and investment facilitation functions, and creates an Investment Promotion Action Center (i-PAC) under the BOI to serve as the link to all government agencies to facilitate entry, retention, expansion and diversification of investments. The bill also mandates the BOI, upon consultation with the Office of the President, relevant IPAs and government offices, and the private sector, to formulate an IPP aimed at generating substantial

investments and employment and promoting the use of new technologies and adequate environmental protection systems.

H.B. 4935 provides various sets of fiscal incentives including income tax-based incentive options as well as VAT and customs duties incentives to qualified registered export enterprises located inside or outside ecozones or freeports, registered domestic enterprises, domestic strategic enterprises, and registered domestic enterprises in Mindanao and in the 30 poorest provinces outside of Mindanao or less developed areas.

To facilitate the processing of VAT refunds, the bill seeks to establish a Trust Liability Account (TLA) in the Bureau of Treasury where all VAT-related payments on the importation of capital equipment and raw materials of registered enterprises should be lodged for the purpose of funding applicable VAT refund claims. Registered enterprises shall file claims for VAT refunds from the DOF.

While President Aquino has called for the rationalization of fiscal incentives since his inaugural State of the Nation Address in 2010, the measure has not so far gained positive traction in the 16th Congress.

There are a number of pending bills before the House and Senate Committees on Ways and Means:

- H.B. 2765 or An Act Rationalizing the Grant and Administration of Fiscal Incentives for the Promotion of Investments and Growth, and for Other Purposes, by Rep. Gabriel Luigi Quisumbing (pending since September 10th 2013);
- H.B. 1788 or The Investments and Incentives Code of the Philippines, by Rep. Rufus Rodriguez (pending since July 31st 2013);
- H.B. 302 or The Investments and Incentives Code of the Philippines, by Rep. Susan Yap (pending since July 23rd 2013);
- H.B. 130 or An Act Instituting the Code for the Administration of Fiscal Incentives for the Promotion of Investments and for Other Purposes, by Rep. Mark Villar (pending since July 23rd 2013);
- S.B. 987 or An Act Harmonizing the Grant and Administration of Fiscal and Non-Fiscal Incentives, and for Other Purposes, by Sen. Ralph Recto (pending since August 14th 2014);

⁵⁹ World Bank Group (n.d.), "Global Economics Prospects - Forecasts", Philippines, <http://data.worldbank.org/country/philippines>.

⁶⁰ World Investment Report (2014), <http://knoema.com/WINVR2014/world-investment-report-2014?region=1001250-east-and-south-east-asia>.



- S.B. 2048 or An Act Rationalizing the Grant and Administration of Fiscal Incentives for the Promotion of Investments and Growth, and for Other Purposes, by Sen. Loren Legarda (pending since January 1st 2014); and
- S.B. 35 or The Investments and Incentives Code of the Philippines, by Cynthia Villar (pending since July 23rd 2013).

Advocacy

The European business community in the Philippines takes a firm stand against any proposal to remove the provision of income tax holiday (ITH) to qualified enterprises as the absence of ITH in a fiscal incentives law will make the Philippines even less competitive and hamper the country's competitive ability to attract investors.

A future fiscal incentives regime that will better facilitate local and foreign investments in the productive sectors of the Philippine economy should cover the following key provisions, among others:

1. The lead investment and incentive agency should be empowered to reduce barriers to foreign investments by reviewing legal and administrative restrictions contained in the national legislative framework.
2. The President should be authorized to match the fiscal incentives of a competing economy for a project considered to be of strategic national importance.
3. Exporters and registered domestic enterprises should be exempt from paying VAT when importing capital equipment and raw materials instead of going through the present cumbersome VAT refund mechanism.
4. Registered export enterprises should have the option of claiming its unutilized input VAT on the importation of raw materials, supplies, spare parts and semi-finished products as expense deductible from its gross income if it does not file a claim for refund.
5. The benefit of double deduction shall extend to expenses paid or incurred by registered export enterprises in their training projects in collaboration with schools and universities accredited by the DepEd or CHED. The training expenses incurred shall be deductible from taxable income on the taxable year the said training expenses were incurred.

6. Registered enterprises should not be required to put up a separate corporation or entity for each activity that will require registration under different IPAs as this requirement is not only impractical but also costly for business.
7. In lieu of the present requirement for registered enterprises to implement programs for environmental protection and CSR activities, an incentive scheme to promote CSR voluntarily and ensure better application of CSR initiatives should be in place.

After years of debates and differences, there is an indication that the DOF and DTI have finally reached a breakthrough and agreed to a new fiscal incentive of a preferential 15% corporate income tax rate for 15 years, which could be extended for another 15 years subject to BOI's approval. ECCP has written to the House Ways and Means Committee to seek clarification whether the proposed tax rate will be an additional option or will replace the ITH option as well as how it will affect, if at all, the incentives available to investors in PEZA zones. ECCP believes that this proposed incentive should be an additional option to strengthen the range of available incentives that could be offered by the executive branch of government to potential strategic investors. We will closely follow and participate in the legislative deliberations on the landmark measure and continue our dialogue with the Senate and House Committees on Ways and Means as well as the leadership of the DOF and the DTI, and maintain our cooperation with the latter on the annual IPP, which lists the sectors qualified to apply for incentives.

CUSTOMS MODERNIZATION AND ANTI-SMUGGLING

Introduction

Data from the World Bank show that the Philippines is the least performing country in the ASEAN-5 in terms of the 2014 Logistics Performance Index, which provides a comparative analysis of, among five other key dimensions, the efficiency of clearance processes (i.e., speed, simplicity and predictability of formalities) by border control agencies, including customs, across 160 economies.⁶¹

The implementation of measures and procedures that aim to develop efficient and effective customs management, facilitate the cross-border movement of goods, and meet international requirements for customs modernization and trade facilitation is crucial for a developing economy like the Philippines to be able to keep pace with advancements in global trading systems.

The enactment of a robust Customs Modernization and Tariff Act by the 16th Congress will be a major step forward in strengthening the ongoing structural reforms undertaken by the BOC, and bringing the Philippines into compliance with its international commitments under the Revised Kyoto Convention, which was ratified by the 14th Congress. RKC serves as an internationally recognized framework for up-to-date and efficient customs procedures that aim to provide international commerce with the predictability and efficiency required by modern international trade.

In addition, provisions included in the CMTA cover numerous provisions also covered in the WTO's Trade Facilitation Agreement, for which the Philippines has submitted an ambitious schedule of implementation.

A CMTA will also improve the international economic relations of the Philippines in view of the vast potential gains made possible by the formation of the AEC and the country's possible accession to the Trans-Pacific Partnership and an EU FTA since the lack of a transparent and efficient customs regime will not be accepted by the country's international trading partners.

⁶¹ World Bank, *Logistics Performance Index, Global Rankings 2014*, <http://lpi.worldbank.org/international/global>.

CMTA

In light of the present legislative efforts to advance a CMTA in both Houses of Congress, the European business community in the Philippines believes that the following recommendations should be carefully considered in the formulation of a CMTA measure:

1. The mandate for the e2m Customs System as provided for by Customs Memorandum Order No. 39-2008 should be enshrined in the CMTA for it to be codified as a statute which is fully implemented with pain of penalty for violations. Under the e2m Customs System, the public transacting with the BOC⁶² need only submit electronic documents for the clearance of inbound and outbound goods or for moving these from one customs jurisdiction to another, provided only that they must register under the BOC's electronic Client Profile Registration System. Customs clearance procedures in the country, however, continue to be a predominantly manual process due to the lack of mandate to fully implement the e2m system.
2. The CMTA should include provisions that will expedite the movement, release, and clearance of goods in order to facilitate international trade by incorporating to its legal landscape similar stipulations found in Article 7 of the US–Philippines Trade and Investment Framework Agreement of 1989 with regards to creating procedures and regulations to address express inter-country shipments while maintaining appropriate customs control and selection.⁶³
3. There should be procedures to enable international transshipments exempt from customs duties under the CMTA. International transshipments from the port of entry to another port for exportation should also be allowed. There

⁶² The public transacting with the BOC refers to importers, exporters, customs brokers, banks, port operators, warehouses, and government entities.

⁶³ Article 7 of the US-Philippines Trade and Investment Framework Agreement of 1989 mandates that procedures for express shipments shall (a) provide a separate and expedited customs procedure for express shipments; (b) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives; (c) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means; (d) to the extent possible, provide for the release of certain goods with minimum documentation; (e) under normal circumstances, provide for express shipments to be cleared within three hours after submission of the necessary customs documents, provided the shipment has arrived; (f) apply without regard to an express shipment's weight or customs value; and (g) under normal circumstances, provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for express shipments valued at 200 USD or less.



should be sufficient time limit for the exportation of goods declared for transshipment and failure to comply with the prescribed time limit should not entail the collection of any duties and taxes potentially chargeable, provided the BOC is satisfied that all other requirements have been met. Procedures and qualifications to classify goods for transshipments should be clearly defined since the BOC's exercise of discretionary powers in determining which goods should be qualified and accepted for transshipments can be abused and misused.

4. Overtime work of BOC employees should not be charged to the public served by virtue of DBM Circular No. 10 issued on 29 March 1996 on the guidelines and procedures on the rendition of overtime services with pay of government personnel. Under the Circular, it is the agency concerned that must shoulder the payment of overtime pay to its employees and the manner on how to fund it following the guidelines laid down in the Circular. Section 8.0 of the Circular stipulates that overtime pay should be sourced from (a) the agency's budget for overtime pay of employees and (b) savings from released allotment for current operating expenditures.
5. Round-the-clock customs operations should be allowed to streamline port operations and further facilitate imports and exports.
6. The BOC should not be mandated with the authority to regulate charges and fees of CBWs and customs brokers as the BOC does not operate and invest infrastructures and manpower in CBWs nor employ customs brokers.

pass within the year their own version of the CMTA, which is one of the priority bills of the upper house, but still pending at the committee level.

Advocacy

Given the fact that the lack of transparency in customs operations undermine the level playing field for European companies and other foreign businesses, ECCP fully supports the government's major customs reorganization and the present drive of the DOF to address corruption issues at the BOC.

ECCP favors the integration of the CMTA bill and an anti-smuggling measure into one bill taking into consideration the country's legal obligation to comply with the provisions of the RKC. In this regard, we appreciate the work done by the House Committee on Ways and Means in approving the CMTA measure and preparing the report for plenary deliberations as well as the commitment of Senate President Drilon to

PROMOTING INTEGRITY IN THE PUBLIC AND PRIVATE SECTORS

Introduction

The pervasiveness of corruption in political and business structures has serious adverse implications on the development of the business sector as the cost of investing in a corrupt environment substantially increases in relation to the measures required to address real or potential business risks.

Global anticorruption watchdog Transparency International ranks the Philippines in 85th place among 175 countries and territories studied in its 2014 Corruption Perceptions Index (CPI), which measures the perceived levels of corruption of a country's public sector, from the perspective of business stakeholders and country experts. The Philippines merely scored 38 points on a scale of zero (highly corrupt) to 100 (very clean).⁶⁴ This detrimental indication of the level of perceived political corruption in the country serves as an important reminder that much more needs to be done not only in terms of improving the state of corruption within the country's public sphere, but also in the private sector because corruption has a negative effect on the economy and in consideration of the international obligation of the Philippines under the United Nations Convention against Corruption.

ADDRESSING CORRUPT PRACTICES IN BUSINESS AND GOVERNMENT

Integrity initiative

Recognizing that corruption continues to be one of the main hurdles to the country's economic development, ECCP created the Integrity Initiative program in 2009 to help the Philippines break the vicious cycle of corruption that has aggravated poverty and prevented evening the playing field for businesses.

Since President Aquino came to office on the ticket of anti-corruption, good progress has been made in advancing a collective action against corruption and unethical business practices. At present, more than 2,013 chief executives of companies, 1,500 DPWH contractors, 42 high government officials, and 140 business organizations belonging to the Integrity Consortium have supported the Integrity Initiative and

⁶⁴ The Philippines scored 36 and 34 CPI points in 2013 and 2012 respectively.

signed the Integrity Pledge, a commitment to ethical business practices and good corporate governance. In addition, a Unified Code of Conduct for Business was launched in 2012 and it provides the basic guidelines to institutionalize ethical business behavior across organizational structures encompassing the top management, human resources, sales and marketing, finance and marketing, procurement, and logistics. An Integrity Self-Assessment Tool is also available for all signatories to evaluate the areas for improvement in the integrity system they have in place in their respective organizations. Lastly, the validation process is now in progress and this will lead to the certification of companies as ethical businesses under the Integrity Initiative program.

ECCP has incorporated the Integrity Initiative program into a non-stock, non-profit organization called Integrity Initiative Inc., with a paid-up capital of 1 million PhP, demonstrating that the mission of the Integrity Initiative is long-term.⁶⁵

Despite these positive developments on upholding integrity, more actions are still required in, for example, reforming national and local government offices, adopting anti-corruption measures in business operations, and involving the academe and civil society including the church and the youth in culture change.

Seeing the need for the government to introduce and institutionalize appropriate principles, tools and control mechanisms to promote transparency in all government departments and agencies in coordination with the private sector, ECCP supports Finance Secretary Cesar Purisima's proposal outlined in a draft E.O. submitted to the Office of the President on the matter of creating an Integrity Governance Council (IGC) whose main objective is to strengthen ethical standards in business and in government and establish the needed environment, opportunities, requirements and basis conducive to the development of a culture of integrity. The proposal promotes a public-private cooperative framework where the IGC will operate under the Office of the President and be led by the head of the Cabinet Cluster on Good Governance and the chair of the Integrity Initiative, Inc., with council members including the DOF, CSC, SEC, DBM, DTI, Office of the Ombudsman, and three private sector representatives (two Filipinos, one foreigner) to be appointed by the President.

⁶⁵ Other stakeholders involved are the Makati Business Club, the Financial Executives of the Philippines, the Management Association of the Philippines, and the American Chamber of Commerce of the Philippines.



Malacañang should also strongly consider issuing an E.O. that will require entities such as project bidders or companies applying for government incentives to sign an integrity pledge to be allowed to transact with the government and incentivize signatory companies that have lived up to their good corporate governance commitments.

Protecting whistleblowers and witnesses

Another area that will help address corruption in the country is ensuring the grant of effective legal protection to whistleblowers and state witnesses to embolden them to come forward and support the prosecution of corrupt public officials.

Under S.B. 2860 or the Whistleblower Protection Act of 2011, whistleblowers are individuals with credible information on improper conducts⁶⁶ involving graft and corruption committed by government officials, so long as they must have not directly participated in the commission of improper conducts or, if involved in such conducts, the individual in question should not be the guiltiest. S.B. 2860 grants eligible whistleblowers the following:

- Absolute confidentiality of their identity and disclosure;⁶⁷
- Defense of absolute privileged communication in any other proceeding or inquiry concerning their disclosure;⁶⁸
- Protection against prejudicial conduct and retaliatory actions or reprisals in the workplace;⁶⁹
- Protection against any administrative, civil or criminal liability for their disclosure;⁷⁰
- Allowance equivalent to their basic financial requirement as well as housing and personal security;⁷¹ and

⁶⁶ The bill protects whistleblowers who give information on improper conducts committed by public officials who have violated any of the following specific laws: Republic Act 3019 or the Anti-Graft and Corrupt Practices Act; Sections 7, 8 and 9 of R.A. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees; R.A. 7080 or An Act Defining and Penalizing the Crime of Plunder; Presidential Decree 46 (Making it Punishable for Public Officials and Employees to Receive, and for Private Persons to Give Gifts on Any Occasion, Including Christmas); and Title VII, Book Two of the Revised Penal Code on “Crimes Committed by Public Officers”.

⁶⁷ Section 11, S.B. 2860.

⁶⁸ Section 15, S.B. 2860.

⁶⁹ Sections 17, 19 and 20, S.B. 2860.

⁷⁰ Section 18, S.B. 2860.

⁷¹ Section 22, S.B. 2860.

- Monetary reward on a contingency basis, equivalent to at least 10% of the amount that may be recovered, or the amount of 1 million PhP, whichever is lower.⁷²

To make the policy design for whistleblowing more effective, the coverage of S.B. 2860 should be broadened to cover criminal acts that do not necessarily involve government officials to provide protection to whistleblowers who divulge fraudulent professional practices such as in law, accounting and medicine, in order to address corruption in the private sector as well. The monetary reward should be exempt from all taxes and the cap of 1 million PhP should be raised. A provision on retroactivity should also be introduced to the bill to dispel uncertainties whether whistleblowers before the enactment of the measure are protected under the law, and to encourage individuals who have knowledge of corruption crimes before the passage of the act to come forward and disclose information.

A sound whistleblower protection law should be complemented by a strong witness protection law, and vice versa. In this regard, the passage of S.B. 2860 with further amendments should be prioritized as it addresses some of the limitations of R.A. 6981 or the Witness Protection, Security and Benefit Act. The present 24-year-old law does not offer government protection to qualified witnesses complicit to the commission of improper conducts on which their disclosure is to be made. This effectively discourages them to come forward for fear that they will similarly face criminal charges. In addition, although the current law on witness protection prohibits employers from penalizing a witness for his absences incurred during an investigation, it does not unambiguously provide protection to witnesses against discriminatory actions or reprisals in the workplace. The Witness Protection Program under R.A. 6981 should also be able to restrain the movement of state witnesses and ensure that only the proper courts should have the authority to dismiss a witness from state protection, considering that any breach of agreement leads to the automatic expulsion of the witness from the WPP under the present law.

⁷² Section 23, S.B. 2860.

Advocacy

ECCP is closely working with non-state actors to promote integrity awareness among the youth through integrity circles, and work with LGUs in building transparency in financial management and in creating an investor-friendly business environment in areas with high levels of joblessness and underemployment. This endeavor is supported by the Konrad Adenauer Foundation through an EU-funded project called “Integrity for Jobs” which started in early 2014.

The decision of the Office of the Ombudsman to create the Investment Ombudsman Team (IOT) is a welcome development that will help create an enabling environment for foreign and local investments and strengthen investor confidence by supporting efforts to address corrupt practices. Indeed, the IOT’s scope covers, among others, business and investor concerns relating to any solicitation, demand or request by a government official in exchange for the issuances of licenses, permits and certificates, the release of shipment and cargoes, as well as the arbitrary assessment of fees for the conduct of business.

In view of the absence of a Philippine law explicitly penalizing corrupt practices in the private sector, ECCP supports the enactment of H.B. 5298 which seeks to amend R.A. 3019 or the Anti-Graft and Corrupt Practices Act to prescribe penalties for graft and corruption offenses in the private sector, among others, and recommends that a corresponding bill be introduced in the Senate.

In line with the advocacy of relevant stakeholders from the public and private sectors, ECCP also endorses the urgent passage of a Freedom of Information Act by the 16th Congress to address corruption in the bureaucracy by making government transactions transparent to the public and holding public officials accountable for their actions, and will also endeavor to study the options of crafting anti-corruption legislative measures.



JUSTICE REFORM

Introduction

The judicial branch is one of the co-equal interdependent tripartite branches of the Philippine government functioning under the doctrine of separation of powers and a system of checks and balances. Judicial power is vested in the Supreme Court and other lower courts as established by the 1987 Constitution and other laws.

The Philippine justice system operates in a complex network of the judiciary, relevant government institutions and agencies, and various offices for justice implementation. Ideally, the SC, DOJ, and the Office of the Ombudsman should work in close coordination and cooperation.

Challenges and reforms in the Philippine justice sector

The espousal of justice, human rights, and the rule of law in the 1987 Constitution marked a watershed moment in Philippine history to reinstate judicial autonomy and develop an effective justice system underpinned by numerous institutional reforms. The most recent and major development is the Supreme Court's adoption of the Action Program for Judicial Reform (2001–2006), which set out a comprehensive set of reform projects and activities aimed at enhancing judicial conditions and performance for a better delivery of judicial services.

Continuing and future reforms in the justice sector, however, face many limitations to the efficient performance of the country's justice sector. An ADB report in 2009 identified common challenges to the country's justice system, which remain substantially relevant to date: lack of resources and fiscal autonomy, delays in justice administration, capacity to undertake reforms, human resources management, and equitable access to justice.⁷³

⁷³ According to the ADB's Background Note on the Justice Sector of the Philippines (2009), significant reforms accomplished during the APJR included:

- a. improved judicial efficiency, demonstrated by an increase in the number of cases disposed by courts;
- b. computerized case management information systems in the Supreme Court, Court of Appeals, Court of Tax Appeals, and Sandiganbayan;
- c. increase of judicial salaries by 100% over a 4-year period, approved in 2003, facilitating the recruitment of qualified candidates for judicial appointment and reducing vacancies in the judiciary;
- d. decentralization of court administration functions to a pilot regional court administration office intended to increase efficiency;
- e. the establishment of 113 court-annexed mediation centers nationwide intended to facilitate access to justice; and
- f. the adoption of new codes of conduct for judges, employees in the judiciary, and public notaries in 2004.

Advocacy

The local and foreign business community is united in pushing for judicial reforms in view of the basic principle that justice delayed is justice denied and for a number of other reasons including the culture of impunity in the country, the propensity of judgments decided with finality only to be reconsidered or reversed in the future, the tendency of the executive branch to push administrative cases in the court system to gain time, and the destructive use of temporary restraining orders, among others.

ECCP supports the Judicial Reform Initiative, a private sector-initiated multi-sectoral advocacy, focused on achieving reforms in the judicial and prosecutorial arms of the government.

ECCP commends the EU's assistance for the country's judiciary through the 570 million PhP EU-Philippines Justice Support Programme II (EPJUST-II) and the EU-Philippines Trade-Related Technical Assistance Project 3 (TRTA). EPJUST-II aims to facilitate people's access to legal information and assistance and to expand the provision of quicker and fairer judicial services; to make the criminal justice system more efficient in preventing and punishing major crimes in general and extra-legal killings and enforced disappearances in particular through the improvement of the investigation, prosecution and adjudication processes; and to strengthen internal monitoring and evaluation systems and to improve the oversight mechanisms involving external actors to better assess the performance of the justice system. Under the TRTA, the EU financially supports the Office for Competition under the DOJ.

Specific proposals aimed at developing the Philippine judicial system include the following:

1. The recent bills filed by the House Committee on Justice in relation to the enactment of a Whistleblower Act and strengthening the Witness Protection law should be passed by the 16th Congress without delays.
2. The salaries of prosecutors and members of the judiciary should be made more competitive by removing the DOJ, SC, Office of the Ombudsman, Court of Appeals, and Sandiganbayan from the Government Salary Standardization Act.

3. The SC, the Office of the Ombudsman, and the Commission on Audit should be enabled to receive a reasonable percentage from the national budget without having to “lobby” for their financial resource allocation with people that they are potentially investigating.
4. There should be an effective mechanism to aggressively investigate judges suspected of corruption and pursue legal and administrative actions once offense is established.
5. Responsive procedures for business disputes should be established.
6. Specialized courts for cases related to business and IPR should be created.
7. Consistency between local ordinances and national policies should be ensured.
8. The SC should consider expanding its use of *amici curiae*, providing information on the implications of decisions on the economy and business, before decisions are made.
9. All judicial vacancies must be filled expeditiously.
10. The competency of public lawyers and judges should be further improved through continuous trainings and capacity-building seminars.
11. An inventory of laws should be created with the aim to identify laws that have become redundant and have them eliminated.



PROTECTION AND ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Introduction

According to the World Intellectual Property Organization, intellectual property refers to creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images used in commerce to which exclusive rights are accorded. The most common types of IPR include patents, copyrights, trademarks and trade secrets.

An effective intellectual property system is crucial for an emerging economy like the Philippines as it will not only encourage innovation and competitiveness but also foster fair market competition for existing businesses and potential foreign investors and since “developing countries with stronger IPR regimes are in a better position to attract knowledge-related FDI flows.”⁷⁴ A foreign investor is more willing to invest in a country where there is adequate legal protection for intellectual property. Studies reveal a strong and positive correlation between FDIs, technology transfer and adequate protection of IPR.

38

IPR in the Philippines

The Philippines has put in place minimum standards of IPR protection in compliance with TRIPS. It has enacted the following laws to safeguard IPR, namely:

- R.A. 8293 or the Intellectual Property Code of the Philippines;
- R.A. 10372 amending the IP Code of the Philippines;
- R.A. 165 or the Patent Law;
- R.A. 166 or the Trademark Law;
- P.D. 49 (series of 1972) or the Decree on the Protection of Intellectual Property; and
- R.A. 9239 or the Optical Media Act.

The Philippines is further compelled to assume IPR obligations under international law by virtue of its accession to the following treaties and agreements:

- Convention Establishing the World Intellectual Property Organization;
- Paris Convention for the Protection of Industrial Property;
- Budapest Treaty on the International Recognition of the Deposit for Microorganisms for Purposes of Patent Procedure;
- Berne Convention for the Protection of Literary and Artistic Works;
- International Convention for the Protection of Performers, Producers of Phonographs and Broadcasting Organizations;
- Patent Cooperation Treaty; and
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol).

The country has made progress in IPR protection and enforcement as evidenced by its recent removal from the US watchlist of trading partners with grave IPR infringements. Despite its existing IPR legal framework, the Philippines is, however, still confronted by serious IPR infringements. In 2013, counterfeited and pirated products seized by the NCIPR amounted to 7.76 billion PhP representing a year-on-year upsurge of 47%.

The reason why IP infringements are still entrenched in the Philippines is attributable to the lack of resources and administrative capability; the lack of interagency cooperation and problems with the legal system specifically the backlogs and delays in courts; the lack of judicial urgency; and the lack of quality convictions.⁷⁵

To address certain administrative problems, President Aquino recently signed R.A. 10372, which amended the IP Code of the Philippines and gave IPOPhil its enforcement powers authorizing the agency to catch counterfeiters. Prior to the amendment, only law enforcement agencies belonging to the NCIPR—namely, the BOC, NBI, OMB and PNP—had anti-piracy visitorial rights and police powers. In strengthening IPOPhil’s enforcement power, Director General Ricardo Blancaflor promised to set in place a database for the registry of licensees.

⁷⁴ Jean Raymond Homere, “Intellectual Property Rights Can Help Stimulate the Economic Development of Least Developed Countries,” *Columbia Journal of Law & the Arts* (2004), p. 277.

⁷⁵ Andrew Jaynes, “Why Intellectual Property Rights Remain Entrenched in the Philippines?” *Pace International Law Review*, Vol. 21, Issue 1, 2009.

Protecting GI as a useful tool that reinforces community development, fair competition and local knowledge benefits producers and consumers alike by building the value premium of protected products and guaranteeing product origin, quality and authenticity. While the IP Code of the Philippines allows the registration of GIs as a collective trademark, ensuring a higher level of protection of products through a *sui generis* or specific GI legal protection framework would have a positive impact on the export potential of the Philippines and future FTA negotiations with the EU (specific local products that could be leveraged to access the EU market through GI recognition include Guimaras mangoes and T'nalak weaving). The IPOPhil's initiative to formulate the IRR for GI registration is an important initial step towards protecting GIs at the national level.

In light of the previous discussion, it is expected that there will be an increase in the number of IPR infringers and it, therefore, becomes indispensable to infuse significant changes in the prosecutorial and judicial court case management and disposition. Presently, a number of selected regional trial courts have been called to try and decide cases involving IPR violations.⁷⁶ Although these IP courts have been designated, in reality IPR cases represent only 10% of the workload as against non-IPR cases. The US National Trade Estimate Report explains the lack of deterrence for IPR infringers in the country as:

Among those cases that have made it to court, there have been relatively few successful prosecutions. While companies have invested significant resources in investigations and litigation, some cases remain unresolved as long as two decades after the initial complaint. The Philippines has failed to establish punitive sanctions sufficient enough to serve as a deterrent to IPR violators. The nominal damages awarded by the Philippine courts in IPR cases add little to the cost of doing business for IP pirates, and thus far there has been no risk of imprisonment for offenders.⁷⁷

⁷⁶ Supreme Court of the Philippines, A.M. No. 03-03-03-SC, 1 July 2003, Consolidation of Intellectual Property Courts with Commercial Courts.

⁷⁷ Stuart P. Green, "Plagiarism, Norms, and the Limits of Theft Law: Some Observations on the Use of Criminal Sanctions in Enforcing Intellectual Property Rights," *Hastings Law Journal*. 167, 233 (2002).

Advocacy

ECCP strongly regards IPR protection and enforcement as one of the important aspects of the level playing field agenda for European businesses especially since an IPR chapter in a future EU-Philippines FTA is fundamental. We support the ASEAN IPR SME Helpdesk,⁷⁸ which provides free information and services to EU SMEs to help them protect and enforce their IPR in Southeast Asia.

To underpin IPR enforcement and protection, specialized IPR courts should be created to streamline and expedite the resolution of IPR-related cases. According to a 2012 study on specialized IPR courts by the International Intellectual Property Institute and the US Patent and Trademark Office, there is a positive correlation between specialized IPR courts and the efficient and effective resolution of IPR cases. Enforcement of IPR laws on the ground should be increased as it is crucial to limit far-reaching IPR breaches, especially in the retail sector.

ECCP shall dialogue with the IPOPhil, OMB and NGOs involved in the fight against IPR infringement such as the Business Software Alliance and the Intellectual Property Coalition to address the issue of courts disposition and management of IPR cases.

The European business community welcomes the recent accession of the Philippines to the Madrid Protocol, which will allow Philippine trademark owners to conveniently and cost-effectively seek trademark protection in multiple major trading partners such as the EU, the US, Japan and China.

⁷⁸ The ASEAN IPR SME Helpdesk is located in Jakarta and operated by the European Business Chamber of Commerce in Indonesia.



PROPOSED AMENDMENTS TO THE LOCAL GOVERNMENT CODE OF 1991

Introduction

ECCP welcomes the recent initiative by the DILG to carry out consultations with the business sector as part of the process to amend the Local Government Code of 1991 (LGC), as LGUs are a key part of national policy-making and implementation. Therefore, strong and mutually beneficial cooperation between the private sector and LGUs is crucial to the further strengthening of inclusive economic growth at a national level.

A clear legislative framework, through the necessary amendments to the LGC, which sets the competencies, obligations and boundaries to the authority of LGUs is necessary to ensure such cooperation.

Business concerns with LGUs

The creation of PEZA is an initiative which has been key to attracting an increasing number of international investors into the country, and effectively fuelling national economic growth and much needed employment generation. However, a number of cases have come to the attention of ECCP, in which LGUs are requiring taxes, fees and additional permits from PEZA investors, which are not in line with the fiscal and non-fiscal incentives provided to PEZA companies. This is despite R.A. 8748, which amended R.A. 7916, including the exemption from all national and local taxes for companies registered under PEZA. More specifically, Section 24 of R.A. 7916 provides that “Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ecozone.”

Effectively, the added costs being imposed by LGUs are leading to additional operation and financial costs for investors and present a significant bottleneck for investors. Furthermore, they reduce the competitiveness of the Philippines as an investment destination.

Advocacy

It is recommended that amendments to the LGC include a section clearly clarifying that LGUs cannot overrule national policies, including fiscal and non-

fiscal incentives provided by PEZA and other IPAs. This section should also set out a clear framework of the mechanism, structure and procedures to ensure that revenues from PEZAs mutually benefit PEZA and LGUs. Economic impact studies should also be carried out to identify the total economic benefits to LGUs, through indirect revenues and job creation from the BPO industry, by BOI, DTI or PEZA to address concerns by LGUs that they are not profiting from the establishment of BPO centers in their areas of jurisdiction due to the investment incentives in place. Additionally, ECCP opposes the proposed amendment of Section 143 of the LGC to introduce a single tax rate, with a maximum rate of 1.5% of gross sales of the preceding year for cities and 1% for municipalities. The implementation of a single tax rather than a number of disparate taxes is supported, however the rate for both cities and municipalities is deemed too high, not least because it is gross sales and not profit which is being taxed. Therefore, it is recommended that a lower single tax rate is introduced.

The proposed amendment to Section 195 of the LGC on protest of assessment and Section 196 on claims for a refund of tax credit to provide an administrative mechanism for appeal of the assessment of taxes decided by the local treasurer to the DOF or the Bureau of Local Government Finance is strongly supported by European business. These amendments will facilitate a more efficient and less costly procedure for businesses and will therefore increase the ease of doing business for companies.

In addition to the above recommendations and with the opportunity of the current amendment procedure to the LGC, it is also recommended that amendments are made to ensure: the definition of clear taxation rules between national and local government and a framework for the harmonization of the proposed LGU Investment Promotion Units with national government investment promotion policies.

More generally, the amended LGC should reflect the need to facilitate the further development of industry sectors with potential and positive effects on job generation and inclusive growth more specifically:

- *Agribusiness.* LGUs in key agricultural areas should strengthen their agricultural extension and training services for farmers and improve farm-to-market roads.
- *IT-BPM-KPM.* LGUs should respect the status of investor operations established in PEZA or IT

zones. At the same time, guidelines should be developed and followed on which fees for local services (e.g., garbage collection) are acceptable.

- *Creative industries.* LGUs should fully support the development of the creative industries in their locality and encourage them to export their products or services.
- *Infrastructure.* LGUs should strongly support rapid implementation of priority infrastructure projects, including PPP projects, that will develop their regions (e.g., for tourism).
- *Manufacturing and Logistics.* LGUs should fully support manufacturing and logistics, which provide local jobs, procurement, and LGU revenue, as well as prioritize reducing and minimizing business costs. Investments are long-term, done on the basis of existing rules and based on established zoning regulations. It is essential that LGUs maintain the rules long-term and that LGUs avoid rezoning developed industrial zones.
- *Mining.* LGUs should help develop local community support for national government policy to develop mining projects that observe social and environmental regulations.
- *Tourism, Medical Travel, and Retirement.* LGUs can help mobilize local communities to make the local tourism experience better through a clean and safe environment, more efficient transportation, and the like. LGUs are entrusted with a greater role under the Tourism Act of 2009 in becoming involved in master planning, tourism zone site selection, implementation of standards, putting one-stop shops in place, and upgrading local infrastructure, among others.

The benefits of continuing economic growth and increasing FDIs are far-reaching, while the development and revenue potential for LGUs through investment is significant. However, to ensure that economic growth is inclusive and sustainable, it is crucial that an attractive investment environment is provided to companies. Therefore, amendments to the LGC which will guarantee that this requirement is met are key to fostering such growth.



SECTOR PAPERS

43



AGRICULTURE

Sector overview

The Philippines is an agricultural country with a land area of 30 million hectares, 9.671 million hectares of which are considered as agricultural land. Prime agricultural lands are located around the rural and less populated areas. In the first half of 2014, the agricultural industry grew by 1.81%. The agricultural sector employed a total of 11,885 million people as of 2014 which represents over 30.1% of the Filipino workforce and is the main generator of employment.⁷⁹

The agriculture industry is composed of subsectors, mainly: crops, fisheries, and livestock and poultry. Each subsector has an impact in the development of the industry. The crop subsector's gross value of output has amounted to 443.9 billion PhP, an 18.31% increase in 2013. It was recorded that the vast amount of harvest and improvement came from the following areas: Ilocos region, Cagayan Valley, Central Luzon, and SOCCSKSARGEN. The fisheries subsector, at current prices as of June 2014, has grossed to 122 billion PhP worth of earnings. The livestock subsector increased to 118.9 billion PhP gross revenues in 2014 from gross earnings of 111.8 billion PhP in 2013. Meanwhile, the poultry subsector's gross revenues went up by 5.91%, having amounted to 91.7 billion PhP at current prices as of June 2014.⁸⁰

The application of GSP+ as of December 25th 2014 in the Philippines is expected to provide strong development potential for the food manufacturing industry, as food products are one of the product segments greatly benefitting from zero-tariff entry to the EU market.

In this context, it becomes ever more important to increase the productivity of Filipino farmers, which has largely lagged behind that of neighboring countries in the past years. A number of projects put in place by the DA, such as farm mechanization, national organic agriculture and post-harvest development programs, and the PRDP, will provide the foundation for increased production and productivity. Reaching those goals however, is also reliant on the success of implementation, including the ease of the indirect factors which contribute to low agricultural productivity in the Philippines.

⁷⁹ National Statistical Coordination Board.

⁸⁰ Bureau of Agricultural Statistics.

Advocacy

I. IMPROVEMENT OF LOCAL ORGANIC CERTIFICATION RULES AND REGULATIONS

Current situation

The Philippines' strategic location along with favorable climactic conditions and agriculture resources, present a natural advantage for agricultural production. However, due to the lack of technical capacity throughout the registration process, it has been difficult to introduce new and innovative organic products into the country.

The current certification rules and regulations for organic products in the Philippines need a thorough review and updating, so as to be aligned with international standards. Furthermore, there is a lack of technologically advanced facilities and laboratories for analyzing residues in food and crops.

Therefore, the Agriculture Committee welcomes the move by BAFS to publish new rules and regulations on the registration of organic input producers and licensing of organic input establishments, and the official accreditation of international organic certification bodies (OCBs), among others, and carry out consultation processes with stakeholders.

Recommendations

The Agriculture Committee recommends the following changes to the Draft Circular on the Rules and Regulations for the Registration of Organic Input Producers and Licensing of Organic Input Establishments:

1. *Under Section VI, Requirement of Experimental Use permit, lines 359-361; it is suggested that an increase on the limitation of trials by an accredited OAR to just 4 experiments at a time is introduced, taking into account that it is possible to simultaneously conduct trials in the same site on 2 to 3 products. This would allow companies to register more than one product at the same time and therefore facilitate faster and more efficient market access, without compromising the quality of the trials;*

2. *Under Section VII, Fees, Annex E, I.A/ B*; registration fees should be the same for local and imported products. Imposing higher fees on imported products will translate into a higher cost of production for farmers who use imported organic inputs;
3. *Under Section IX, Revocation of COR and LTO*; the Agriculture Committee supports the inclusion of a provision for OCB certification to be optional, and to accept organic certification from the country of origin to merit approval for the application for registration. It is also requested that requirements for certification are made clear and transparent, and a rate schedule is made publicly available for accredited OCBs; this also applies for Annex B;
4. *Under Section X, Labelling of Registered Organic Inputs, lines 423-428*; it is recommended that a provision that will allow a sticker label to be used on top of the standard packaging when retailed in the Philippine market is included. This will reduce the costs of compliance to the section, which foresees the use of customized packaging for the Philippines.

The move to recognize international OCBs in the certification process is fully supported by the Committee and is seen as an essential step towards the modernization of the registration process of organic input producers.

Additionally, the Agriculture Committee proposes the harmonization of the organic certification rules and regulations of the country with international standards. For example, EU standards, as set by the Council Regulation (EC) No. 834/2007 could be used as a benchmark.

II. REVISION OF THE LIST OF CONTROLLED AND REGULATED CHEMICALS IN LINE WITH INTERNATIONAL STANDARDS

Current situation

P.D. 1866, or the List of Controlled and Regulated Chemicals, Explosives or Explosive Ingredients, amended by R.A. 8294 and R.A. 9516, encompasses all chemicals, and products of those, which are considered as dangerous by the Philippine National Police, and therefore are subject to a number of security procedures.

While European business considers national security as an uncompromising priority, and therefore fully supports the strict regulation and enforcement of dangerous chemicals and explosives, it is understood that a number of fertilizers destined for agricultural use and invaluable for agricultural productivity, are also included in this list despite international indications that they are in fact non-explosive and non-oxidizing.

Notably, a number of security procedures are implemented by the Philippine National Police for products listed under the list of controlled and regulated chemicals, explosives or explosive ingredients; import permits, escorted transport, annually renewable licenses, specific storage provisions, are just some of the requirements needed in order to access and handle the fertilizer. These serve as an obstacle for small scale farmers to benefit from these fertilizers as they cannot afford to comply.

Therefore, Filipino farmers face a competitive disadvantage compared to farmers in neighboring countries and key trade partners in the agricultural sector which do not apply such procedures, in line with international and European regulations.

Recommendations

It is therefore recommended that the list of controlled and regulated chemicals is revised, with exemptions provided to by-products of listed chemicals which are not considered oxidizing or flammable, using international benchmarks, such as the Dangerous Goods in the UN Transport Regulations “Orange Book” and the EU Regulation No 98/2013 on the marketing and use of explosives precursors and its respective guidelines. This will allow Filipino farmers to fully benefit from products available on the international market at competitive rates, while ensuring continued regulation and enforcement of those chemicals that present a potential threat to national security.

III. REMOVAL OF 3% IMPORT DUTIES ON NPK

Current situation

NPK is a widely used fertilizer in the Philippines.



It provides plants with macro nutrients such as nitrogen, phosphorous and potassium and is therefore essential for higher productivity. In the Philippines, NPKs are subject to an import duty of 3%; this is not the case in most ASEAN countries as, with the exception of those where the raw materials for a domestic fertilizer production are locally available, there is no import duty applied to NPKs.

While many importers benefit from zero tariff imports under AFTA or bilateral trade agreements, fertilizers of European origin continue to be subject to the import duty.

This creates an un-level playing field for European companies, but also increases the cost for farmers who chose to avail of high quality European NPKs, making them less competitive compared to farmers using the same NPKs in other countries in the region where the tariff is not applied.

Recommendations

It is recommended that the 3% import duty on NPK should be removed. This will improve agricultural productivity and effectively the competitiveness of Philippine agricultural products.

In order to ensure that European importers of agricultural products can benefit from a level playing field in the long-term, it is suggested that agricultural inputs are included in the FTA negotiations between the EU and the Philippines.

AUTOMOTIVE, PARTS, LUBRICANTS AND FUELS

Sector overview

ASEAN is becoming one of the largest markets globally for vehicle sales. By December 2014, sales in the seven major vehicle markets of ASEAN amounted to over 3.1 million, while motorcycle and scooter sales added up to over 10.8 million by the same month.⁸¹ It is estimated that by 2019, ASEAN will be the fifth largest market in the world.⁸²

The Philippines is one of the fastest growing markets in ASEAN for vehicle sales; in fact, YOY growth for 2014 for motor vehicle sales was 29.2%, equal to 234,747 vehicle sales as compared to 181,738 in 2013. Philippine motorcycle and scooter sales had the highest growth among recorded ASEAN sales, at 5% YOY.⁸³ In absolute numbers, however, the Philippines still has significantly lower sales than the major markets in the region; over 1.2 million motor vehicles were sold in Indonesia and more than 880,000 in Thailand during the same period.⁸⁴

Fuels, lubricants and parts are also a growing market; most major international players are present, although especially in the parts industry they are deterred by a large market of substandard products.

The motor vehicle manufacturing sector also grew substantially in 2014, with YOY growth at 12.2%. However, automotive manufacturing remains an area in which the Philippines significantly lags behind regional competition; despite a 23.5% shrinking of the industry in Thailand, it still produced over 1.8 million cars in 2014, while Indonesia produced just under 1.3 million. The Philippines produced just 88,845.⁸⁵ CARS, the planned Philippine Automotive Industry Roadmap which is expected to be introduced in 2015, is hoped to boost the competitiveness of the Philippines as a destination for automotive manufacturing investment and effectively the number of vehicles produced in the country.

In terms of employment generation, in 2013 the automotive manufacturing sector generated an

⁸¹ ASEAN Automotive Federation (2014), Sales report. January - December 2014, http://www.asean-autofed.com/files/AAF_Statistics_ytd_december2014.pdf. (2014, pp. 1-2).

⁸² Frost & Sullivan (2013). ASEAN to emerge as a...<http://www.frost.com/prod/servlet/press-release.pag?docid=283142681>.

⁸³ See ASEAN Automotive Federation (2014).

⁸⁴ Ibid.

⁸⁵ Ibid.

estimated 68,000 direct jobs. 8,000 of those were in vehicle manufacturing, while 60,000 were in parts manufacturing.⁸⁶

Most major European automotive brands are present in the Philippines in the retail sector, however due to investment restrictions, most dealerships are present in the market through a national partner.

A young demographic, rising middle class and low ownership of cars are the driving forces for continued growth of the sector.

Advocacy

I. STRENGTHENING OF THE COMPREHENSIVE AUTOMOTIVE RESURGENCY STRATEGY (CARS)

Current situation

The automotive industry has flourished in other countries in the region, such as Thailand; however the Philippines has a very limited car manufacturing and assembly industry, despite growing domestic demand. This reflects the concern by automotive companies that there is a lack of an integrated production chain.

Specifically, for a multi-stage production line, such as that of the automotive industry, to be cost-efficient it is necessary to develop manufacturing clusters which enable an economy of scope. In the case of the automotive production line the presence of both parts manufacturers and assemblers is crucial to an attractive investment environment. This is characteristic of the largest automotive manufacturing destinations in the region, such as Thailand and Indonesia, and currently lacking in the Philippines.

As the electric car segment grows, with it comes the opportunity for the Philippines to catch up with regional players and become the regional production hub for electric cars, which requires a different production line than that of traditional vehicles. Therefore, it becomes even more important that this opportunity is seized and that the necessary provisions and incentives are provided to ensure that the Philippines becomes an attractive investment destination for the automotive industry.

⁸⁶ House of Representatives (2014), Motor Vehicle Industry: Facts in Figures, <http://www.congress.gov.ph/cpbo/images/PDF%20Attachments/Facts%20in%20Figures/FF2014-14-Motor%20Vehicle%20Industry.pdf>.



Recommendations

The Automotive, Parts, Lubricants and Fuels Committee supports the efforts being made by government to develop the automotive manufacturing and assembly industry in the Philippines, through the proposed CARS.

CARS needs to include the necessary provisions to allow for long-term sustainability and growth of the Philippine automotive industry. Indeed, it is estimated that a strong domestic automotive manufacturing industry could generate approximately 300,000 jobs for skilled and highly skilled workers and it will also promote national competitiveness at a regional and international level. To achieve this, the Automotive, Parts, Lubricants and Fuels Committee recommends:

- The government should shift the focus on incentives which will attract new investors to the Philippines, not just foster the growth of companies already assembling in the country.
- The fast growing GDP per capita and vehicle sales data in the past years indicates that there will be a growing domestic demand for higher end cars in the coming years; this should be reflected through clear incentives targeted at the higher end automotive companies.
- The growth of the electric car market is an opportunity for the Philippines to place itself in the regional automotive industry as a regional production hub and needs to be promoted through targeted provisions for direct and indirect incentives.
- The significant benefits of knowledge and technology transfer from companies with highly advanced technology need to be recognized within the framework of CARS through provisions which will facilitate the use of foreign experts in the sector.
- To ensure the success of CARS, it is necessary to apply a holistic approach reflected through provisions targeted equally at parts manufacturers and automotive assemblers.

II. SUCCESSFUL IMPLEMENTATION OF EURO 4

Current situation

Air quality in Metro Manila is an ongoing concern; taking into account that 70–80% of air pollution originates from mobile sources or vehicular emissions on the one hand⁸⁷ and the high growth in car sales on the other, namely a YOY growth of 29.2% for 2014,⁸⁸ higher standards for emissions are crucial to proper implementation of R.A. 8749, otherwise known as the Philippine Clean Air Act of 1999. The move therefore by the Philippine government, to implement a PNS equivalent of Euro 4 standards for fuels and emissions, is fully supported by the European vehicle and oil industry in the Philippines.

Despite the costs involved in fully complying with the fuel and emissions standards that will be introduced, European stakeholders are willing to incur the cost to support the efforts being made to meet R.A. 8749 objectives and effectively benefit the quality of life for those living in Metro Manila and other urban areas.

However, taking into account that the date of implementation originally set by government was January 1st 2016 and companies in the industry have aligned their investment plans according to that timeline, the DENR's move to accelerate implementation to July 1st 2015 will be disruptive both for businesses, which need to fast track their adherence process in a very limited timeframe, and for the long term success of Euro 4 implementation, as fast track implementation will undoubtedly mean that corners are cut for stakeholders to meet the deadline.

Additionally, a key concern by European oil and vehicle companies, is that the necessary actions are taken so that the efforts being made by DOE, DENR and DOTC are not undermined due to gaps in the implementation of Euro 4 equivalent standards.

Recommendations

The Automotive, Parts, Lubricants and Fuels Committee strongly supports the implementation of Euro 4 equivalent PNS standards according to the original timeline adopted by government, namely

⁸⁷ Department of Environment and Natural Resources (2014), DENR Pushes For Early Compliance to Euro 4 Standard..., <http://www.denr.gov.ph/news-and-features/latest-news/1960-denr-pushes-for-early-compliance-to-euro-4-fuel-standards-phase-out-of-ageing-vehicles.html>.
⁸⁸ See ASEAN Automotive Federation (2014).

January 1st 2016.

Furthermore, the Committee recommends a number of points to be considered to ensure successful implementation of the transition to Euro 4.

More specifically:

- The committee supports a strict deadline for the full implementation of Euro 4 equivalent PNS standards, rather than a “dual system”, allowing Euro 2 equivalent fuel to remain available on the market;
- To ensure full compliance to the 2% CME requirement, in addition to the remaining standards set by the Euro 4 equivalent standards, it is recommended that more widespread and more frequent testing, with a bigger focus on ad hoc testing at distribution level, is implemented;
- It is suggested that DOE includes a ban on the inclusion of metal additives in gasoline and diesel, in addition to the standards put in place for Euro 4 equivalent PNS standards on fuels and emissions;
- Inclusion of all vehicle segments with no exceptions, including heavy duty vehicles and mass transport vehicles, in the implementation of Euro 4 equivalent PNS standards from the beginning is supported.

III. PRESENCE OF THE AUTOMOTIVE INDUSTRY IN THE EU-PHILIPPINES FTA

Current situation

Imported vehicles to the Philippines from the EU currently incur 30% customs duty, 12% VAT and excise or ad valorem tax from 2% to 60% depending on the value of the vehicle. The impact on the retail price of European vehicles in the country is significant and can add up to 102% on top of the initial price. At the same time cars imported from most other vehicle manufacturing countries enjoy preferential tariffs under FTAs.⁸⁹

⁸⁹ These FTAs are Australia/New Zealand - ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), China - ASEAN-China Free Trade Area (ACFTA), India - ASEAN-India Free Trade Area (AIFTA), Japan - ASEAN-Japan Comprehensive Economic Partnership Agreement

Effectively, European vehicles cannot retail on a level playing field in the Philippines as the retail price is uncompetitive compared to the majority of vehicles in their respective categories.

Recommendations

To minimize unfair competition for European vehicles in the Philippines, the Committee supports the inclusion of the vehicle sector in the EU-Philippines FTA negotiations. Such provisions should allow for the elimination of fiscal and non-fiscal barriers to import European vehicles to the Philippines, as is the case for vehicles of other origin.

IV. STRENGTHENING REGULATIONS AND ENFORCEMENT ON PARALLEL IMPORTS

Current situation

Despite significant improvements to the customs and imports system in the past years, there is still a concern on the volume of parallel imports of vehicles and imports of substandard parts into the Philippines, especially through private ports. In addition to the unfair advantage this offers to illegal importers, as they do not incur taxation or import duties, substandard automotive vehicles and parts can pose a significant risk to road safety.

At the same time customs procedures for the importation of spare car parts for compliant companies can be lengthy⁹⁰ due to extensive import requirements and delays in approval, which further reduce the opportunity for compliant companies to operate on a level playing field.

The presence of substandard automotive parts on the road reflects the lack of full implementation, and more importantly enforcement, of regulations harmonized with international standards, such as UNECE regulations, which ensure that vehicles on the road are safe, and therefore would exclude

(AJCEPA), Philippines-Japan Economic Partnership Agreement (PJEP), Korea - ASEAN-Korea Free Trade Area (AKFTA)

⁹⁰ More specifically, the following parts face delays when imported due to excessive requirements by government agencies (identified in brackets): Batteries (PDEA), Brake fluids (DENR, DTI and DoE), Windshields/Glazing (DTI), Tyres (DTI), Air bags (PNP).



substandard products.

Recommendations

At an operational level, it is important that customs procedures become more stringent to enforce regulations and ensure a cut-down on parallel importations through private ports across the Philippines.

Furthermore, the streamlining of requirements set by specific agencies will enable a fast and cost-efficient importation process for compliant companies.

Full implementation of the proposed E.O. on “Establishing a Whole Vehicle Type Approval System (WVTAS)”, and promulgation of IRR of the E.O. that adheres to the 19 UNECE regulations identified as priority regulations for harmonization in ASEAN⁹¹ is also instrumental in ensuring that substandard parts

91 These UNECE regulations are as follows ECE R13 Heavy vehicle braking, ECE R13H Braking of passenger cars, ECE R14 Safety-belt anchorages, ECE R16 safety-belts, ECE R17 Strength of seats, their anchorages and head restraints, ECE R25 Head restraints, ECE R30 Tires for passenger cars and their trailers, ECE R39 Speedometer, ECE R40 Exhaust emission, ECE R41 Noise emissions, ECE R43 safety glass, ECE R46 Devices for indirect visions, ECE R49 Diesel emission, ECE R51 Noise emissions of M and N categories of vehicles, ECE R54 Tires for commercial vehicles and their trailers, ECE R60 Driver operated controls, ECE R75 Tires for motorcycles/ mopeds, ECE R79 Steering equipment, ECE R83 Exhaust emissions of M1 and N1 vehicles.

are taken off the roads.

CONSUMER GOODS AND RETAIL

Sector overview

The development of the consumer goods and retail sector is a product and also a driving force of the continued economic growth in the country. In fact, one of the key components driving economic growth in the past years has been private consumption, which rose by 5.6% in the first half of 2014.⁹² Similarly, from the production side, retail trading was a key contributor to GDP growth.⁹³

Retail sales also followed an upward trend in 2014, up 3.2% in September 2014, as compared to the same month in 2013.⁹⁴ Similarly, consumer spending reached an all-time high in the third quarter of 2014 with 1,245,614 million PhP spent.⁹⁵

As a whole, it is estimated that the retail sector accounted for 14% of national GDP, equal to approximately 1.6 trillion PhP in 2013.⁹⁶

The food and beverage industry is a driving force in retail consumption; in 2012 food and non-alcoholic beverages accounted for 43% of household consumption, while alcoholic beverages and tobacco were equal to 1.3% of household consumption. Purchases of apparel were calculated at 1.4%, while other segments were not calculated separately.⁹⁷

There is a boom in the retail sector, which is reflected in the fast growth of shopping malls across the Philippines and especially in the NCR. However, mainly due to a restrictive legislative framework for international investment in the sector, most major international companies have no choice but to enter the country through franchise agreements or partnership with local retail companies; up to now there has been only one exception of a European company entering the Philippines independently in 2014. Effectively, the industry is largely dominated by few large players.

In addition to the priorities highlighted below, IPR enforcement is a major area of interest for European businesses active in the Philippine retail sector. Therefore, the Committee endorses the

⁹² ADB (2014), *Asian Development Outlook 2014 Update...*, <http://www.adb.org/sites/default/files/pub/2014/ado2014update.pdf>.

⁹³ Ibid.

⁹⁴ Trading Economics (2015), *Philippine Retail Sales YoY, 1985 - 2015 Data Chart*. <http://www.tradingeconomics.com/philippines/retail-sales-yoy>.

⁹⁵ Trading Economics (2015), *Philippines Consumer Spending, 1998 - 2015 Data Chart*, <http://www.tradingeconomics.com/philippines/consumer-spending>.

⁹⁶ OBG (2014), *Expanding Opportunities, The Report: The Philippines 2014*.

⁹⁷ Ibid.

recommendations made in the cross-sector paper on Intellectual Property Rights.

Advocacy

I. RETAIL TRADE LIBERALIZATION

Current situation

The Retail Trade Liberalization Act, or R.A. 8762, was enacted in 2000 to open the Philippine retail sector to foreign investment. However, the nature of the provisions introduced in R.A. 8762 have not allowed FDI in the retail sector to reach its full potential. Notably, while private consumption is one of the key growth drivers of the GDP, the retail sector accounts for only 1% of FDI to the country.

Based on the categorization for foreign equity participation which R.A. 8762 prescribes, enterprises may only be foreign owned if they have a paid-up capital of at least 2.5 million USD, with a minimum investment of 830,000 USD per store, with the exception of enterprises specializing in high-end or luxury products, which can be wholly owned by foreigners with minimum paid up capital of 250,000 USD per store.

Additionally, foreign owned enterprises are subject to divestiture requirements,⁹⁸ capital requirements, a proven track record and minimum limits to the number of stores in the parent company.

At the same time, other countries in the region have largely liberalized their domestic retail sectors. Cambodia, Singapore, Japan and South Korea in particular, do not restrict foreign participation in their respective retail industries, to the advantage of consumers who benefit from wider competition in the retail market.

This becomes especially relevant if the Philippines aims to increase, and even retain, its competitiveness within the AEC; true liberalization of the retail trade sector is necessary if the Philippines is to become a leader as a regional shopping destination. In addition to a growth in incoming shoppers from abroad, an opening up of the market will benefit end-consumers through a wider choice of prices, quality and products.

Recommendations

The Consumer Goods and Retail Committee supports

⁹⁸ All retail trade enterprises under Categories B and C in which foreign ownership exceeds 80 percent of equity are required to offer a minimum of 30 percent of their equity to the public through any stock exchange in the Philippines within eight years from the start of their operations.



S.B. 2121, which was referred to the Senate Committee on Trade, Commerce and Entrepreneurship after its first reading on February 17th 2014. This proposed bill seeks to amend the provisions of R.A. 8762. Its main features are the following:

- The 2.5 million USD minimum paid-up capital requirement on foreign retailers under R.A. 8762 is abolished.
- All the categories under R.A. 8762 are repealed.
- The only requirement for qualification is the reciprocity agreement: “Only nationals from, or juridical entities formed or incorporated in countries which allow the entry of Filipino retailers shall be allowed to engage in retail trade in the Philippines.”
- The Department of Trade and Industry is tasked to pre-qualify foreign retailers.
- Concerning the promotion of locally manufactured goods, it is required that at least 10% of the aggregate cost of the stock inventory of foreign retailers should be made in the Philippines.

52

Taking into account the timeline of AEC, it is imperative that S.B. 2121 and a corresponding bill in the House of Representatives are approved and passed into law during the 16th Congress, to ensure that the Philippines does not lose its competitiveness to other ASEAN countries.

While closely watching the progress of S.B. 2121, the Committee will continue to support the revision of R.A. 8762 to make the present foreign equity limitations more consistent with the provisions set in the Foreign Investment Act of 1991, as amended.

II. HARMONIZATION OF ASEAN STANDARDS FOR FOOD AND BEVERAGES

Current situation

In preparation of the AEC, the ASEAN Secretariat identified a number of priority sectors for harmonization of standards. Some of these sectors have already been successfully harmonized; an example is the cosmetics sector, with ASEAN standards adopted and implemented in the Philippines through A.O. No. 2005-0015 or the Adoption of the Association of Southeast Asian Nations (ASEAN) Harmonized Cosmetic Regulatory Scheme and ASEAN Common

Technical Documents and A.O. No. 2005-0025 or the Implementation of the ASEAN Harmonized Cosmetic Regulatory Scheme and ASEAN Common Technical Documents.

However, there remain sectors of key importance which have yet to be harmonized.

One of those is the food and alcoholic and non-alcoholic beverage sector.

The lack of harmonized standards for a broad range of elements, including labelling, technical standards and product classification, and sanitary and phyto-sanitary standards, poses an obstacle to the strengthening of trade and investment from foreign countries in this sector as compliance to varying standards and requirements is expensive and complicated.

Recommendations

It is crucial that further moves towards harmonizing the food and beverage sector at an ASEAN level are taken.

More specifically, harmonization should focus on five priority areas:

- Nutrition labelling;
- Pre-market registration;
- Import/export certification;
- Authorization of food ingredients and additives; and
- Contaminant limits and analytical methods.

Therefore, it is recommended that the Philippines should closely follow the process of ASEAN Harmonization of standards for food and beverage products, and adopt and implement such standards in a timely manner; the use of international benchmarks, such as the EU’s Codex Alimentarius, is also imperative as this will further increase the competitiveness of Philippine products in the international market.

At an operational level, the FDA should accept internationally recognized standard certifications in the national accreditation process of products, to facilitate market access for reputable brands which meet high international standards by eliminating the need to test products before the approval of registration, which leads to additional financial and

administrative burden.

ENERGY AND RENEWABLE ENERGY

Sector overview

The current installed capacity in the Philippines is 12,528 MW,⁹⁹ while the dependable capacity is 11,508 MW.¹⁰⁰ Electricity consumption stood at 75,266 GWh,¹⁰¹ countrywide and 55,735,785 MWh¹⁰² in Luzon in 2013.

The grids of Luzon and the Visayas are connected, although not in a loop circuit; the grid of Mindanao is still not connected to the grids of Luzon and the Visayas but the connection is planned. Many of the 7,107 islands of the country are not connected to the Luzon/Visayas-Mindanao grids; power generation solutions for the off-grid areas are, therefore, of great interest.

The country's energy mix in 2013 consisted of conventional (fossil), and renewable (biomass, solar, wind and ocean; geothermal; and hydropower) energy sources. More specifically, installed generating capacity for coal represented 42.62% of the energy mix (32,081,007 MWh), oil-based 5.97% (4,490,600 MWh), natural gas 24.97% (18,791,286 MWh), geothermal 12.76% (9,604,598 MWh), hydro 13.31% (10,019,308 MWh), wind 0.09% (65,655 MWh), solar <1% (1,414 MWh) and biomass 0.28% (211.973 MWh).¹⁰³

Privatization has not yet been fully implemented, despite EPIRA provisions; this is an ongoing process in Luzon in Visayas, and in Mindanao, however the energy market has undergone an extensive reform. With the RE Act of 2008, the foundations for the development of renewable energy were created.

Despite the introduction of short-term solutions, such as ILP, to minimize the effects of the power shortage in Luzon this summer 2015, the power shortage serves as a pertinent reminder of the need to create a national energy framework which will meet growing demand in the long term.

It is in this context that this paper focuses on a comprehensive solution, including conventional

⁹⁹ Meralco (August 2014), *Power Supply Situation Outlook*.

¹⁰⁰ Ibid.

¹⁰¹ DOE (2013), *Energy Statistics: Power Statistics 2013 Report*, http://www.doe.gov.ph/dae_files/pdf/02_Energy_Statistics/Power-Statistics-2013.pdf.

¹⁰² Ibid.

¹⁰³ Ibid.

energy, renewable energy and energy efficiency to ensure that long-term, nationwide energy sufficiency for the Philippines will be ensured, through a multi-stakeholder approach.

Advocacy

I. OPTIMIZATION OF THE ENERGY MIX

Current situation

Coal is currently the leading source of power generation in the country and is expected to grow in terms of its share of the national energy mix, taking into account numerous ongoing and planned expansion projects, such as Pagbilao 3, and construction of new plants, such as the Sarangani Energy Corp.'s 210 MW coal-fired plant. This comes despite a global trend to decrease coal-generated power. In fact, the energy mix does not reflect the potential electricity power generation by the country's untapped renewable energy sources, which is estimated at 250,000 MW.¹⁰⁴

An energy mix which continuously meets demand, while keeping the cost of electricity low for end consumers and being environmentally sustainable is key if the country is to continue as a competitive market for foreign investment, without the threat of energy shortfalls.

Recommendations

Therefore, it is suggested that a comprehensive National Energy Roadmap is developed, with a focus on the ideal energy mix to reflect current and projected demand and ensure environmental sustainability and a gradual reduction in the cost of electricity.

The energy roadmap should focus on the power plants needed to ensure that demand is met, taking into account maintenance of plants and external factors. The energy roadmap should follow international trends to move away from conventional energy sources to more environmentally friendly and sustainable solutions.

While the implementation of FIT-All has provided

¹⁰⁴ KPMG report (2013), *The Energy Report Philippines: Growth and Opportunities in the Philippine Electric Power Sector (2013-2014 Edition)*.



the necessary foundations for RE development on the supply side, the Renewable Portfolio Standards (RPS) will provide a valuable tool to increase RE as a percentage of the national energy mix on the demand side. Therefore, the Energy and Renewable Energy Committee fully supports the formulation and promulgation of the RPS Rules and Regulations, as provided under Rule 2, Section 4 of the IRR of the RE Act of 2008, as soon as possible.

II. IMPROVEMENTS TO THE NATIONAL GRID

Current situation

Under EPIRA, ERC was created and mandated with the overseeing of all aspects of the national grid, including the promulgation and enforcement of a National Grid Code and a Distribution Code. The National Grid Company holds the franchise from TRANSCO to operate, maintain and expand the national grid.

While the legislative framework is in place to provide for the ongoing management and upgrades to the grid, there are operational level factors which affect the efficiency of the grid and its ongoing upgrade to reflect the growing, and changing needs for energy supply in the country.

Renewable energy has great potential, through large untapped natural resources, as a viable solution to meet the growing energy demand of the country. However, strengthening of the national grid to accommodate large amounts of variable renewable energy is required to fully harness this potential. Roadmaps to achieve this have already been suggested through studies conducted by the World Bank.¹⁰⁵ A key conclusion of these studies is that variable renewable energy penetration would need to exceed 10% of the total for grid stability to be affected – far in excess of current levels and those planned for the next five years. This gives a window of opportunity to plan necessary modifications to the grid which will fully harness potential without stymying current planned projects

Therefore, there is an increasingly pressing need to plan and implement modifications to the national grid to accommodate increased amounts of variable renewable energy in line with the changing needs of

105 A Guide to Operational Impact – Analysis of Variable Renewables: Application to the Philippines' World Bank 2013.

the power generation sector.

Recommendations

Positive solutions need to be sought to upgrade the existing grid and the power supply available in the country, with DOE taking the lead for a public-private sector cooperation to identify the necessary infrastructure projects. These projects could be included under the PPP framework and bidded out to private sector under the “Amended BOT law”.

Additionally, amendments to the franchise agreement between TRANSCO and the National Grid Company, to define clear responsibilities for the maintenance and improvement of the grid and to ensure that NGCP has aligned incentives to implement necessary changes, could greatly improve the grid in the long term.

III. IMPROVED IMPLEMENTATION OF EPIRA

Current situation

PSALM was set up under EPIRA, with the objective to privatize 70% of the total capacity of generating assets of NPC within three years, with the remaining assets to be privatized within eight years.

Administrative delays of PSALM in privatizing power plants, such as the Angat hydroelectric power plant, are contributing to the power supply deficit.

Unclear rules and procedures are delaying privatization of plants crucial to the power generation capacity of the country, and also create obstacles for companies interested in bidding.

At the same time, the lack of a comprehensive inventory of the country’s available power supply capacity and its operational status, both privatized and public-owned, offers an unclear picture to potential investors and end users as many plants are idle, as they are no longer economical in their operation, and therefore not listed.

Recommendations

The creation of a one-stop shop for all requirements for the approval process, instead of the current 162 permits needed, which lead to an average of two to three years of delay, is instrumental to improving

the privatization process.

An inventory including all available power supply capacity, both active and idle, but conditionally able to operate, is also necessary to ensure that a clear picture is available on the power situation.

IV. SUPPORTING RE UTILITIES AND TECHNOLOGIES

On-grid

Current situation

Due to initial concerns on the impact of FIT-All on universal charges, the DOE set very low targets.¹⁰⁶ In fact, total capacity of wind-powered plants in operation is already above the installation targets, an issue which has already been acknowledged by Sec. Petilla.

This will put off potential and penalize existing investors, who have invested based on expectations to benefit from FIT-All. This will also affect the percentage of RE contributing to the national energy mix and the cost of energy in general.

In fact, the PEMC has recently acknowledged that additional FIT RE generation may temper wholesale electricity spot prices which will avoid electricity price increases. This has been validated in major power exchanges like Germany and Australia.

Recommendations

The Energy and Renewables Committee commends the move by the DOE to increase the ceiling for installed solar power benefitting from FIT-All to 500MW and looks forward to its full implementation. It is suggested that, similarly, wind power is also increased to 500MW. The increase of hydro and biothermal ceilings should also be considered. For the increase in the solar power ceiling to fully benefit the further development of solar energy, it is suggested that rates for FIT-All remain unchanged.

Furthermore, clarification of all parties concerned, including DOE, ERC, NGCP, TRANSCO, and DUs, on the load capacity of the existing transmission lines prior to the award of connection agreements by NGCP would be a significant improvement to the current framework. The RE developer should only be

¹⁰⁶ The installation targets set by DOE are 50MW for solar, 200MW for wind, 250MW for hydropower, 250 MW for biomass, 10MW for ocean.

responsible until the point of feed in to the grid.

It is also recommended that limitations set on foreign ownership are lifted. Natural resources are nationally owned, but resources without borders in terms of reach and ownership are not national. Therefore, it is felt that the ownership of RE developers for wind, solar and biomass should not be restricted.¹⁰⁷ 100% foreign ownership would increase competition, installed capacity and, ultimately, decrease the cost of energy.

Off-grid

Current situation

Off-grid areas are considered to be very attractive for the implementation of RE generation facilities. However, there are multiple reasons as to why propagation is not developing at a desirable speed.

In addition to operational concerns, such as the limitation of available spots with potential to serve as wind and hydro sites, issues with the grid, and lack of adequate technical knowledge by grid operators, the following issues are the main factors reducing the success of offgrid RE today.

- The ERC filing process for changing 100% conventional energy into a hybrid with renewables is currently lengthy.
- As long as the grid operator does not have the technical capability to synchronize and manage two or more generation sources, real hybrid plants, specifically diesel-solar and diesel-wind, have to be introduced. A solar-diesel hybrid plant has to be seen as one power source as it manages the use of resources itself.

Recommendations

The advanced technology of diesel-solar hybrid application, where the solar component is only an add-on to the main source diesel generation and not a separate solar plant in the mini-grid, has to be recognized in the ERC regulation. Improvements to the current process would be invaluable in the further development of the sector; to this extent, acknowledgment of diesel-solar hybrid technology by the ERC and the adjustment of concessions to allow

¹⁰⁷ It should be noted that DOE Circular No. DC2009-07-0011 exempts geothermal from the restriction on foreign ownership.



further private investment would be instrumental.

Furthermore, it is suggested that a retrofit of solar to an existing diesel plant should be left to the entrepreneurial risk of the investor without the need to submit new filing with the ERC. An energy generation mix is an investment initiative; also, the addition of solar to diesel plant improvement is an initiative for which the investor takes sole responsibility at no risk to the government's expense. Therefore, the benefit should also go fully to the entrepreneur. Once a PSA is in place for a certain period any improvement should be allowed. During the bidding for the PSA, a bidder should be requested to use an RE component.

Overarching recommendation

The RE Act of 2008 was enacted to open the path for RE development and the positive results such development would bring. While many provisions, including FIT-All have been implemented since the promulgation of the RE Act of 2008, there are still provisions for mechanisms which are not yet in place.

56

To fully achieve the benefits foreseen by the enactment of the law, the full implementation of the RE Act of 2008 is therefore recommended; this should include the provision of the necessary resources for NREB to operate as an independent agency and the creation of IRR for the fiscal incentives provided for and implementation of RPS.

V. ENERGY EFFICIENCY AS A PRIORITY

Current situation

The benefits of efficient energy use expand beyond the measures of reduced energy demand and cheaper consumption costs. In general, energy efficiency can act as a potent tool for economic and social development in ensuring energy-system security, supporting economic growth through improved industry competitiveness, and advancing environmental sustainability through lower greenhouse gas emissions as put forward by a recent International Energy Agency study.¹⁰⁸

A recent official energy saving forecast projection (2010–2030) as cited in H.B. 4393 shows there is an annual energy saving potential of 3,445 kilotons of oil

¹⁰⁸ International Energy Agency, *Capturing the Multiple Benefits of Energy Efficiency* (released 9 September 2014).

equivalent coming from the energy demand sector comprising of residential, industrial, commercial, transport and agriculture segments. This is estimated to have a monetary equivalent of about 122 million PhP annually.

While there are existing statutory provisions¹⁰⁹ on energy efficiency and conservation in the Philippines, there is a pressing need for the government to close the policy gap caused by the absence of a comprehensive Philippine energy efficiency and conservation framework to stimulate a greater uptake of energy efficiency opportunities in the market.

There are currently a number of relevant proposed bills pending before the Energy Committees of both Houses of Congress.

Recommendations

The Energy Committee commends the efforts of House Energy Chair Reynaldo Umali in including the implementation of energy efficiency measures as one of the components of the House Joint Resolution 21 on addressing the expected 2015 energy shortfall.

The implementation of national standards for lighting in line with international standards would further support the use of more energy efficient lighting by end consumers.

VI. SELF-GENERATION

Net metering

For micro-scale projects up to 100kW, qualified end users can avail themselves of a net metering scheme. This is in particular suitable for solar roof tops. On a smaller scale, there are also applications possible in rural areas for wind and biomass. To accelerate RE in the Philippines, R.A. 9513 addresses the application of RE for own consumption.

Current situation

There are a number of concerns in the propagation of solar rooftops. Specifically:

- The permitting process with the respective DUs needs to be simplified.

¹⁰⁹ These statutory provisions include: Department of Energy (DOE) Memorandum Circular No. 93-03-05 (series of 1993), Executive Order 123 (series of 1993), E.O. 472 (series of 1998), Administrative Order 110 (series of 2004).

- The rate for export (feed out) landed cost is not deemed adequate as solar generation export takes place at highest WESM prices. Therefore, there is a need for the development of a smart grid.
- Requests for grid impact studies for installations over 5kWp increase the burden and cost of installations, while the capacity is too low to have any significant impact on the grid.
- Solar panels are duty free; however, this is just one of many components needed for solar-powered energy. All other components remain subject to import taxes and duties.
- The VAT burden on end users is substantial, as no output VAT to the DU is administered.

Parallel generation

Commercial and industrial establishments using very high electrical consumption have the option to generate a portion of their own consumption via PV rooftops exceeding 100kWp. In this case, no electricity at any time is allowed to be fed back to the grid. Such application for factories, warehouses and shopping malls with MW-capacity installations could be a big contribution to reduce power shortages which occur usually at peak time, especially taking into account that this is around lunch time, when solar installations also generate their maximum power.

Current situation

Although it is a stringent requirement that no export takes place, some DUs require a grid impact study.

Uncertainties with regard to the exposure to higher real estate tax are also a concern, as attached house improvements could trigger a new assessment and, contrary to utility style solar farms there is no ceiling of 1.5% for an additional tax increase.

The RE Act of 2008 does not cover the propagation of large rooftop installations for own consumption as in Chapter 5, Section 13 it only excludes the 100kW installations from the 1% share of the gross income. Therefore, large rooftop installations on factories are not addressed. As there is no income from energy sales, in practice they are not subject to a 1% contribution. This needs to be made clearer in the RE Law.

Recommendations

A wide propagation of solar rooftops in the Philippines could easily replace peak power requirements of 500MW up to 1000MW which would avoid the construction of additional large conventional plants.

In the distribution grid embedded generation facilities can be vital contributors to save the construction of additional conventional power plants especially as the highest power demand coincides with the best hours in solar harvest. This should be reflected in measures which will incentivize investors in rooftop solar through import duty exemptions on all equipment and not just the solar panels.

The installation of a power reverse control item on the DU side could prevent the feed in, instead of demanding a grid impact study which covers a case which should never happen.

VII. NATIONAL ENERGY COUNCIL

Current situation

For long-term, sustainable solutions which will meet the country's growing energy needs to be found, a comprehensive multi-stakeholder approach needs to be taken, allowing for all stakeholders to become part of the solution, rather than being part of the problem.

A National Energy Council will guarantee that all efforts are made to increase national energy capacity. In the long term this is key to maintaining the competitiveness of the Philippines as an international investment destination, especially in heavily electricity-reliant sectors such as service outsourcing and manufacturing. At the same time an efficient national electricity system will ensure a more competitive price for electricity which will benefit all end users, both commercial and private, and environmental sustainability.

Recommendations

The Energy and Renewable Energy Committee recommends the creation of a National Energy Council, similar in structure to the National Competitiveness Council.

Such a Council will allow for a public-private partnership focusing on developing streamlined



policies for all energy segments in all areas of the Philippines. The National Energy Council should include the DOE, ERC, NREB, NGCP, National Competitiveness Council, GIZ, ADB, WB, foreign and local business organizations and key private sector stakeholders in the energy business, to ensure a comprehensive approach to the energy sector. Malaysia has already implemented a similar initiative with an RE Board which reports directly to the Prime Minister.

FINANCIAL SERVICES

Sector overview

The financial services sector is a significant pillar in sustaining Philippine economic growth. Out of the total GDP in the 3rd quarter of 2014, financial services contributed 7% to the 57% growth attributed to the services sector.¹¹⁰

A stable performance of financial institutions including banks, insurance companies, and the equity and bonds market, is imperative towards attracting FDI and increased employment. From 2001, the financial sector has been steady and has received positive reviews from the international board for its financial inclusion strategy and financial education initiatives.¹¹¹

Banks constitute 80% of the total assets in the financial sector¹¹² and are the main source of credit in the economy which makes them the driving force in strengthening the financial system. Approximately 6,961 establishments were engaged in financial and insurance activities in 2012 with 73.7% engaged in other financial activities aside from insurance and pension funding.¹¹³ Non-banks led by pawnshops have more offices than banks. With the kickoff of the ASEAN integration in late 2015, the financial services market will grow bigger, more demanding and competition will be intensified.

The promulgation of R.A. 10641 or An Act Allowing the Full Entry of Foreign Banks in the Philippines, which amended R.A. 7721, on July 20th 2014, is a turning point in the sector and allows foreign banks to own 100% of subsidiaries and acquired local banks, hence removing most of the limitations on foreign participation in the sector. R.A. 10641 is a key indicator of the government's commitment to pursue and sustain economic growth and reforms.

Despite its steady growth and sustained strength, Philippine financial stability is faced with excess liquidity and credit growth and inflation of food

and energy prices.¹¹⁴ But the Philippine Banking Liberalization Act makes Philippine banks better positioned and more competitive in the ASEAN Banking Integration Framework which will be in full force in 2020.

The EU has been the largest foreign investor in the Philippines with an FDI stock of around 451.15 billion PhP in 2013, or approximately 30% of total FDI stock in the country.¹¹⁵ As a result of the approval of the banking liberalization law, it is envisaged that more foreign banks will enter the local market bringing further product sophistication and knowledge expertise. The BSP recently reported that foreign banks from Asia, Europe and Middle East have expressed interest to enter the Philippines.

Advocacy

I. STRENGTHENING OF THE BANKING SECTOR

Current situation

The Financial Services Committee commends the efforts which have been made in the past year to support the further development and strengthening of the national banking sector, through its liberalization.

Specifically, the promulgation of R.A. 10641 and the timely approval of the respective IRR in November 2014 are seen as a significant move towards a more business- and investor-friendly environment. Similarly, the revision of the capitalization requirements to a tiered approach is acknowledged by Committee members as a positive move by BSP.

Recommendations

For liberalization to translate into a stronger national banking sector, it is suggested that increased focus should be given to the enforcement of measures to combat non-compliance in line with the existing legislative framework. This will ensure more financial inclusion and the elimination of money laundering in the system.

110 Husna, R. (2015), Philippines GDP Growth Beats Expectation. National Statistics Coordination Board, <http://www.tradingeconomics.com/philippines/gdp-growth-annual>.

111 The Philippines is one of the top three countries in the world that have the most effective financial inclusion programs, based on the "Global Microscope 2014" index of the Economist Intelligence Unit (EIU) which assessed the "enabling environment" of 55 countries.

112 Bangko Sentral ng Pilipinas (2014). Report on Economic and Financial Developments: Third Quarter 2014 Report, http://www.bsp.gov.ph/downloads/Publications/2014/LTP_3qtr2014..

113 National Statistics Office (2012), 2012 Census of Philippine Business and Industry – Financial and Insurance Activities for All Establishments: Final Results, <http://census.gov.ph/content/2012-census-philippine-business-and-industry-financial-and-insurance-activities-all>.

114 World Bank Group (2014), Philippine Economic Update: "Investing in the future, sharing growth and job opportunities for all", <http://www.worldbank.org/content/dam/Worldbank/document/EAP/Philippines/Philippine%20Economic%20Update%20August%202014.pdf>.

115 Delegation of the European Union to the Philippines (2015), Trade, Investment and Financial links, http://eeas.europa.eu/delegations/philippines/eu_philippines/trade_relation/index_en.htm.



The creation of the Credit Information Corporation in 2008 as a result of R.A. 9510 or The Credit Information System Act is also seen as a positive step towards a strengthened banking sector.

II. TARIFF REGULATIONS FOR NON-LIFE INSURANCE

Current situation

A concern for European insurance companies operating in Non-Life insurance is the enforcement of tariff regulations. Specifically, it is noted that compliant companies are unable to operate on the basis of an even playing field, as there are numerous cases where non-compliant stakeholders are not included in the penalty system for tariff violations and have no incentives to be compliant.

In particular, insurance intermediaries often peddle premium rates below tariff and yet are not penalized by the regulators, as the regulators only punish the insurance companies.

Recommendations

It is therefore important that the penalty system for tariff violations is extended to include and hold accountable all stakeholders in the sector, including insurance peddlers.

Proper enforcement of tariff regulations also needs to become a priority if compliant companies are not to face a competitive disadvantage.

III. IMPLEMENTATION OF THE DATA PRIVACY ACT

Current situation

On August 15th 2012, President Aquino signed R.A. 10173, or the Data Privacy Act of 2012, which protects the confidentiality of individuals and communication systems in the government and private sector by penalizing the unauthorized disclosure of personal information.

Despite the enactment of the Data Privacy Act in 2012, the promulgation of its IRR and the creation of a National Privacy Commission are yet to happen. Similarly, despite a previous letter by ECCP in April

2014 to Hon. Edgardo J. Angara and Rep. Roman T. Romulo as the law's main proponents, and the subsequent House Resolution 1216 by Rep. Romulo urging the House Committee on Information and Communication Technology to conduct an inquiry into the delays, to our knowledge no further action has been taken as yet.

Taking into account the moves towards the further development of the national banking system and most importantly the big potential for the Philippines that the new trend in big data presents, it is crucial that the necessary legislative framework is set up to ensure that companies can invest in these areas without running the risk of not complying with their national regulations.

More worrying is the deterrent effect this could have on attracting new foreign investors; liberalization of the national banking sector through R.A. 10641 could be undermined without the necessary investment environment.

Recommendations

According to R.A. 10173, and more specifically Chapter III, Sec. 9, Organizational Structure of the Commission, the National Privacy Commission will be attached to the DICT.

Taking into account that the approval of the establishment of a DICT is still pending in both Houses of Congress, to ensure that R.A. 10173 is implemented with no further delays, it is suggested that R.A. 10173 should be amended as soon as possible, to attach the National Privacy Commission to the DOST, until such time as the DICT has been formed and become operational.

HUMAN CAPITAL

Sector overview

Human capital is one of the main assets of the Philippines and its economy. With a population of approximately 100 million, of which 52.7% are under the age of 25, and a median age of 23.5 years, the country offers a large pool of young talent.¹¹⁶

The main competitive advantage of the Philippine workforce as compared to other countries in the region is the widespread proficiency in English. This is reflected in the rapid development of the BPM sector; in fact, in 2014 the IT-BPM sector reached over 1,000,000 employees nationwide.¹¹⁷

However, competitiveness of the Filipino workforce is not limited to language skills; European investors have also highlighted cultural adaptability, customer-service mindset, and good work ethic as some of the main factors which guide their preference for Filipino employees.

In addition to human capital attracting foreign investors to the Philippines, it is also one of the most significant exports. Remittances by OFWs are one of the contributing factors to high economic growth in the past years and accounted for over 843.51 billion PHP in 2014 alone.¹¹⁸

A commendable reform in the past years is the introduction of K-12 system to basic education in the Philippines as a result of which, since 2012 the Philippines has a 12-year education system in line with most countries in the region.

In addition to traditional tertiary education, there is a push towards TVET systems, such as the Dual Training System led by TESDA.¹¹⁹ The expected passing of the amended Apprenticeship Bill is expected to provide a substantial boost to this type of education.

¹¹⁶ CIA World Factbook (n.d.), *Philippines Demographics Profile 2014*, http://www.indexmundi.com/philippines/demographics_profile.html.

¹¹⁷ Information Technology and Business Process Association of the Philippines (2014).

¹¹⁸ Bangko Sentral ng Pilipinas, *Overseas Filipinos' Remittances*, <http://www.bsp.gov.ph/statistics/keystat/ofw.htm>.

¹¹⁹ Technical Education and Skills Development Authority, *Enterprise-based Programs*, <http://www.tesda.gov.ph/About/TESDA/38>.

Advocacy

I. REMOVAL OF PROFESSIONS FROM THE FINL

Current situation

The Ninth FINL identifies the “practice of all professions” as one of the sectors which are not allowed any foreign equity.¹²⁰ As practice of a profession is neither an investment area nor an activity that involves equity, it is felt that it should be delisted from the FINL.

Additionally, inclusion of the practice of professions in the FINL does not take into account specific profession-related laws which permit non-Philippine nationals to practice in the country by virtue of reciprocity.

Recommendations

It is recommended that the provision on practice of all professions should be taken out of the FINL.

In addition, foreigners should be allowed to own companies that provide services, as long as all services are delivered by licensed professionals.

II. TECHNOLOGY AND KNOWLEDGE TRANSFER

Current situation

Despite one of the lowest government expenditures on education as a percentage of GDP,¹²¹ the Philippines has one of the highest literacy rates in the region. This contradiction highlights the commitment of Filipinos to education and their willingness to invest in knowledge and skill development.

However, the skill sets required by international employers are not always met by courses and training offered at a national level, especially in sectors with large potential, such as advanced technology engineering and front line management. Effectively, the potential of the Philippines to become a global pool of talent and benefit from the significant employment generation this could create can be strengthened through the facilitation of technology and knowledge transfer.

¹²⁰ Provision 2, List A.

¹²¹ UNESCO Institute of Statistics, *Expenditure on education as % of GDP (from government sources)*, <http://data.uis.unesco.org/Index.aspx?queryid=181#>.



Recommendations

For the Philippines to reach its full potential in terms of competitiveness of the workforce, a two-pronged approach is needed.

First, the system for recognition of foreign qualifications needs to be simplified and reformed in line with the Bologna Accord as an international benchmark. The Bologna Accord is widely used worldwide as a benchmark for higher education.

Second, a transnational education system is key to developing knowledge and skills sets in line with international employers' needs. CHED Memorandum Order No.2-2008 on Policies, Standards and Guidelines on Transnational Education was a significant step towards this. The focus should now be on streamlining the transnational education opportunities available in the country, especially as transnational education through the web becomes more popular, to ensure that they offer high standards and marketable skills to students. Specifically, the definition of stricter guidelines and accreditation procedures for online transnational education opportunities by CHED will support the formalization of transnational studies.

62

III. STRENGTHENING OF THE NATIONAL TALENT POOL

Current situation

The quality and size of the workforce in the Philippines is one of the country's strongest assets and offers high potential for further economic development. It is for this reason that the Human Capital Committee envisions the Philippines as a global pool of talent.

However, as economic growth continues at high rates and foreign investors are increasingly attracted to the country, while at the same time ever more Filipinos seek employment abroad, it becomes harder for employers to find suitable employees.

If the Philippines wants to guarantee its place on the international market as a top quality exporter of goods and services, targeted action needs to be taken to develop the skill pool and incentivize the retention of talent to support national economic growth and exports.

Recommendations

The Human Capital Committee supports the efforts being made by the Philippine government to put in place the necessary framework to develop the skill base of the Philippine workforce, both at a secondary education level, with the introduction of K-12, and the progress being made towards the amendment of the Apprenticeship Bill.

As it is important that skills development reflects the need of the private sector, both in terms of soft and hard skills, the inclusion of the private sector in the creation of dual training courses, the apprenticeship program and other skill development initiatives is of key importance. This can be achieved through a public-private sector task force, including business associations, TESDA, national and international academic institutions, and DOLE, among others, to streamline the approach by all stakeholders towards skill development and training at a nationwide, horizontal level.

Additionally, programs to incentivize talent retention in the country are key to continued growth of priority sectors, such as manufacturing and service outsourcing. While the value of OFWs to the economic structure of the country is undoubtable, an adequate talent pool within the country is also crucial to economic growth. It is important to provide an environment in which foreign investors continue to see the benefit of investing in the Filipino workforce and contribute to the development of the national talent pool through internationally recognized training programs.

ICT-BPM-KPM-CREATIVE INDUSTRIES

Sector overview

The IT-BPM industry was the fastest growing industry in the Philippines in 2013 with a 16% YOY growth rate. The average annual growth rate since 2006 has been even higher, at 25%. The industry plays an important role as an employer; in fact, in 2014, the sector reached 1,000,000 employees,¹²² up from 900,000 in 2013 and 770,000 in 2012. According to the industry association IBPAP, the industry is expected to employ 1.3 million people by 2016.¹²³

Industry revenue grew to 679.14 billion PhP in 2013, up from 164.21 billion PhP in 2006. Strong growth is expected to continue; according to IBPAP estimates, revenues will grow to 25 billion USD, equivalent to 10% of the global market, by 2016.¹²⁴ According to a recent estimate by Tholons consulting company, the Philippine IT-BPM sector has the potential to grow to 48 billion USD by 2020, accounting for 20% of the current global market.¹²⁵

Globally, the Philippines is number one in voice BPM services and ranks as number two after India in non-voice BPO services and complex IT-BPM services.¹²⁶ Europe is the second largest export market of BPM services for the Philippines, after the US.¹²⁷

The government has identified the IT-BPM industry as one of the key industries in the Philippines. This has resulted in steady growth and a favorable environment for companies in the sector. One of the most important agencies for the industry has been the Philippine Economic Zone Authority, which has attracted most of the foreign investments.¹²⁸

122 Reyes, D. (2014), *Speech of IBPAP Chairman Danilo Reyes at the 6th IIS*, <http://ibpap.org/media-room/ibpap-news/880-speech-of-ibpap-chairman-danilo-reyes>.

123 IBPAP presentation – Experience Excellence, Feb 2014.

124 IBPAP presentation – Experience Excellence, Feb 2014

125 Pillas, C. (2014), *BPO Revenues at \$48billion by 2020*, <http://www.businessmirror.com.ph/bpo-revenues-at-48-billion-by-2020>.

126 IBPAP presentation – Call Center and Business Process Services in the Philippines, May 2014.

127 *The Delegation of European Union in the Philippines (2013)*, EU-Philippines trade and investment factfile 2013, http://www.eas.europa.eu/delegations/philippines/documents/more_info/publications/trade_and_investment_factfile.pdf.

128 NCSB (2014), *Total Approved Foreign Investments by Investment Promotion Agency: First Quarter 2013 to Second Quarter 2014 Report*, http://www.nscb.gov.ph/fjis/data/2nd_14/Table%201b.pdf.

Advocacy

I. APPRENTICESHIP, TALENT DEVELOPMENT AND RETENTION

Current situation

The fast growth of the IT-BPM industry has undoubtedly kept the demand for talent high. In fact, CHED estimated in 2012 that the BPM sector creates 137,000 new jobs annually, representing more than 25% of all graduating college students.¹²⁹ Companies operating in the industry are facing pressure both in finding and retaining talent.

The growing competition over talent is increasing the price of labor, especially for senior managers. Demand for this level remains high because of the skill gap between graduates and industry needs, including a lack of basic soft skills such as communication and problem-solving skills.

To support the demand for senior managers, the industry and academe introduced SMP, implemented in 17 schools across the country.¹³⁰ While this initiative is a positive step forward towards ensuring that the skills needed by the industry are available in the workforce, taking into consideration the high growth rate of the industry, this alone is not enough to solve the skill gap.

Recommendations

The private sector is prepared to take an active role in the further development of the available talent pool, but needs the support of government agencies to ensure that through cooperation of the two a skill-base of professionals suitable for the ICT-BPM industry is created.

Specifically, the Committee invites TESDA to lead the development of industry-specific short training courses, in cooperation with the private sector to provide recent graduates with the necessary skills for the ICT-BPM industry, and especially management positions. Such training could be based on an interactive dual training curriculum, including class-based learning and practical experience led by industry players.

129 Team Asia (2013), *Philippine IT-BPM industry grew...*, <http://www.teamasia.com/newsroom/read-client-news.aspx?id=460:philippine-it-bpm-industry-grew-19-percent-in-2012-adds-over-137000-jobs>.

130 Team Asia (2013), *Industry Trained teachers to enhance business, IT Learning*, <http://www.teamasia.com/newsroom/read-client-news.aspx?id=457:industry-trained-teachers-to-enhance-business-it-learning>.



It is also suggested that a framework for cooperation between DepEd, CHED, PAASCU, DOST and industry is created through an MoU, under which career mentoring is provided to students in their final years of secondary education, to provide insight into the necessary skills and qualifying for a career in the BPM-KPM-ICT sectors.

II. ESTABLISHMENT OF THE DEPARTMENT OF ICT

Current situation

Despite the bill for the creation of DICT being approved by both Houses of Congress during the 15th Congress, a bicameral conference committee was never carried out and therefore the law was not passed. As the Philippines' ICT and BPM sector continues to grow, the need for a devoted Department of ICT becomes ever greater.

The drop in the Philippines' ranking in the UN E-government development index over the past 10 years to 95 out of 193 countries, and the ranking of the Philippines as one of the slowest broadband speeds in ASEAN¹³¹ are indications that the Philippines is lacking the necessary leadership at a centralized level to develop national ICT and telecommunications to an internationally competitive level.

The creation of DICT will increase the focus on several challenges which the Philippines currently faces; most notably, e-governance, modernization and inclusiveness of telecommunications, and cybersecurity. Additionally, according to current provisions in R.A. 10173, the DICT is instrumental to the implementation of the Data Privacy Act.

Furthermore, the DICT Act will assure that permanent priority is given to enabling the Philippine digital economy. The previous and current administrative structures – the ITECC, the CICT, and DOST/ICTO – were created by three presidents using administrative and executive orders. The DICT Act will be difficult for a future administration to change, as the consent of the Congress will be required. Thus, the creation of the DICT can become an important piece of the legacy of the Aquino Administration and positively benefit future generations of Filipinos.

¹³¹ A 2014 rating of broadband speed showed the Philippines at 3.6 mbps, Indonesia (4.1 mbps), Malaysia (5.5 mbps), Cambodia (5.7 mbps), Vietnam (13.1 mbps), Thailand (17.70 mbps)

Recommendations

The Committee looks forward to the timely approval of S.B. 2686 by the Senate and the approval of the corresponding bill by the House of Representatives to ensure that a DICT is established before the end of the 16th Congress. By becoming one of 80% of countries in the world that have a separate government agency on ICT, the Philippines will be able to tackle the issues and facilitate further development of the sector.

III. VAT EXEMPTION FOR ENERGY IN VERTICAL PEZA ZONES

Current situation

PEZA offers several incentives for IT-BPM companies exporting their services abroad. To operate under PEZA these companies have to be located in PEZA-approved IT centers and parks. PEZA companies are generally exempted from VAT, but for companies operating in so called mixed vertical PEZA zones, this incentive is hard to avail of for electricity.

According to PEZA and Meralco, VAT exemptions can be availed of in the vertical PEZA zones if the units have their own direct electricity meters. In most cases, such meters have not been installed and retro installation is extremely expensive. The building association is responsible for managing and invoicing the tenants on electricity used. They charge an administration fee for their services, which also hinders their interest in pushing for direct metering.

Recommendations

It is suggested that it should become a requirement for building owners to provide direct meters for individual tenants as part of their accreditation for permit application and renewal to operate in PEZA vertical and horizontal zones.

IV. INCENTIVES FOR ENERGY EFFICIENCY

Current situation

It is widely acknowledged that the cost of electricity in the Philippines is one of the highest in ASEAN; taking into account that the BPM, KPM and ICT sectors are strongly dependent on continuous and large scale

consumption of energy, the high cost of electricity substantially increases the cost of doing business in the Philippines.

The introduction of energy efficiency requirements for buildings is seen as a necessary move to decrease energy costs for investors in the BPM, KPM and ICT sectors.

Recommendations

It is recommended that PEZA should make energy efficiency measures, in line with those included in the Green Building Regulations of Mandaluyong City, Ordinance No. 535, S-2014, a criteria for buildings to become PEZA-accredited.



INFRASTRUCTURE AND TRANSPORTATION

Sector overview

Increasing connectivity through infrastructure and transportation development is key to furthering economic growth and national development through increased economic productivity and providing an attractive environment for foreign investors.

From 2008 to 2012, infrastructure expenditure accounted for just 2–3% of the country's GDP.¹³² The Philippines ranks 91st globally in terms of overall infrastructure quality rankings, 87th in terms of road infrastructure, 80th in railroad infrastructure, and 108th for air transport infrastructure in the WEF Competitiveness Report 2014.¹³³

Philippine road assets amount to a total of 215,088 km and include national roads, secondary roads, provincial roads, city roads, municipal roads, and barangay roads.¹³⁴ Limited road capacity and an abundance of vehicles have inevitably led to congestion. The Philippines also utilizes four major railway lines namely Light Rail Transits 1, 2, and 3, and PNR South Commuter, which altogether span 79 km, and accommodate approximately 1.3 million passengers daily.¹³⁵

In terms of air transportation, the Philippines has 10 international airports and 34 main airports serving domestic flights.

The inadequate supply of infrastructure ranked as the 2nd most major setback in doing business in the Philippines. The emerging needs of the market and the growing population are the main factors challenging the existing infrastructure and transportation systems.¹³⁶

A valuable tool in developing much needed infrastructure across the country is the PPP model which allows the private sector to finance the construction, operation and maintenance of infrastructure projects.¹³⁷ Since 2010, the government has awarded eight key infrastructure programs,

¹³² Navarro, A.M. and Llanto, G.M. (2014), *Financing Infrastructure in the Philippines: Fiscal Landscape and Resources Mobilization*, <http://dirp4.pids.gov.ph/webportal/CDN/PUBLICATIONS/pidsdps1401.pdf>

¹³³ World Economic Forum (2014), *Global Competitiveness Report*, <http://reports.weforum.org/global-competitiveness-report-2014-2015/economies/#indexId=GCI&economy=PHL>.

¹³⁴ See Navarro, A.M. and Llanto, G.M. (2014), *Financing Infrastructure in the Philippines: Fiscal Landscape and Resource Mobilization*.

¹³⁵ Japan International Cooperation Agency (2014), *Roadmap for Transport Infrastructure Development for Metro Manila and Its Surrounding Areas (Region III & Region IV-A)*.

¹³⁶ See World Economic Forum (2013), *supranote 133*

¹³⁷ See Navarro and Llanto (2014).

specifically: the Daang Hari-South Luzon Expressway project, Phase 1 of the PPP School Infrastructure Program, Ninoy Aquino International Airport Expressway, PSIP Phase 2, the Modernization of the Philippine Orthopedic Center, the Automatic Fare-Collection System, the Mactan Cebu International Airport New Passenger Terminal, and the Light Rail Transit Line 1 Cavite Extension.¹³⁸

In 2014, President Benigno S. Aquino III visited four EU member states (i.e., Spain, Germany, France, and Belgium) and showcased the opportunities for European companies to participate in future PPP opportunities. There are currently over 10 projects up for procurement, including the Laguna Lakeway Expressway Dike Project, the Bulacan Bulk Water Supply Project, the Operations, Maintenance, and Development Projects for six airports across the country.¹³⁹

Advocacy

I. IMPROVEMENTS TO PPP

Current situation

R.A. 6957, or the Build-Operate-and-Transfer Law (BOT), and R.A. 7718, or the Amended BOT Law, govern BOT and PPP projects in the Philippines. Despite E.O.8 (series 2010), which allowed for the set-up of the PPP Center in the form it operates today, under NEDA, there are still a number of concerns by European companies with regard to PPP.

Despite the amendments brought by R.A. 7718, there is still a need to further improve the legislative framework governing PPP projects. There is currently a lack of a stringent institutional framework, with a focus on transparent and efficient procedures and strict guidelines on the procedures to be followed before, during and after the bidding process. The result is cases like the rebidding of the CALAX PPP, which makes participation in PPP projects less attractive to top quality international investors.

Recommendations

If PPP is to continue as a successful tool for national infrastructure development, R.A. 6957 needs to be further amended to include provisions for:

¹³⁸ *Ibid.*

¹³⁹ Public-Private Partnership (2014), *Press Release: Aquino to highlight PPP Projects during EU visit*, <http://ppp.gov.ph/?p=25039>.

- A strengthened institutional framework;
- Financial and technical support through the PDMF;
- Optimizing project risks and obtaining government support;
- Expanding PPP contractual arrangements;
- Providing for transparent and competitive bidding;
- Setting standard contents and implementation of PPP projects for transparency, consistency and predictability and;
- Granting incentives to PPP projects.

To this extent, the recent approval by the House of Representatives Committee on Public Works and Highways of the PPP Act is welcomed and the progress of the said bill will continue to be closely monitored by the Infrastructure and Transportation Committee.

II. IMPROVEMENTS TO THE PUBLIC PROCUREMENT FRAMEWORK

Current situation

R.A. 9184, or the Government Procurement Reform Act, provides for the modernization, standardization and regulation of procurement activities of the government and its agencies. However, despite the positive changes which have been brought to the procurement process by R.A. 9184, there are a number of provisions which result in unfair competition and unequal treatment especially affecting foreign contractors.

More specifically, R.A. 9184 subjects the procurement of infrastructure to C.A. 138, or the Flag Law of 1936, which gives preference to the purchase of domestic products for government use, and in the case of public bidding, allows the award to be given to the domestic entity offering the lowest bid, instead of the entity offering the overall lowest bid.

Similarly, the revised IRR of R.A. 9184, issued in 2009, contain provisions that favor domestic goods and local service providers. This results in a procurement process which is not led by a focus on the quality and cost-efficiency of the good or service provided, therefore affecting the end results and long-term costs and benefits of the projects.

Recommendations

C.A. 138 is repealed and the IRR of R.A. 9184 is improved to facilitate an equal playing field for all bids. This will ensure that the bid which is most beneficial to national infrastructure development and cost-efficiency for the government and the nation in the long term is selected.

In the context of increasing transparency and predictability in the government procurement process, it is suggested that the Philippines should participate in the WTO GPA. As a WTO member the Philippines can join the GPA as an observer initially, to participate in discussions and have access to best practices, until it is ready to fully accede to the GPA. Participation in the GPA will raise the reputation of the Philippines and its procurement procedures internationally.

The publication of the reciprocity list by GPPB as envisaged by the Government Procurement Reform Act will also serve to increase transparency and make it easier for international bidders to participate in procurement projects. It is recommended that the 28 EU countries should be included in the reciprocity list to further facilitate the inclusion of European investors in the procurement process.

III. CONSTRUCTION LAW

Current situation

According to the IRR of PCAB promulgated on March 31st 1989, and more specifically Rule 3, Section 3.1. (a), “The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/corporation with at least seventy percent (70%) Filipino equity participation and duly and existing under and by virtue of the laws of the Philippines”.

However, Section 10, Article XII of the 1987 Constitution, provides that “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 investment...”. Consequently, only Congress can legislate and impose a 60-40 Philippine-foreign equity cap requirement.



P.D. 1746, amended by E.O.s 679, 768, 1008 and 133, otherwise known as An Act Creating the Construction Industry Authority of the Philippines, and R.A. 4566 or An Act Creating the Philippine Licensing Boards for Contractors, Prescribing its Powers, Duties and Functions, Providing Funds Therefor, and for other Purposes, do not specify any foreign equity cap.

Therefore, the implementation of restrictions to the operation of foreign construction firms in the Philippines by the IRR of PCAB is not in line with the provisions provided for under the national Constitution.

Recommendations

It is suggested that amendments to the IRR of PCAB are passed, in line with the provisions of the 1987 Constitution and legal framework governing the construction sector in the Philippines. It is reminded that absent any law which imposes the 60-40 foreign equity cap, it is not possible for the president, departments, agencies, bureaus or officers thereof to engraft new provisions or restrictions.

MANUFACTURING

Sector overview

In the past years, the Philippine services sector has grown exponentially. However, the same cannot be said of the manufacturing sector, which despite growing, has failed to benefit from the regional manufacturing boom in the past decade. In fact, when comparing the contribution to GDP by the manufacturing sectors to regional data, the Philippines lags behind other ASEAN members. Specifically, in 2013 manufacturing accounted for 33% of GDP in Thailand and 24% in Malaysia and Indonesia, while in the Philippines it accounted for 21% of GDP.¹⁴⁰

In the first half of 2014, growth in the manufacturing sector slowed down to 6.8%, compared to 10.3% in 2013; this was largely due to a contraction in food manufacturing.¹⁴¹

Philippine manufacturing exports are dominated by electronic products; in fact, they accounted for 41.6% of total national exports in the month of August 2014. Exports of electronic products were valued at 99.64 billion PhP, a YOY increase of 10% for the same month. Other significant manufactured export products include garment and textile, machinery and transport equipment and other manufactures.¹⁴²

It is estimated that the manufacturing industry in the Philippines created approximately 3 million jobs, equivalent to 8% of national employment, in 2013.¹⁴³

Exports of manufactured goods to the EU accounted for 82%, equal to 236.86 billion PhP, of total exports from the Philippines to the EU in 2013. Exports of manufactured goods to the EU are dominated by electronics, with a 45% share in 2013; other manufactured goods exported to the EU include transport equipment (3%), garment and textiles (4%), industrial equipment (3%) and metal products (1%) on the export side. In terms of imports from the EU to the Philippines, manufactured products account for 84%, approximately 270.69 billion, of imports.¹⁴⁴

140 The World Bank Group (2010-2014), *Manufacturing, Value Added Data*, <http://data.worldbank.org/indicator/NV.IND.MANF.ZS>.

141 The World Bank Group (2014), *Investing in the Future, Sharing Growth and Job opportunities for all, Philippine Economic Update*, <http://www.worldbank.org/content/dam/Worldbank/document/EAP/Philippines/Philippine%20Economic%20Update%20August%202014.pdf>.

142 PSA-NSO (2014), *Merchandise Exports Performance: August 2014*, <http://web0.psa.gov.ph/content/merchandise-exports-performance-august-2014>.

143 Department of Labor and Employment (2012), *Labor Force Survey*.

144 The Delegation of European Union in the Philippines (2013), *EU-Philippines trade and investment factfile 2013*, http://www.eeas.europa.eu/delegations/philippines/documents/more_info/publications/trade_and_investment_factfile.pdf.

The recent application of GSP+ to the Philippines offers major potential for the manufacturing industry to flourish, benefitting from preferential tariffs for exports to the EU.

Advocacy

While the Philippines has largely missed out on the development of the region as a manufacturing hub, as global manufacturing dynamics change the Philippines has a renewed opportunity to find a place in the global value chain.

The creation of 31 roadmaps by DTI, in collaboration with industry, and the cooperation with multilateral organizations to further align these roadmaps to global trends, such as the “greening manufacturing” initiative led by GIZ, are commendable.

However, if the Philippines is to truly catch up with other manufacturing destinations in the region, or at least find its place in the global value chain, it is imperative that the investment environment should be improved and modernized to appeal to potential and existing investors. Such moves should focus on three main pillars reflecting the three stages of investment: the ease of establishing a manufacturing plant in the Philippines, removal of obstacles to operation, and facilitating transportation and exports of products.

I. INCREASE ATTRACTIVENESS TO INVESTORS

For the Philippines to increase its attractiveness for investors in the manufacturing sector, it needs to become more competitive at a regional level.

While PEZA offers a number of incentives to investors who fulfill the criteria, companies operating in PEZA zones have to export at least 70% of their products; effectively, investors are unable to simultaneously benefit from investment incentives and tap into the potential that the domestic market offers.

Furthermore, while one-stop shops exist for PEZA zones, investors outside PEZA are subject to lengthy and costly bureaucratic procedures, characterized by multiple layers of red tape. The effects this has on the ease of setting up a business and the cost of initial investment make the Philippines less competitive in a region where the facilitation of FDI is a priority for most governments.



Recommendations

A two-pronged approach is suggested to increase the attractiveness and ease of investment in the Philippines for the manufacturing sector, focused on infrastructure development and streamlining of bureaucratic procedures.

Infrastructure development

The creation of dedicated Domestic/Export Industrial Zones (D/EEZs), similar to PEZA zones in terms of incentives and operation and open to manufacturers of products destined for both domestic and international markets, will be a much needed step supporting the development of the manufacturing sector in the Philippines. These D/EEZs will be privately owned but managed by PEZA.

Such D/EEZs should be located in rural areas where there are high levels of unemployment and underemployment, so as to offer fundamental benefits to job creation and poverty reduction, while at the same time providing a large pool of workers for manufacturers.

In addition to the incentives offered to investors in the D/EEZs, manufacturers will also benefit from a naturally evolving industry clustering, leading to a decrease in input and transport costs, and will be protected from the lengthy and costly procedures required by LGUs and a multitude of other government agencies. It is suggested that the government sponsor a PPP project to market the concept of D/EEZs and attract real estate investors to invest in the creation of low-cost factory space.

Streamlining of bureaucratic procedures

Targeted actions to limit red tape and obstacles that manufacturing companies meet at all stages of operation in the Philippines are needed.

These should include reforms to make LGUs more business-friendly in requiring permits and taxes from manufacturers.

Additionally, registration should be simplified with a one-stop shop for all investors, not just those located in PEZAs, and a Cabinet-level Office of Investment Facilitation and Protection. Most importantly, government stakeholders at all levels need to become more business-friendly. This is currently not

the case, an example is the case of BIR withholding approximately 16 billion PHP worth of VAT refunds; it not only puts potential investors off the Philippines but also creates serious damage to existing investors' profits. This has to be changed, with a legal framework that protects existing investors from backtracking and subjective interpretation of laws which are damaging to business by government actors.

II. EASE OF OPERATION

Energy cost and reliability

As manufacturing is an energy-intensive industry, the cost of electricity is a considerable part of operational costs. Taking into account that electricity costs in the Philippines are the highest in ASEAN, in addition to low reliability which means manufacturers are also required to invest in independent power generation solutions, the added cost of operation compared to other ASEAN countries is substantial.

Recommendations

An approach is needed to guarantee sufficient electricity at a competitive cost.

Taking into account the level of energy use which can be saved through energy efficiency, the Manufacturing Committee fully supports the proposal by PEZA to include energy efficiency equipment for PEZA registered companies under VAT and import tax exceptions.

A VAT exemption on electricity power for manufacturers in priority sub-sectors or investments outside the main manufacturing areas will lead to a cut in costs for manufacturers, therefore increasing the Philippines' competitiveness significantly.

Supporting fair competition

Compliant manufacturers are often unable to operate on a level playing field, due to widespread cases of non-compliant companies gaining unfair advantages and, therefore, lowering their costs of production. The smuggling of raw materials, unfavorable labor practices, use of substandard materials and non-compliance to tax regulations are just some of the practices which are used to lower costs.

Recommendations

There is general consensus among the private sector that there is sufficient legal framework in place to ensure compliance; the issue is enforcement.

An E.O. should be adopted to create a PPP Task Force. The task force should include relevant government agencies, including LGUs, and private sector stakeholders to adopt a centralized and transparent approach to enforcement and monitoring of industrial practices in accordance with rules and regulations, and provide a level playing field for compliant manufacturers. The task force should also identify and enforce the role and responsibility of LGUs, to decrease corruption at a local government level.

Targeted action should also be taken to eradicate smuggling. Measures, among others, should include the implementation of transparency measures, the tightening of egress at freeports and SEZs, and the strict enforcement and heavy punishment for offenders.

III. FACILITATING EXPORT OF PRODUCTS

Perhaps the most important factor for investors in the manufacturing sector is the ease of moving their products from production to the consumer, especially in the case of manufacturing for export. While substantial work has been made to improve connectivity in the Philippines in the past years, the recent port congestion in Manila only serves to highlight that there is still much to be done for the Philippines to enjoy infrastructure which meets growing demand for national and international transportation of goods.

Recommendations

Implementation of the following recommendations will ensure that the necessary capacity is created for the transportation of goods to and from the Philippines:

- The further development of road infrastructure linking industrial zones with each other and with the main ports and airports;
- Improvement of the port system, both LO/LO and RO/RO; and

- The decrease of domestic shipping costs to facilitate the development of inter-island production chains.



MARITIME

Sector overview

As the Philippine economy continues to grow, the maritime industry is undoubtedly a key contributor to national GDP. In 2013, remittances from Filipino seafarers alone contributed 220.72 billion PhP to the national economy, while in the period of January–October 2014, they reached 207.33 billion PhP.¹⁴⁵ Filipino seafarers comprise a significant percentage of overseas workers, with a total of 367,166 deployed seafarers in 2013,¹⁴⁶ Filipinos account for approximately 28% of the world's seafarers.¹⁴⁷ European countries are currently the second largest source of remittances to the Philippines and the largest employer of Filipino seafarers in the world.¹⁴⁸

Other sectors of the maritime industry, such as logistics, transportation and shipbuilding are also significant contributors to the national GDP and job creation. In fact, it is estimated that the shipbuilding industry generated over 39,000 employment positions in 2010¹⁴⁹ and the Philippines was ranked as the 4th shipbuilding nation worldwide in 2013.¹⁵⁰ There are four major shipbuilding companies which mainly build ships of larger tonnage capacities such as bulk carriers, container ships, and passenger ferries.¹⁵¹

When considering the industry as a whole, including indirect activities,¹⁵² revenue contributions to the national economy are substantial. Therefore, continuing growth in this sector will also translate into further growth for the national GDP. Based on the UNCTAD Maritime Review 2012, the Philippines is ranked only 29th among the top flags of registration in terms of ship registration.¹⁵³

145 Bangko Sentral ng Pilipinas (2011), *Overseas Filipinos' Cash Remittances: Statistical Data*, [http://www.bsp.gov.ph/statistics/spe_i_pub/Table%2011.pdf](http://www.bsp.gov.ph/statistics/spe_i_pub/Table%202011.pdf).

146 Philippine Overseas Employment Administration (2013), 2013 Statistics, http://www.poea.gov.ph/stats/2013_stats.pdf.

147 MARINA (2013), *The Philippine Maritime Industry: Prospects And Challenges In 2013 And Beyond*, http://www.marina.gov.ph/reports/other_reports/Philippine%20Maritime%20Industry.Prospects%20and%20Challenges.pdf.

148 Statement by the President of the European Council Herman Van Rompuy, Brussels, 16 September 2014, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/144888.pdf.

149 investphilippines.gov.ph

150 Shipping Statistics (n.d.), *Top 10 ship building nations by orderbook*, http://www.shippingstatistics.com/ss_topsbnationsrankmenu.php.

151 Invest Philippines (n.d.), investphilippines.org.

152 These include, but are not limited to, travel, training centers, maritime schools, maritime clinics, manufacturers of uniforms and safety gear, crewing agencies, real estate, information technology, accounting firms and accountants, law firms and lawyers, bank fees, construction, taxes generated.

153 Planning and Policy Office (2013), *The Philippine Maritime Industry: Prospects and Challenges in 2013 and beyond*, http://marina.gov.ph/reports/other_reports/Philippine%20Maritime%20Industry.Prospects%20and%20Challenges.pdf.

Advocacy

I. LONG-TERM SOLUTIONS FOR THE MANILA PORT CONGESTION

Current situation

Port congestion arose due to a number of reasons, including changes to the BOC administration, the extension of the Manila truck ban and the LTFRB truck franchising enforcement, and resulted in a dramatic increase in port utilization and a lack of truck capacity to move goods to and from the port; port congestion effectively resulted in the disruption of domestic and international business activities.

In fact, it is estimated that hundreds of companies have suffered from a lack of supplies in the past months, while international companies considered ending their activities in the Philippines. Despite recent announcements by PPA that the situation has now returned to normal, with port capacity within normal levels for proper operation, there is still widespread concern. The problems which led to the port congestion are not one-off issues and only serve to highlight how sensitive the current port capacity is. Unless targeted action is taken for long-term solutions, port congestion will be a recurring problem in coming years.

In fact, considering the high growth rates the country is experiencing, 7.2% in 2013 and 6.1% in 2014, and the increased need of imports to power such growth (imports in 2013 showed an annual growth rate of 5.42% of GDP),¹⁵⁴ it becomes evident that short-term measures, such as lifting the truck ban and designating Batangas and Subic ports as extensions of the Manila port are not sufficient.

Recommendations

The focus needs to be on infrastructure development.

It is recommended that the Cabinet Cluster on Port Congestion works on a comprehensive port infrastructure development roadmap, including the expansion of the ports and their facilities alongside an integrated road development and management system which will allow direct access to the port of Manila, without weighing upon the most congested traffic arteries of the city.

154 World Bank Group (n.d.), *Global Economics Prospects - Forecasts*, <http://data.worldbank.org/country/philippines>.

II. SEAFARERS' CERTIFICATION AUDITS

Current situation

During audits of the certification system by EMSA there were a number of concerns and recommendations made towards ensuring continued recognition of Filipino seafarers by EU countries. A mission by EMSA took place on September 29th – October 4th 2014 to follow up on progress.

To continue improving the national certification system in line with the recommendations made by the EMSA mission, it is important that MARINA should continue to implement improvements to the system.

Recommendations

To continue improvements, it is of key importance that the budget which has been allocated to MARINA activities is disbursed by the DBM in a suitable timeframe to facilitate the implementation of all necessary actions without budgetary constraints.

Furthermore, a long-term roadmap should be developed and adopted with clear objectives and benchmarks for MARINA, at least until 2020. Such a roadmap should also include clear guidelines on the procedure to be followed, in the case of a leadership change in MARINA, in order to guarantee continuity of the positive outcomes achieved until today.

III. CREATION OF THE PHILIPPINES OPEN REGISTRY

Current situation

Numerous countries have open registries, either as a second registry or as their main registry. Open registries generally offer fiscal and non-fiscal incentives to shipping lines, such as flexibility in the nationality of the crew, tax exemptions and the creation of maritime hubs servicing shipping lines.

In the Philippines, the laws that pertain to the maritime industry date back to the Spanish Code of Commerce of 1888 and do not offer the necessary legal framework for national shipping companies to become competitive internationally.

Effectively, despite the significant economic benefits to the national economy through the employment of Filipino seafarers by international shipping lines, the country is losing out on a large potential source of revenue from other direct and indirect activities related to maritime operations.

Recommendations

It is recommended that the national ship registry should be modernized and modified to include a secondary ship registry open to international ships.

The increase of ships registered under the Philippine flag will create a spillover effect, extending and widening the existing presence of maritime-related industries in the country; today, it is mainly crewing agencies, but with the transformation of the Philippines into an international flag of choice all phases of the supply chain will be developed, including those of higher value-added services related to the maritime industry.

The positive effects on the welfare and rights of seafarers themselves are not to be dismissed. By exercising flag state jurisdiction over an increasing number of ships crewed by Filipino seafarers, the Philippines will be able to ensure that Filipino nationals benefit from a work environment which adheres to international safety standards as set by international maritime conventions, and a wage which is in line with minimum requirements set by DOLE. This is often not the case when seafarers are employed by ships sailing under other national flags and it is difficult for the Philippine government to intervene.

IV. MODERNIZATION OF POEA

Current situation

Recruitment of Filipino seafarers by international ship owners and managers is currently managed by POEA and is subject to the POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers.

Recruiters face lengthy procedures with numerous documentation requirements and frequently unclear guidelines. Effectively, this increases the cost and administrative burden of employing Filipino seafarers.



Recommendations

The Maritime Committee therefore recommends the modernization of POEA procedures.

It is suggested that a new body within POEA is set up to deal exclusively with the international recruitment of seafarers. Such a body should be staffed by maritime experts, provide a service-oriented approach, transparency through efficient communication channels with the industry, automated procedures and mapping of quality and non-quality ship operators

This will make procedures more efficient and cost-effective for recruiters and will ensure continuing confidence and deployment of Filipino seafarers by international companies.

V. SEAFARERS' CLAIMS SYSTEM

Current situation

Under Philippine law, seafarers whose work has led to an injury or worsened an existing injury or illness are entitled to compensation by their employer. The government body responsible for adjudicating such claims is the NLRC, with few cases being heard at the NCMB. Appeals by companies can be heard at the Philippine Court of Appeals and the Supreme Court.

NLRC rulings show a distinct pro-claimant trend. Such rulings are often inconsistent and not transparent. The pro-claimant nature of NLRC rulings is reflected in available data on the number of cases which have been reversed or modified by the Court of Appeals. As of November 2014, the International Group of P&I Clubs recorded a total of 159 reversed or modified NLRC decisions, equal to more than 488.35 million PhP being due to be returned to its Members. This represents 61 new cases just in the past year, amounting to 221.98 million PhP.¹⁵⁵

Due to the pro-claimant nature of NLRC rulings, an industry of “ambulance chasing” lawyers has flourished. Such lawyers receive anything between 25% and 40% of compensation received by claimants. In effect, this is making the Philippines less competitive as a source of seafarers as shipping companies unfairly incur large and unpredictable costs which make employing Filipino seafarers more

¹⁵⁵ IG Position Paper- Garnishment-ESCROW proposal contained within position paper filed with en banc – 3rd October 2013, 26th November 2014

expensive. At the same time other countries in the region are significantly improving the skills and English competence of their seafarers while retaining competitive costs.

Recommendations

Legislation needs to be put in place whereby a direct appeal procedure from the NLRC Commission and the NCMB to the Court of Appeals will be allowed. Such legislation should also make clear that no payment is made by the defense until the outcome of the appeal is final. Otherwise, respective rules need to be amended to create a mechanism or procedure that ensures that money garnished by virtue of their award is not immediately released to the claimant while the case is still pending to be resolved at the Court of Appeals or Supreme Court (Escrow Account). The qualifications of the Voluntary Arbiters in NCMB also need to be re-examined to ensure that they are competent to render just decisions in accordance with applicable law, contractual provisions, and settled and recent jurisprudence. Finally, it is recommended that the grounds for delisting an Arbitrator should be scrutinized and the Voluntary Arbitrators face more serious penalties in being made accountable for wrong and unjust decisions they issue.

The implementation of these recommendations will reinstate the confidence of ship owners to trust the national legal system to protect their rights as employers based on objective and verifiable evidence.

Additionally, in the case of unfavorable rulings by the NLRC which are appealed, companies will be protected from handing out funds knowing that they will be unable to revoke them, irrelevant of the decision by the Court of Appeals.

VI. CO-LOADING

Current situation

Under the Philippine legal framework, and more specifically P.D. 1464, R.A. 1937, the Tariff and Customs Code of 1978, and R.A. 9295 or the Domestic Shipping Development Act of 2004, Philippine cabotage principles do not allow the intra-country carriage of goods by vessels not registered under the Philippine flag.

R.A. 1937 provides that only vessels with Philippine registry are accorded with the exclusive right to engage in coastwise trade.¹⁵⁶ The entry and clearance of foreign vessels carrying cargoes and passengers to and from a Philippine port of destination may only be allowed upon the approval of the Customs Commissioner.¹⁵⁷

R.A. 9295 grants exclusive authority to domestic ship owners or operators to carry cargoes and/or passengers in domestic trade.¹⁵⁸ Foreign vessels may only be permitted to engage in trade and commerce in Philippine territorial waters upon the issuance of a special permit from MARINA when no Philippine vessel can provide the required shipping service and if public interest so warrants.¹⁵⁹

Effectively, international shipping lines carrying import and export goods are obliged to move their cargo from their vessels to domestic ships to deliver or pick up products throughout the country. Needless to say, the additional cost incurred by shipping lines is significant and is passed on to the price which end consumers are paying.

In fact, it has been popularly observed that intra-country shipping in the Philippines largely incurs more costs than inter-country shipping. As an example, an exporter from Cagayan de Oro currently needs to pay twice to ship goods to Hong Kong (1,120 USD to ship his goods to Manila via a local shipping line, and USD144 for the trip from Manila to Hong Kong) while the cost of shipping a 20-foot container unit from Kaoshiung, Taiwan, to Cagayan de Oro only costs 360 USD.¹⁶⁰

Recommendations

The Maritime Committee commends the approval on third and final reading of S.B. 2486, amending Section 1009 of the Tariff and Customs Code to allow the transportation of import and export cargoes by foreign ships to and from international and domestic ports, with due clearance from the Customs Commissioner. Similarly, the committee supports the bill approved by the Committee on Trade and Industry, the Committee on Ways and Means and the Committee on Transportation in the House of Representatives.

¹⁵⁶ Section 902, R.A. 1937.

¹⁵⁷ Section 1009, R.A. 1937.

¹⁵⁸ Section 5, R.A. 9295.

¹⁵⁹ Section 6, R.A. 9295.

¹⁶⁰ Senate of the Philippines (23 February 2015), Press Release: Senate acts to allow foreign ships to dock in multiple ports, https://www.senate.gov.ph/press_release/2015/0223_prib1.asp.

Allowing co-loading in the Philippines will substantially bring down shipping costs and prevent multiple handling of shipments. This will directly benefit local shippers and strengthen the competitiveness of Philippine exports in the global market.

VII. FURTHER AMENDMENT OF THE CCT AND GPBT LAW

Current situation

In March 2013, R.A. 10378 was signed into law, rationalizing taxes on international carriers.

R.A. 10378 amended relevant provisions of R.A. 8424 or the National Internal Revenue Code of 1997 to rationalize the 3% CCT, 2.5% GPBT, and 12% VAT levied on international carriers operating in the Philippines. One of the key reforms introduced by R.A. 10378 was the exemption of VAT and CCT and the subjecting of GPBT to virtues of reciprocity for international air and sea passenger carriers. However, these provisions were not applied to international cargo carriers.

The reduction of the cost of transportation of products to and from the country is instrumental to continuing the Philippines' strong economic growth by remaining competitive as an investment destination and exporter of goods. To this extent, it is felt that the exemption of international cargo carriers from CCT and GPBT will be beneficial for existing investors, and will also reduce the costs for Filipino exporters.

Recommendations

The Maritime Committee supports the further amendment of R.A. 8424 to revise CCT and GPBT provisions to cover international air and sea cargoes.



PHARMACEUTICALS

Sector Overview

The past years have seen a renewed focus on healthcare in the Philippines in an effort to provide a more inclusive national healthcare system.

The Kalusugang Pangkalahatan (KP), or Universal Healthcare (UHC), launched by President Aquino in 2010 prioritized improvements in three strategic areas: health financial risk protection, health service delivery, and the attainment of Philippine MDGs.¹⁶¹ Additionally, government healthcare expenditure has increased, with the DOH currently enjoying one of the largest budgets in the government, namely 84 billion PhP.¹⁶²

Market trends also show an increased focus on healthcare; in fact, in 2013 the Philippine pharmaceutical market generated over 127.34 billion PhP in revenues, making it the third largest market in the ASEAN region. This reflects an increased spending per capita, which was estimated at 4,201.37 PhP per year in 2011, up from just 1478.79 PhP in 2001.¹⁶³

The ethical pharmaceuticals market also enjoyed a 6% annual growth rate in 2013, the highest rate in five years.¹⁶⁴ Similarly, generic medicines are becoming more popular among Filipino patients as perceptions on them begin to change.¹⁶⁵

While foreign pharmaceutical companies captured approximately 62% of the revenue share in the Philippines in 2011,¹⁶⁶ manufacturing pharmaceuticals products, including those for foreign companies, is dominated by one domestic manufacturer.¹⁶⁷

R.A. 10606, otherwise known as the National Health Insurance Act of 2013, was a major reform for the healthcare, and effectively the pharmaceutical, sector as it aims to increase the reach of the national health insurance scheme PhilHealth to all Filipinos. By early 2014, it was estimated that 83% of Filipinos were registered in the system, which reflected an increase of 100% as compared to 2008. However, approximately only 73% of Filipinos were actually covered.¹⁶⁸

161 Department of Health (DOH) Administrative Order No. 2010-0036 (16 December 2010), *The Aquino Health Agenda: Achieving Universal Health Care for All Filipinos*.

162 R.A. No. 10633 or the General Appropriations Act (Fiscal Year 2014), *Official Gazette*, Vol. 109, No. 1.

163 Gross, Ames (May 2013), *Philippines pharmaceutical market update*, 2013, <http://www.pharmaphorum.com/articles/philippines-pharmaceutical-market-update-2013>.

164 IMS Health Philippines (2014).

165 *Healthcare & Life Sciences Review* (March 2014), pp. 7 and 40.

166 National Tax Research Center, *Tax Contribution of the Philippine Pharmaceutical Industry*, NTRC Tax Research Journal, vol. XXVII.2, March – April 2014.

167 Gross, op. cit.

168 *Healthcare & Life Sciences Review*, op. cit., p. 37.

In terms of forecasts for the Philippine pharmaceuticals market, it is expected that spending on medicines will continue to grow in the coming years, reaching a national pharmaceuticals market of 8 billion USD by 2020, with a CAGR of 9.4%.¹⁶⁹

Advocacy

I. INSTITUTIONALIZING UHC GAINS

Current situation

UHC has so far delivered significant breakthroughs leading to the President being recognized by the WHO in April 2013 for having “shown perseverance in pursuing better... health policies that will literally save millions of lives” to eventually drive a “virtuous cycle of opportunity and inclusive growth” especially among poor Filipino families.¹⁷⁰ These feats in social sector reform, outlined in the Philippine Development Plan 2011–2016, were regarded by the Government as tangible achievements of its “good governance policy”, one that goes beyond political patronage.^{171,172,173}

An important component of UHC is sustainable and equitable access to safe, quality, cost-effective essential medicines; a concrete step towards the progressive realization of the fundamental human right to health, enshrined in the Philippine Constitution and well-founded in international laws, and forms an indispensable component of social systems.^{174,175,176} Currently, 53% of Filipino households’ health expenditures are paid out of pocket and about 42% of these are for purchase of medicines, which contributes to the observed increased number and proportion of impoverished households due to **healthcare expenses**.^{177,178,179,180,181}

169 GlobalData (2014), *CountryFocus: Healthcare, Regulatory and Reimbursement Landscape – Philippines*.

170 *Philippine Asian News Today* (12 April 2013), *WHO lauds Aquino for boosting Filipinos’ health*, <http://www.philippineasiannewstoday.com/news/rp-news/7154-who-lauds-aquino-for-boosting-filipinos-health>.

171 *Ibid.*

172 National Economic Development Authority, *The Philippine Development Plan (2011-2016)*, http://www.neda3.com.ph/images/Downloads/PDP2011-2016/15_SOCIALCONTRACT.pdf.

173 Presidential Communications Operations Office, Aquino says World Health Organization-Philippines citation of his achievements in providing quality healthcare for all Filipinos is testament to the strength of a people working towards change, <http://www.bcs.gov.ph/index.php/10-latest/332-aquino-says-world-health-organization-philippines-citation-of-his-achievements-in-providing-quality-healthcare-for-all-filipinos-is-testament-to-the-strength-of-a-people-working-towards-change>.

174 World Health Organization (WHO), *Medicines and health products*, <http://www.who.int/healthsystems/topics/medicines/en/>.

175 Article II, Section 15, 1987 Philippine Constitution.

176 WHO, *Access to essential medicines as part to right to health*, http://www.who.int/medicines/areas/human_rights/en/.

177 DOH (2011), *Philippines Pharmaceutical Country Profile*, http://www.who.int/medicines/areas/coordination/Philippines_PSCPBNarrative_QuestionnaireEndorsement_13062012.pdf.

178 DOH, Chapter 1, *The Philippine Health System at a Glance*, <http://www.doh.gov.ph/sites/default/files/3%20Chapter1.pdf>.

179 Philippine Health Insurance Corporation (PhilHealth) Circular 048, s. 2012, *Implementing Guidelines on the Z-Benefit Package*, http://www.philhealth.gov.ph/circulars/2012/circ48_2012.pdf.

180 DOH Administrative Order No. 2014-0033 (8 October 2014), *The Philippine Medicines Policy towards Kalusugan Pangkalahatan*.

181 Ulep, Valerie Gilbert (2012), *Analysis of Out-of-Pocket Expenditures in the Philippines*, Philippine Institute of Development Studies.

To guide medicine access, policy initiatives in support of UHC and the Philippine SARAH¹⁸² pillars, reflecting the WHO framework, focused on addressing the acknowledged gaps around regulations, rational drug use, and provider-patient information asymmetry are needed.^{183,184}

Addressing these gaps can be a complex challenge to the government and society at large; however, it is a critical imperative if the gains already achieved by UHC are to be sustained.

Recommendations

Institutionalizing the gains of UHC to ensure that it reaches the lowest levels of society is a complex, time-consuming effort—one that will require sustained, inter-departmental cooperation among various agencies of the government.

Therefore, for it to gain even better traction in the last leg of President Aquino’s term, it is recommended that the President should appoint a dedicated UHC lead who will bring together an inter-agency task force of senior officials from the DOH, FDA, NCPAM, PhilHealth, DTI, DBM, DOF, and NEDA whose mandate will be to develop the necessary policy, budget and operational recommendations aimed at the strategic strengthening of institutions and processes to address the structural areas that impede faster progress of UHC. These recommendations, when enacted, should survive President Aquino’s current term and provide a lasting legacy of inclusive healthcare protection for all Filipinos.

For its part, the private sector is prepared to work with this inter-agency task force, and in the spirit of PPP, create a healthcare council that can provide inputs to this system-wide healthcare reform. These inputs may be in the way of solicited grants, provision of training support for government healthcare professionals as well as the cross-posting of volunteer employees from the private sector to assist the government in the areas of project planning and implementation, technology integration, supply chain efficiency, and healthcare technology assessment, among others.

182 SARAH Medicines Access Framework encompasses five major pillars of the Philippine Medicines Policy (2011–2016): 1) Safety, Efficacy and Quality (SEQ) of medicines; 2) Affordability and Availability; 3) Rational Drug Use; Accountability, Transparency and Good Governance; and 5) Health Systems Support.

183 WHO Medicines Strategy: Countries at the Core 2004–2007, http://whqlibdoc.who.int/hq/2004/WHO_EDM_2004.5.pdf.

184 DOH, Philippine Medicines Policy: Strategic Directions on Access to Medicines for Filipinos 2011–2016, Health Sector Reform Agenda Monograph.

By institutionalizing the UHC and effectively implementing a multi-stakeholder approach, the landmark achievement of UHC will also translate into a lasting healthcare reform by strengthening the institutions that will safeguard achievements already made and preserve them: not just for this generation, but for many more that will come after it.

II. IMPROVING FILIPINO PATIENTS’ ACCESS TO SAFE, QUALITY, EFFECTIVE MEDICINES

A stronger working relationship of the public and private sectors should also pave the way for greater understanding and collaboration to effectively and efficiently improve Filipino patients’ access to safe, quality, effective medicines by focusing on three impact areas: (1) a fit-for-purpose, transparent PNF; (2) safe, quality medicines and vaccines through a more modern, technically adept Philippine FDA; and (3) embedded standards of integrity and ethical pharmaceutical marketing conduct through the widespread adoption of the Mexico City Principles.

A focus on these three impact areas from the UHC inter-agency task force should help make the promises of UHC more tangible and long-lasting to the masses of Filipino patients.

A. Fit-for-purpose, transparent Philippine National Formulary

Current situation

The PNF is the country’s equivalent of WHO’s Model List of Essential Medicines.¹⁸⁵ Conceptually, essential medicines intend to satisfy the healthcare needs of the majority of the population and should be flexible and adaptable to many different situations while remaining responsive to the current and emerging health threats, and in so doing, promote rational public use.^{186,187,188} Understandably, the PNF guides the procurement and reimbursements of medicines and vaccines in government units and GOCCs as a matter of policy.^{189,190,191}

185 DOH Administrative Order No. 2012-0023 (24 October 2014), Revised Implementing Guidelines for the Philippine National Formulary System.

186 *Ibid.*

187 WHO (2000), The Use of Essential Drugs: Ninth Report of the WHO Expert Committee, <http://apps.who.int/medicinedocs/en/d/Js2281e/2.html>.

188 WHO, Essential Medicines and Health Products: Biennial Report 2012–2013.

189 Executive Order No. 49 (1 January 1993), Directing the Mandatory Use of the Philippine National Formulary Volume 1 as the Basis for Procurement of Drug Products by the Government.

190 DOH Administrative Order No. 163, s. 2002, Implementing Guidelines and Procedures in the Procurement and Requisition of Drugs and Medicines by the Department of Health pursuant to Executive Order No. 49.

191 Philippine Health Insurance (PHIC) Board Resolution No. 265 (July 15, 1999).



The PNF Manual was last revised in 2008, listing 627 products; compared to Thailand's 740, Vietnam's 750 and Malaysia's 1,200.^{192,193,194,195} In the last few years, a number of PNF process enhancements were introduced. However, there remain acknowledged challenges in keeping the process robust and transparent and the PNF Manual updated.^{196,197,198,199} Some of the timelines in the PNF registration process remain unclear and review for medicine inclusion has recently taken up to 3 years.

The complications created by an outdated PNF are multi-fold. For instance, public procurement regulations requiring government entities and GOCCs to purchase or reimburse only PNF-listed medicines would result to a huge number of life-saving drugs not being made accessible to a vast majority of patients suffering from cancer and other degenerative diseases whose primary way to access is through government assistance. To illustrate just one example, without an updated PNF, the PCSO, as a GOCC, will have to cease funding charitable requests for life-saving chemotherapy and cancer medicines that are rightfully prescribed by physicians but are not listed in the PNF.^{200,201,202,203} In this case, the PNF becomes a barrier to Filipinos being able to access medicines that could potentially save them, extend or improve their quality of life.

Recommendations

Therefore, it is imperative that, for UHC to truly succeed, an updated, fit-for purpose PNF and a transparent, efficient PNF listing process must be put in place, specifically:

- An updated PNF published with great urgency to include innovative, life-saving drugs, and recently introduced and WHO-endorsed vaccines, proven to improve public health;

192 Philippine National Drug Formulary: Essential Medicines List, Volume I, 7th Edition, 2008.
 193 Holloway, Kathleen, Thailand, Drug Policy and Use of Pharmaceuticals in Health Care Delivery, WHO Regional Office for South East Asia Mission Report 17–31 July 2012, http://www.searo.who.int/entity/medicines/thailand_situational_analysis.pdf.
 194 WHO, Vietnam National Essential Medicines List 2008, <http://apps.who.int/medicinedocs/documents/s19532vi/s19532vi.pdf?ua=1>.
 195 Excerpt of Press Release by Malaysia Ministry of Health (February 1996), http://www.prn.usm.my/old_website/edl/esentia2.html.
 196 See supra note 187.
 197 National Center for Pharmaceutical Access and Management (NCPAM) website, <http://www.ncpam.doh.gov.ph/>.
 198 NCPAM (18 February 2014), Update on the evidence review of medicines, <http://www.ncpam.doh.gov.ph/index.php/update-on-the-evidence-review-of-medicines>.
 199 De Rosas-Valera, Madeleine, Health Technology Assessment in the Philippines, presented at the NUS Initiative to Improve Health in Asia (NIHA): Economics, Technology Assessment and Health Policymaking, 1–2 July 2013, National University of Singapore, http://www.gat.nus.edu.sg/niha/wp-content/uploads/2013/07/UseC_Madeleine_DE_ROSAS-VALERA.pdf.
 200 See supra note 188.
 201 See supra note 189.
 202 Section 4, R.A. 6675 or The Generics Act of 1988.
 203 Joint DOH-DTI-IPO-BFAD Administrative Order No. 2008-01, Implementing Rules and Regulations of R.A. 9502, otherwise known as the Universally Accessible Cheaper and Quality Medicines Act of 2008.

- A multi-stakeholder, comprehensive review of the current PNF listing process, structure and systems including decision-making and resourcing to determine gaps; and
- A well-funded capability building program that provides the DOH with adequate funding for human capital, equipment, research and training to build expertise in the field of health technology assessment.

B. Protecting the integrity and security of medicines for the Filipino patient

Current situation

Access to safe and quality medicines (and vaccines) is an integral cornerstone of healthcare.^{204,205} It is therefore critical to ensure the integrity and security of healthcare products made available in the country through good regulatory capacity, backed by strong enforcement.²⁰⁶ However, threats to the integrity of these health interventions are potentially present throughout the globalized pharmaceutical supply chain.^{207,208}

The cumulative effects of the shifting dynamics in the global economy (for example, ASEAN integration) and sophistication in criminal activities involving medicines increasingly add to the complexity of pharmaceutical regulations.^{209,210} In the final analysis, the level of quality of health care products reaching patients is a reflection of the overall strength of the regulatory bodies tasked to protect the country's medical supply chain.²¹¹

The FDA has taken a number of steps to improve its operations to better match the pace at which NCEs are introduced into the country, while preventing the entry and proliferation of substandard medicines. Over the past two years, the FDA has increased its

204 See supra note 187.
 205 WHO Media Centre (5 February 2014), WHO, WIPO, WTO release study on health innovation and access to medicines, http://www.who.int/mediacentre/news/releases/2013/book_launch_20130205/en/. Accessed October 2014.
 206 WHO Director-General Margaret Chan, China's regulatory system on food and drugs from a global perspective, speech delivered in Beijing, China, 4 July 2014, <http://www.who.int/dg/speeches/2014/china-vaccines-regulation/en/>.
 207 Bernstein, Ilisa (22 October 2012), APEC Roadmap for Global Medical Product Quality and Supply Chain Integrity, presented at the International Conference on Drug Regulatory Authorities (ICDRA), Estonia.
 208 Molson, Justinia, Integrity of the Supply Chain, Global Forum: Inform, volume 5, issue 3, www.diahome.org.
 209 Johnson, Brian, Supply Chain Security: One Company's Holistic Approach, Global Forum: Inform, volume 5, issue 3, www.diahome.org.
 210 Healthcare Distribution Management Association (2013), Pharmaceutical Supply Chain Security: Protecting the World's Safest, Most Secured Delivery Network.
 211 WHO (2007), Practical Guidance for Conducting a Review (based on the WHO Data Collection Tool for the Review of Drug Regulatory Systems), Regulatory Support Series, No. 12, Technical Cooperation for Essential Drugs and Traditional Medicine, http://www.who.int/medicines/areas/quality_safety/regulation_legislation/GuideAssessRegSys.pdf?ua=1.

transparency, accountability and efficiency, owing to adoption of electronic systems that create greater visibility of its activities to the public at large. Sustaining these reforms already underway and meeting the daunting requirements to perform its mandate will be difficult as the Philippine FDA is currently faced with a serious budgetary and financial constraint.²¹²

Recommendations

To sustain the gains achieved by the FDA in recent years and to further protect the integrity and security of the Philippines' medicines supply, the following are proposed:

- Fast-track the review of the FDA's proposed 5-Year Business Plan²¹³ already submitted to the DBM last June 23rd 2013, to: (i) enable the FDA to utilize its retained earnings of 1 billion PhP in support of its proposed FDA Strengthening Program; (ii) allow the FDA to hire additional permanent staff for the screening of products for registrations as well as for the surveillance of registered products and institutions; and (iii) upgrade the regulatory capabilities of its existing personnel.
- The FDA, being a highly technical agency tasked with maintaining the safety, purity, efficacy and quality of the nation's food and drug supply, should be allowed to re-organize with permanent, fresh hires who are technically competent and intellectually agile, so that they are better able to comprehend, participate and effectively regulate within the rapidly evolving international regulatory framework overseeing an ever-increasing number of new pharmaceutical medicines, biologicals, generics and bio-similars as a result of improvements in the Philippine economy, ASEAN harmonization, the impending approval of the Trans-Pacific Partnership, and globalization in general.

²¹² Food and Drug Administration (2014), *FDA Progress Report for September 2012 to January 2014*.

²¹³ *Ibid.*

C. Embedding transparency and ethics in pharmaceutical marketing practices

Current situation

"Ethical considerations help ensure that medical decisions are made in the best interest of patients."²¹⁴ Ethical concerns in pharmaceutical marketing potentially compromise patients' welfare by abetting health information asymmetry between health providers and patients, especially the poor. These can also negatively impact productivity and ability for market entry of new players and eventually contribute negative external perceptions on the Philippines.^{215,216}

Ethical matters around marketing of medicines in the Philippines are referred by FDA to applicable provisions of general laws as there is no national Code of Conduct in this regard. Pursuant to the ideals of self-regulation, the PHAP has its own promotional code that is consistent with the APEC 2011 MCPs as well as the code of promotions of the International Federation of Pharmaceutical Manufacturers & Associations (IFPMA).^{217,218,219}

To help promote behaviors of highest ethical standards among stakeholders, the FDA is to be commended for releasing Circular No. 2013-024, expressing the country's adoption of the MCP, and the DOH for Circular No. 2014-0389 (Creation of a Committee for the Adoption of the Mexico City and Kuala Lumpur Principles).^{220,221}

Recommendations

The Philippines, being one of the APEC signatories to the MCP in 2011, can visibly demonstrate its commitment to the MCP, with:

- The timely adoption of a set of IRR that mandate all healthcare providers, organizations and professionals to adhere to the MCP;

²¹⁴ *Asia-Pacific Economic Cooperation (2011), The Mexico City Principles for Voluntary Codes of Business Ethics in the Biopharmaceutical Sector.*

²¹⁵ See *supra* note 184.

²¹⁶ FDA Circular No. 2013-024 (5 September 2013), *Adoption and Implementation of the Mexico City Principles for Voluntary Code of Business Ethics in the Biopharmaceutical Sector.*

²¹⁷ See *supra* note 214.

²¹⁸ *Pharmaceutical and Healthcare Association of the Philippines, PHAP Code of Practice 2014, <http://www.phap.org.ph/index.php?cid=5&sid=15>.*

²¹⁹ *International Federation of Pharmaceutical Manufacturers & Associations, IFPMA Code of Practice 2012.*

²²⁰ See *supra* note 216.

²²¹ DOH Circular No. 2014-0389 (2 October 2014), *Creation of a Committee for the Adoption of Mexico City and Kuala Lumpur Principles.*



- A Philippine FDA requirement for healthcare organizations / companies to certify their compliance with the MCP's IRR annually or risk sanctions;
- The creation of a multi-stakeholder, non-government, independent body that will oversee adherence to the MCP IRR by various industry groups; as well as adjudicate over complaints for non-compliance by healthcare companies, organizations and professionals; and
- A clearly defined roadmap that will continuously raise the adherence of the various bodies in the Philippines' healthcare eco-system to the highest standards of ethical conduct as observed by advanced nations with well evolved healthcare systems.

TOURISM

Sector overview

Tourism is one of the most promising sectors for the development of the Philippine economy. 7107 islands including beaches, coral reefs, and mountains, are an asset which can be developed exponentially to increase the share of the growing tourism arrivals to Southeast Asia for the Philippines.

The Philippines has not yet managed to grab a large share of the booming tourism industry in Southeast Asia; namely, in 2013 international arrivals to the Philippines were 4.68 million, while Thailand and Malaysia saw 26.55 million and 25.72 million international arrivals, respectively. In fact, at an ASEAN level the Philippines was also surpassed in terms of international arrivals by Indonesia and Vietnam, and was only slightly higher than Cambodia, which saw 4.21 million international arrivals in the same year.²²²

However, the tourism industry continues to develop, with international arrivals to the Philippines growing by 3.25% in 2014 to 4,833,368 arrivals, as compared to 4,681,307 in 2013.²²³ In terms of contribution from the tourism industry to the national economy, in 2014 total earnings from inbound tourism amounted to 205.44 billion PhP.²²⁴ In 2013, direct employment generated by the tourism sector was 1,226,500 jobs, or 3.2% of total national employment, while the total contribution of the sector to job generation was 11.3% of total national employment, or 4,295,000 jobs.²²⁵

The EU ranks fifth in terms of the source country or region of international arrivals to the Philippines. In 2013, there was an annual increase of 8% in arrivals from the EU, with a total number of over 376,000 European tourists visiting the Philippines.²²⁶

²²² World Tourism Organization (2014), *UNWTO Tourism Highlights: 2014 Edition*, <http://www.e-unwto.org/content/r13521/fulltext.pdf>

²²³ Republic of the Philippines (2014), *Press Release: PH Tourism Registers 9.56% Growth Receipts up by 15.1%*, <http://www.gov.ph/2014/02/13/ph-tourism-registers-9-56-growth-tourism-receipts-up-by-15-1/>

²²⁴ Department of Tourism (2015), *Tourism Industry Performance for 2014*, <http://www.tourism.gov.ph/Pages/IndustryPerformance.aspx>

²²⁵ WTCC (2014), *Travel and Tourism, Economic Impact 2014: Philippines*.

²²⁶ Delegation of the European Union to the Philippines (2013), *EU – Philippines: Trade and Investment Factfile 2013*, http://eeas.europa.eu/delegations/philippines/documents/more_info/publications/trade_and_investment_factfile.pdf

Advocacy

I. AIRLINE COST REDUCTION

Current situation

The National Tourism Development Plan 2011–2016, sets a target of 10 million international arrivals annually by 2016; in 2014 international arrivals nationwide amounted to 4.83 million.²²⁷ If the number of international arrivals is to increase significantly in the coming years, it is crucial to improve international connectivity to the Philippines through a greater number of seats at a cheaper cost made available to passengers. However, the high costs incurred by international air carriers flying to the Philippines acts as a deterrent factor to this becoming a reality.

While industry commends Philippine policymakers for passing R.A. 10378, which amended R.A. 8424, this should be seen as a first step, rather than the final solution.

Despite the positive effects of R.A. 10378 eliminating the CCT for air passengers and deeming the GPBT subject to reciprocity, both CCT and GPBT are still applicable to the carriage of cargo. Taking into account that passenger carriers also carry cargo, this reduces the benefits of R.A. 10378 for passenger carriers, as they still incur additional costs.

In the case of offline carriers, they are subject to corporate income tax; this leads to an uncompetitive environment for European carriers, the majority of which serve the Philippines as an offline carrier, as online carriers enjoy preferential income tax rates or income tax exemption. It is worth highlighting here the importance of offline carriers in serving the Philippine market, as without offline carriers and their accredited travel agencies, Filipino passengers would not have access to tickets for routes which do not fly directly to or from the Philippines.

Recommendations

It is felt that the extension of R.A. 10378 provisions to include the exemption of cargo from CCT and GPBT will support the increase of seats to the Philippines at more affordable prices.

It is also suggested that the provision “Nevertheless, an off-line international carrier shall be subject to the

²²⁷ See Department of Tourism (2015), *Tourism Industry Performance for 2014*.



regular rate of income tax under Section 28(A)(1) of the NIRC, as amended, based on its taxable income from sources within the Philippines.” in paragraph 4.3 of RR No. 15-2013, is amended to ensure preferential income tax rates or exemption of income tax for offline carriers similar to those for online carriers, as outlined in paragraph 4.1 of the same RR.

II. INFRASTRUCTURE DEVELOPMENT

Current situation

The importance of infrastructure development in an effort to develop the Philippines as a top tourist destination is unquestionable. Without the necessary infrastructure in place, it is difficult to attract a larger number of international visitors, and especially those at the higher end of the market.

For infrastructure to be developed in line with the expectations of international visitors there needs to be a focus on the following:

- **Airports:** International connectivity is central to any discussion on tourism development. As the gateway to the country, airports give a first, and lasting, impression to visitors. The main airport in the country, NAIA, is consistently voted among the worst airports in the world. While the bidding out of the two PPP packages for the development, operations and maintenance of Iloilo, Bacolod, Puerto Princesa, Davao, Laguindingan, and New Bohol airports is welcomed, the poor infrastructure and lack of capacity to serve growing numbers of passengers at NAIA also have to be addressed.
- **Roads:** Road infrastructure in many existing and potential tourist destinations and attractions needs to be improved if the number of international visitors is to be increased, especially the top end of the market, as such visitors expect comfortable and fast travel. An example is the road between Puerto Princesa and El Nido; despite both places being some of the top tourist destinations in the Philippines, the road network connecting the two towns is in a bad condition. If the infrastructure were in place, tourism destinations like San Vicente would develop rapidly.
- **Marine transportation:** Despite being an island nation, the Philippines’ marine transportation is still largely undeveloped. A lack of seaports,

unorganized or non-existence timetables, unsafe vessels, and the inability to pre-book tickets for many destinations translates into areas of great potential as international tourism destinations being left undeveloped. An example is Mindoro, only a few hours away from Metro Manila and with great potential to develop as a sailing, snorkeling and relaxing destination; it is only served by traditional wooden “bancas”, which do not adhere to safety rules and are subject to fluctuating timetables driving away not just international, but also local tourists which feel unsafe using this type of transport.

Similarly, as marine tourism is booming in the region, the Philippines has great potential to become a hub for luxury marine tourism, such as yachting, due to its geographical location and numerous islands. However, while in other countries, such as Indonesia and China, government is the driving force behind marine tourism development by funding and developing the necessary infrastructure, such as marinas, and offering investment incentives, this is not the case in the Philippines, where there are almost no organized marinas. Effectively, the country is losing out on what could be a natural advantage.

Recommendations

For the Philippines to reach its full potential as an international tourism destination, the following moves to improve infrastructure should be prioritized:

- A change to NAIA opening times, ensuring that the airport remains open 24 hours a day, with flights scheduled throughout the night, in addition to the removal of general aviation from NAIA to increase the available slots for international flights, while remaining within the guidelines set by ICAO;
- The creation of a joint public-private sector task force including DOT, DOTC, DPWH, DTI, PPP Center and major private sector stakeholders to identify the main infrastructure and ensure fast implementation to develop areas with major potential as tourism destinations. Priorities of such a task force could include:
 - > connectivity to island destinations with potential for tourism development, such as Mindoro and Marinduque, through the facilitation of safe, organized ferry routes;

- > the lack of proper road infrastructure in top tourism destinations, including Palawan; and modernization of passenger vessels nationwide, including the enforcement of safety regulations, the normalization of timetables and the availability of pre-booking.
- > Creation of a comprehensive strategy for the development of the marine tourism sector, including plans for strategically placed marinas across the country and the creation of PPP projects to complete such infrastructure development.

III. INCREASING SECURITY LEVELS IN TOURIST DESTINATIONS

Current situation

Security concerns in the past years, such as the high profile kidnapping case of two German tourists in early 2014, have brought a sense of insecurity surrounding the Philippines for potential international visitors and investors alike. The effects these concerns have on tourism are no better reflected than in the case of the travel warning for the Philippines issued in 2014 by Chinese authorities, which translated into a 7.37% fall in tourist arrivals from China.²²⁸

Not only are potential tourists choosing other destinations which they believe are safer, but there is also skepticism from international brands to invest, due to the perceived risk on their reputation in the case of a security breach. Effectively, growth of the tourism industry is being restrained due to the perceived security threat, despite the limited geographical area where the potential of a security threat is realistic.

Recommendations

The creation of more TIEZAs with a stronger focus on security aspects through the inclusion of specific measures in the IRR for the creation and operation of TIEZAs can increase the attractiveness of the Philippines by guaranteeing safe areas, for both investors and customers.

It is recommended that the number of “tourism-oriented police for security and safety” is increased from the current number of 2,000 police to ensure a stronger presence countrywide. In addition, it is

important that the body becomes a permanent asset of the PNP, to avoid the transfer of police with special training back to their original positions.

Finally, the inclusion of information on the strict geographical limits of a security threat and the very safe nature of the Philippines as destination in all other areas in tourism campaigns abroad can contribute to the already successful tourism campaigns, such as “It’s more fun in the Philippines”.

IV. HOTEL INFRASTRUCTURE DEVELOPMENT

Current situation

A basic requirement for the Philippines to increase its attractiveness to international visitors is the availability of accommodation in line with international standards and competitive prices.

While R.A. 7652 or the Investors’ Lease Act allows companies or individuals investing in the tourism industry to lease land for 50 years, renewable for another 25, it also sets minimum capital investment requirements. Specifically, Section 5.5 states that “lease of private lands by foreign investors qualified herein shall be limited to projects with an investment of not less than five million (5 million) US dollars, seventy percent (70%) of which shall be infused in said project within three years from the signing of the lease contract”. At the same time, foreign investors cannot take out mortgages as the restrictions on foreign land ownership means they do not have collateral.

Effectively, two key concerns arise from the provisions in R.A. 7652:

- First, the current legislation favors the concentration of large-scale hotel investments among a small group of domestic real estate developers. Effectively, this hinders competition and has a negative impact on the development of the tourism industry.
- Second, the high level of capital required for foreign investors, in a short timeframe and the lack of capital availability limits the entrance of small- and medium-scale investors in the country, which are vital to the development and diversification of the tourism market.

²²⁸ See Department of Tourism (2015), *Tourism Industry Performance for 2014*.



- The specific nature of the tourism industry as a capital-intensive service industry, means that investment decisions for investors focus on three key criteria: business predictability, equity return, and ownership control. Taking into account the current investment environment in the Philippines, these requirements are not met for investors. Specifically:
 - > **Hotel performance predictability** – Despite systematic data collection on the demand side of tourist arrivals in the Philippines, there is a lack of comprehensive and methodical data collection by the DOT on the demand side. Therefore, foreign investors are unable to develop business models based on sound statistical data and financial forecasts. This significantly heightens the perceived risk of investment.
 - > **Equity Return** – As foreign investors cannot take out mortgages, the legal framework discriminates access to debt capital for foreign investors in the tourism industry and, therefore, does not allow for the creation of the necessary conditions for an attractive equity return for investors.
 - > **Ownership Control** – Hotel property ownership control, including the land it is built on, is a fundamental investment decision criteria for foreign investors. Giving up land ownership control might have negative consequences on the course of life of a hotel project.

Additionally, more consistent and detailed data collection methodologies for the supply side of tourism should be applied by DOT to ensure the reliability and transparency of data available on nationwide hotel performance. This will greatly decrease the perceived risk by foreign investors on the sector, as solid forecasts can be developed.

Recommendations

The Tourism Committee recommends that the Philippine government adopts legislation and incentives applied to foreign players with booming tourism industries in the region, such as Thailand. Specifically, it is suggested that as part of the concessions made available to foreign investors, land ownership is offered to investors, as long as they are registered under TIEZA and subject to specific conditions. To this extent, it is suggested that Rule XII, Sec. 6 of the IRR of R.A. 9593 should be amended accordingly.

This will also facilitate improved equity return and capital investment, as foreign investors will be able to apply for mortgages, given that they will be able to provide the land owned as collateral to banks.

WATER AND ENVIRONMENT

Sector overview

Mitigating environmental degradation remains a priority given its implications on health, tourism, and the aggregate output of the economy.

The consequences of such have cost a total of over 184 billion PhP worth of infrastructure, agriculture, private and commercial properties, from years 2000 to 2012.²²⁹ In 2013, the Philippines ranked 103rd out of 178 in terms of sanitation and water in the EPI, taking into account the accessibility to drinking water and the level of sanitation.²³⁰ Roughly, just 70% of the 30,000 tons of municipal solid waste produced daily is being collected while approximately only 5% is disposed in properly designed SLFs and even a lower portion of that is recycled in properly designed recycling plants; the rest is dumped in various bodies of water, contaminating local water supply which causes serious issues such as flooding and pollution.²³¹ To strengthen environmental efforts, R.A. 9003 or the Ecological Solid Waste Management Act of 2000 was approved in 2001 mandating the adoption of a systematic, comprehensive, and ecological solid waste management program. Recognizing the urgency of this matter, in 2014, DPWH allocated 1.73 billion PhP for the implementation of water supply projects,²³² while 34.2 billion PhP was apportioned for flood control and management services.²³³ The NEDA Board also approved environment- and disaster risk reduction-related projects worth 11.9 billion PhP, to mitigate the impact of environmental factors.²³⁴

Various EU member states, namely Germany, Spain, France, the UK, and the Czech Republic, have reached out to the Philippines through financial assistance. GIZ, in 2009, provided 132.76 million PhP for climate change initiatives. Spain financed 398.27 million PhP for the program “Strengthening the Philippines’ Institutional Capacity to Adapt to Climate Change”. France provided assistance in research-related environmental initiatives. The Czech Republic has provided support in the area of water supply and hydropower.²³⁵

²²⁹ Senate of the Philippines (2013), *Natural Disasters at a glance*, https://www.senate.gov.ph/publications/AAG%202013-04%20-%20Natural%20Disasters_final.pdf.

²³⁰ EPI (2014), *Country Profile: Philippines, Environmental Performance Index*, <http://epi.yale.edu/epi/country-profile/philippines>.

²³¹ Development Academy of the Philippines (n.d.), *Global Partnership on Waste Management: Philippines Profile*. United Nations Environment Programme. <http://www.unep.org/gpwm/InformationPlatform/CountryNeedsAssessmentAnalysis/Philippines/tabid/106537/Default.aspx>.

²³² Piudbm (2014), *DBM pours P 1.73 B into water supply projects nationwide*, Posted in Department of Budget and Management. <http://www.dbm.gov.ph/?p=9542>.

²³³ (n.d.), *Integrity of the Environment and Climate Change Adaptation and Mitigation*. <http://budgetngbayan.com/integrity-of-the-environment-and-climate-change-adaptation-and-mitigation-2/>.

²³⁴ Lopez, E. (2012), *NEDA Approves P12-B Environment Projects*, <http://creba.ph/2012/04/02/neda-approves-p12-b-environment-projects/>.

²³⁵ European Commission in the Philippines (2009), *Country Environmental Profile Updates*, <http://>

Advocacy

I. PROMOTION AND ENFORCEMENT OF THE CLEAN WATER ACT OF 2004

Current situation

Following the adoption and implementation of R.A. 9275 or the Clean Water Act of 2004 and according to the provisions thereby provided, NSSMP was set up, headed by NEDA and DPWH. The objective of NSSMP is to improve water quality and protect public health in urban areas of the Philippines by 2020.²³⁶

However, up to now, implementation of waste water treatment projects in water districts across the country is limited. Under the CWA, funding for sewerage and septage facilities are not explicitly mandated, specifically, Sec. 7, Article 1, Chapter 2 provides that “... the national government may allot, on an annual basis, funds for the construction and rehabilitation of required facilities.... Each LGU may raise funds to subsidize necessary expenses for the operation and maintenance of sewerage treatment or septage facility servicing their area ...”. According to the same passage, LGUs are responsible for appropriating the necessary land, road access and right-of-way for the project.

Additionally, the method of septage treatment currently used shows a number of opportunities for improvement. General practice includes the collection of waste from septic tanks and transportation by septic tankers. This affects congestion and adds to the operational costs of septage treatment. Moreover, the treatment used is limited to BOD removal and does not include the removal of nitrogen and phosphorus, which are the main causes of algae bloom and oxygen depletion in aquifers.

NSSMP and its mandate offer an opportunity for long-term improvements to the national water supply which will benefit the current and future generations. With a strong implementation framework which will allow quality private sector actors to cooperate with central and local government to develop the necessary projects, the objectives of the CWA can become a reality.

eeas.europa.eu/delegations/philippines/documents/more_info/coop_news/cep_update_09_en.pdf.

²³⁶ More specifically, NSSMP sets four targets. Target 1: By 2020, all LGUs have developed septage management systems and the 17 highly urbanized cities (HUCs) have developed sewerage systems. Target 2: By 2020, approximately 43.6 million people have access to septage treatment facilities and about 3.2 million will have access to sewerage treatment facilities. Target 3: By 2020, PhP 26.3 billion has been invested in sanitation improvement projects. Target 4: By 2020, about 346 million kilograms of BOD is diverted from the environment per year as a result of the sewerage and septage management projects.



Recommendations

In addition to the communication campaign organized by the Steering Committee of NSSMP for LGUs on the program, a communication campaign, targeted at awareness building for public and private sector decision makers on the need for waste water treatment will allow for a more informed and coordinated approach. To this extent, the review of technical implementation strategies can facilitate the adaptation of best practices to the needs of each water treatment project respectively.

It is also recommended that provisions under Sec. 7, Article 1, Chapter 2 of the CWA should be amended to provide clearer responsibilities for funding at each stage of the project and identify the sources of funding to be used.

The size and design of each NSSMP project is key to properly addressing the treatment of all pollutants. Therefore, it is recommended that technologies such as combined sewage treatment and the equipment of projects with anaerobic stages, which minimize power consumption and maximize RE power generation from biogas produced from digested sludge, should be used. Furthermore, the size of projects should be determined based on the projected population growth in the coverage area rather than current needs to accommodate growing demand.

II. NATIONWIDE APPLICATION OF A GREEN BUILDING CODE AND URBAN PLANNING

Current situation

The potential benefits of a national Green Building Code, both for business and the environment are far-reaching. In fact, DPWH estimated that if green building standards were to be followed in the Philippines as of the beginning of 2015, savings for consumer and businesses could amount to 35.2 billion PHP by 2030, while approximately 1.90 million tons of carbon dioxide emissions could be prevented as commercial buildings alone consume 36% of annual national energy consumption.²³⁷

As economic and demographic growth continues, the need for a nationwide Green Building Code becomes ever stronger.

²³⁷ Ranada, P (2015), *Green' building can save businesses, consumers P35.3B*, <http://www.rappler.com/science-nature/environment/56194-green-building-code-dpwh>.

Similarly, the lack of an integrated development master plan and strict enforcement of zoning regulations has substantial negative results on urbanized areas, where the lack of sufficient road capacity, mass transit and green areas have direct effects on the quality of life for urban dwellers.

Recommendations

The Water and Environment Committee welcomes the ruling by DOJ that under the National Building Code of the Philippines (NBCP), the DPWH may “revise, amend or create a separate referral code in conformation with NBCP and its IRR to safeguard life, health, property, and public welfare, consistent with the principles of environmental management and control”. The initiative of the DPWH to create the Green Building Code is also to be commended.

The Committee will closely follow the development of the Green Building Code and its implementation; it is recommended that in addition to LEED standards, other international benchmarks such as BREEAM should also be considered, while adapting to the specific climatological, geological and market needs of the Philippines. The Green Building Code should also include enforceable provisions for the prevention of the use of hazardous building materials in new buildings.

It is also suggested that a central urban planning agency, attached to DPWH, is created to implement and enforce urban planning and zoning across the country, to avoid current inconsistencies and continuous changes in regulations at LGU level.

III. UPDATE OF FLOOD CONTROL MASTER PLAN AND TRANSPARENCY

Current situation

The increase of extreme weather in the past years has further emphasized the need for the mitigation of flood risks in majorly populated areas, including Metro Manila. The ongoing procurement of flood control projects highlights the proactive role of policymakers to this extent.

However, despite the procurement and completion of numerous flood control projects, there are concerns that completed projects do not always fully meet the

technical and infrastructure standards that would allow them to fully mitigate flood risks.

Under current legislation, flood control projects tendered by DPWH and MMDA are subject to infrastructure rules and documents, which are primarily designed for the development of bridges and roads. Effectively, the content of tender documents and the scope of the TORs do not include technical specifications relevant to flood control projects, but rather focus on more general requirements such as the quality of concrete used.

Recommendations

DPWH and MMDA should produce new tendering documents specifically for flood control projects, including TORs and technical requirements which set minimum standards for the quality of equipment and technology used.

Planning should pay special attention both to flood management and climate change effects. In fact climate change is affecting flood occurrences and intensity which will continue to change over time, so long term modeling should be taken in consideration for planning purposes. Actual and future flood plain should be available in the planning process to minimize risks and make appropriate mitigation and adaptation to climate change decisions.

IV. INTEGRATED SOLID WASTE MANAGEMENT SYSTEM

Current situation

R.A. 9003 or the Ecological Solid Waste Management Act provides for the better management of solid waste in the Philippines.

Taking into account the sheer quantity of garbage being produced nationwide, and especially in urban centers such as Metro Manila, sanitary landfills alone do not provide a long term, environmentally sound and financially viable solution. Therefore, it is crucial that more effective solutions should be found to meet the targets set out in R.A. 9003.

Recommendations

The Water and Environment Committee recommends an integrated solid waste management solution, which includes segregated collection with a localized

logistics system and maximized recovery and recycling through professionally designed, built and operated recycling plants applying locally adapted technology, such as large-scale fermentation and post composting for biodegradable fractions and a high-quality recycling system.

To achieve the successful implementation of such a system, existing projects designed to carry out such waste management solutions and which have been awarded under the BOT law need to be implemented without further delays by the responsible government agencies.

Implementation of an integrated solid waste management solution will be strengthened further through the amendment of the IRR of R.A. 9003, to mandate LGUs to set up professionally designed and operated recycling plants and restrict, and in the long term ban, the establishment of ordinary sanitary landfills.

V. HAZARDOUS WASTE DISPOSAL

Current situation

Although R.A. 6969 or the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 has been in place since 1990, widespread segregation of hazardous waste in the Philippines is still lacking. In addition to the undeveloped legislative and enforcement framework set by R.A. 6969, a lack of technical capacity to manage hazardous waste and the necessary treatment and disposal facilities, are the key factors for the limited hazardous waste segregation in the country.

There are a number of bills pending in the Ecology and Environment and Natural Resources Committees in both the House of Representatives and the Senate respectively, which aim to provide for comprehensive hazardous and radioactive waste management, since 2013. However, they still have not been approved. Without proper hazardous waste management and segregation, it is impossible to talk of sustainable and inclusive economic growth, as undoubtedly the results affect the most vulnerable and at the same time increase the costs for foreign investors who follow international standards of hazardous waste segregation, without national infrastructure.



Recommendations

The Water and Environment Committee supports the deliberation of the bills by the two Houses of Congress and the timely adoption and implementation at a national level of a Philippine Hazardous and Radioactive Wastes Management Act. This will ensure that proper segregation of hazardous waste, through the development of the necessary infrastructure and capacity building, across the country and especially in industrial areas, becomes a priority.

ANNEX 1 | EU-PHILIPPINES BUSINESS NETWORK

EPBN, established in January 2014, is a project co-funded by the EU and implemented by a consortium of European business organizations based in the Philippines, led by ECCP.²³⁸

The overarching objective of EPBN is to provide the necessary support for European companies, especially SMEs, to increase exports and investment to the Philippines through the facilitation of market access and ensuring a level playing field for all companies. EPBN aims to contribute to the improvement of the trade and investment environment for European companies in the Philippines and support to the economic growth of the country through sustainable competitiveness.

In order to do so, EPBN adopts a threefold approach of outreach, support services and advocacy. Effectively, it provides a strong support system at every stage of access to the Philippine market for European businesses. In delivering these services, EPBN cooperates closely with its partner organizations in other ASEAN countries to provide information on ASEAN as a market and trade and investment options in other ASEAN countries, keeping the Philippines as a regional hub in mind.

Advocacy has been identified as critical to moving towards an equal playing field and easier market access for European companies and has therefore been recognized as a priority since the beginning of the project. EPBN has adopted a bottom-up, industry-driven approach, with 14 sector-specific committees.²³⁹ The Market Access Priorities developed by the Market Access Team joined by trade representatives from EU diplomatic missions in the Philippines are handled as a priority.

The Sectoral Committees meet on a monthly or bi-monthly basis and provide a forum for European companies to discuss issues and possible solutions, which are then elevated to the legislative and executive branches of government, including LGUs and judicial organs through a series of advocacy tools. These include the drafting of bills, production of position papers on proposed reforms or current issues, and the annual position paper, among others.

This position paper highlights key sector-specific and crosscutting issues which have been identified by industry experts as the overriding obstacles to market access in the Philippines. It also offers specific recommendations for policymakers, which if implemented will not only facilitate market access but more importantly ensure long-term economic growth and competitiveness for the Philippines and increased economic cooperation between the Philippines and the EU.

²³⁸ The consortium is led by the European Chamber of Commerce of the Philippines; partner chambers of commerce include: the Belgian-Filipino Business Club, British Chamber of Commerce Philippines, French Chamber of Commerce of the Philippines, German-Philippine Chamber of Commerce and Industry, Italian Chamber of Commerce of the Philippines, Nordic Business Council of the Philippines, and Spanish Chamber of Commerce of the Philippines.

²³⁹ These committees cover the following sectors: agriculture and food; automotive, parts, fuels and lubricants; consumer goods and retail; energy and renewables; financial services; human capital; ICT-BPM-KM-Creative industries; infrastructure and transportation; manufacturing; maritime; pharmaceuticals; tourism; and water and environment.



This project is co-funded by the European Union



A.O.	Administrative Order
<i>ADB</i>	Asian Development Bank
<i>AEC</i>	ASEAN Economic Community
<i>AFTA</i>	ASEAN Free Trade Area
<i>APEC</i>	Asia-Pacific Economic Cooperation
ARMM	Autonomous Region in Muslim Mindanao
<i>ASEAN</i>	Association of Southeast Asian Nations
BAC	Bids and Awards Committee
<i>BIR</i>	Bureau of Internal Revenue
<i>BOC</i>	Bureau of Customs
<i>BOD</i>	Biochemical Oxygen Demand
BOI	Board of Investments
<i>BOT</i>	Build-Operate-Transfer
<i>BPM</i>	Business Process Management
<i>BPO</i>	Business Process Outsourcing
<i>BSP</i>	Bangko Sentral ng Pilipinas
C.A.	Commonwealth Act
<i>CAGR</i>	Compound Annual Growth Rate
<i>CALAX</i>	Cavite-Laguna Expressway
<i>CARS</i>	Comprehensive Automotive Resurgence Strategy
CBWs	Customs bonded warehouses
<i>CCT</i>	Common Carriers' Tax
<i>CHED</i>	Commission on Higher Education
<i>CICT</i>	Commission on Information and Communications Technology
<i>CME</i>	Coconut Methyl Ester

CMTA	Customs Modernization and Tariff Act
CPI	Corruption Perceptions Index
CSC	Civil Service Commission
CSR	Corporate Social Responsibility
<i>CWA</i>	Clean Water Act
<i>D/EEZ</i>	Domestic/Export Industrial Zones
<i>DBM</i>	Department of Budget Management
<i>DENR</i>	Department of Environmental and Natural Resources
<i>DEPED</i>	Department of Education
<i>DICT</i>	Department of Information and Communications Technology
<i>DILG</i>	Department of Interior and Local Government
<i>DOE</i>	Department of Energy
<i>DOF</i>	Department of Finance
<i>DOH</i>	Department of Health
<i>DOJ</i>	Department of Justice
<i>DOLE</i>	Department of Labor and Employment
<i>DOST</i>	Department of Science and Technology
<i>DOT</i>	Department of Tourism
<i>DOTC</i>	Department of Transport and Communications
<i>DPWH</i>	Department of Public Works and Highways
<i>DTI</i>	Department of Trade and Industry
<i>DUs</i>	Distribution Utilities
E.O.	Executive Order
e2m	Electronic to Mobile
<i>ECCP</i>	European Chamber of Commerce of the Philippines
EFTA	European Free Trade Association

<i>EMSA</i>	European Maritime Safety Agency
<i>EPBN</i>	EU-Philippines Business Network
<i>EPI</i>	Environmental Performance Index
<i>EPIRA</i>	Electric Power Industry Reform Act
<i>ERC</i>	Energy Regulatory Committee
<i>EU</i>	European Union
<i>EUR</i>	Euro
<i>F&B</i>	Food and Beverage
<i>FDA</i>	Food and Drug Administration
<i>FIA</i>	Foreign Investment Act of 1991
<i>FINL</i>	Foreign Investment Negative List
<i>FIT</i>	Feed in Tariff
<i>FIT-ALL</i>	Feed in Tariff Allowance
<i>FTA</i>	Free Trade Area
<i>G20</i>	Group of 20
<i>G33</i>	Group of 33
<i>GDP</i>	Gross Domestic Product
<i>GI</i>	Geographical Indication
<i>GIZ</i>	Deutsche Gesellschaft für Internationale Zusammenarbeit
<i>GNI</i>	Gross National Income
<i>GOCC</i>	Government Owned/Controlled Corporations
<i>GPA</i>	Agreement on Government Procurement
<i>GPBT</i>	Gross Philippines Billing Tax
<i>GPPB</i>	Government Procurement Policy Board
<i>GSP/ GSP+</i>	Generalized System of Preferences
<i>GWh</i>	Gigawatt Hour

<i>H.B.</i>	House Bill
<i>HMO</i>	Health Maintenance Organization
<i>IBPAP</i>	IT and Business Process Association of the Philippines
<i>ICAO</i>	International Civil Aviation Organization
<i>ICT</i>	Information Communication Technology
<i>ICTO</i>	Information Communication Technology Office
<i>IFPMA</i>	International Federation of Pharmaceutical Manufacturers and Associations
<i>IGC</i>	Integrity Governance Council
<i>i-PAC</i>	Investment Promotion Action Center
<i>IPAs</i>	Investment promotion agencies
<i>IPOPHL</i>	Intellectual Property Office of the Philippines
<i>IPP</i>	Investments Priority Plan
<i>IPR</i>	Intellectual Property Rights
<i>IRR</i>	Implementing Rules and Regulations
<i>IT</i>	Information Technology
<i>ITECC</i>	Information Technology and E-Commerce Council
<i>ITH</i>	Income tax holiday
<i>KM</i>	Kilometer
<i>KP</i>	Kalusugang Pangkalahatan
<i>KPM</i>	Knowledge Process Management
<i>KW</i>	Kilowatt
<i>KWP</i>	Kilowatt Peak (Peak Power)
<i>LEED</i>	Leadership in Energy and Environmental Design
<i>LGC</i>	Local Government Code of 1991
<i>LGU</i>	Local Government Unit
<i>LO / LO</i>	Load on / Load off



<i>LTFRB</i>	Land Transportation Financing Regulatory Board
<i>MARINA</i>	Maritime Industry Authority
<i>MCP</i>	Mexico City Principles
<i>MDG</i>	Millennium Development Goals
<i>MOU</i>	Memorandum of Understanding
<i>MW</i>	Megawatt
<i>NAIA</i>	Ninoy Aquino International Airport
<i>NBCP</i>	National Building Code of the Philippines
<i>NBI</i>	National Bureau of Investigation
<i>NCE</i>	New Chemical Entity
<i>NCIPR</i>	National Committee on Intellectual Property Rights
<i>NCMB</i>	National Conciliation and Mediation Board
<i>NCPAM</i>	National Center of Pharmaceutical Access and Management
<i>NCR</i>	National Capital Region
<i>NEDA</i>	National Economic and Development Authority
<i>NGCP</i>	National Grid Corporation of the Philippines
<i>NGOs</i>	Non-governmental organizations
<i>NLRC</i>	National Labor Relations Commission
<i>NPC</i>	National Power Corporation
<i>NPK</i>	Nitrogen Phosphorus-Potassium Fertilizer
<i>NREB</i>	National Renewable Energy Board
<i>NSSMP</i>	National Sewerage and Septage Management Program
<i>OFW</i>	Overseas Filipino Worker
<i>OMB</i>	Optical Media Board
<i>P&I</i>	Protection and Indemnity
<i>P.D.</i>	Presidential Decree

<i>PAASCU</i>	Philippine Accrediting Associations of Schools, Colleges and Universities
<i>PCAB</i>	Philippine Contractors Accreditation Board
<i>PCSO</i>	Philippine Charity Sweepstakes Office
<i>PDEA</i>	Philippine Drug Enforcement Agency
<i>PDMF</i>	Project Development and Monitoring Facility
<i>PDR</i>	Peoples’ Democratic Republic
<i>PEMC</i>	Philippine Electricity Market Corporation
<i>PEZA</i>	Philippine Economic Zone Authority
<i>PHAP</i>	Pharmaceutical and Healthcare Association of the Philippines
<i>PhilGEPS</i>	Philippine Government Electronic Procurement System
<i>PhP</i>	Philippine Peso
<i>PNF</i>	Philippine National Formulary
<i>PNP</i>	Philippine National Police
<i>PNS</i>	Philippine National Standards
<i>POEA</i>	Philippine Overseas Employment Administration
<i>PPA</i>	Philippine Port Authority
<i>PPP</i>	Public-Private Partnership
<i>PSA</i>	Philippine Statistic Authority
<i>PSALM</i>	Power Sector Assets and Liabilities Management Corporation
<i>PV</i>	Photovoltaic
<i>R.A.</i>	Republic Act
<i>RE</i>	Renewable Energy
<i>RETF</i>	Renewable Energy Trust Fund
<i>RKC</i>	Revised Kyoto Convention
<i>RO / RO</i>	Roll on / Roll off
<i>ROHQ</i>	Regional Operations Headquarters

<i>RPS</i>	Renewable Portfolio Standards
<i>RR</i>	Revenue Regulations
<i>S.B.</i>	Senate Bill
<i>SC</i>	Supreme Court
<i>SEC</i>	Securities and Exchange Commission
<i>SFL</i>	Sanitary Land Fill
<i>SME</i>	Small Medium Enterprise
<i>SMP</i>	Service Management Program
<i>SOCCSKSARGEN</i>	South Cotabato, Cotabato, Sultan Kudarat, Sarangani and General Santos City
<i>STCW</i>	Standards of Training Certification and Watchkeeping
<i>TESDA</i>	Technical Education and Skills Development Authority
<i>TIEZA</i>	Tourist Infrastructure and Enterprise Zone
<i>TLA</i>	Trust Liability Account
<i>TRANSCO</i>	National Transmission Corporation
<i>TRIPS</i>	Trade Related Aspects of Intellectual Property Rights Agreement

<i>TRTA</i>	Trade-related technical assistance
<i>TVET</i>	Technical Vocational Education and Training
<i>UHC</i>	Universal Healthcare
<i>UNCTAD</i>	United Nations Conference on Trade and Development
<i>UNECE</i>	United Nations Economic Commission for Europe
<i>USA/ US</i>	United States of America
<i>USD</i>	US Dollar
<i>VAT</i>	Value Added Tax
<i>WB</i>	World Bank
<i>WEF</i>	World Economic Forum
<i>WESM</i>	Wholesale Electric Spot Market
<i>WHO</i>	World Health Organization
<i>WPP</i>	Witness Protection Program
<i>WTO</i>	World Trade Organization
<i>WVTAS</i>	Whole Vehicle Type Approval System
<i>YOY</i>	Year-on-Year



ANNEX 3 | CROSS RATES OF THE PESOS PER UNIT OF USD AND EUR²⁴⁰

All monetary values have been converted to pesos for the purposes of this document. Conversions have been made based on the average exchange rate for the given year of each amount mentioned. Specific rates of conversion can be found in the table below and in Annex 4. Projections of amounts and amounts quoted in legislation are expressed in their original currency.

CROSS RATES OF THE PESOS per unit of USD and EUR		
in period averages of the given years		
Year	USD	EUR
2001	50.9927	
2006	51,3143	
2009		66.3788
2010	45.1097	59.8705
2011	43.3131	60.2791
2012	42.2288	66.9249
2013	42.4462	56.3942
2014	44.3952	59.0432

²⁴⁰ Bangko Sentral ng Pilipinas (n.d.), *Economic and Financial Statistics*, http://www.bsp.gov.ph/statistics/efs_ext3.asp.

ANNEX 4 | CONVERTED VALUES OF THE AFOREMENTIONED FIGURES²⁴¹

CONVERTED VALUES (in PhP)					
Page No. / Ref. No.	YEAR	CURRENCY	INITIAL VALUE (USD / EUR)	CONVERTED VALUE (PhP)	CONVERTED VALUE - SHORTENED (PhP)
Page 13	2013	USD	3,860,000,000	163,842,332,000.00	163.84 billion PhP
Page 13	2013	USD	125,460,000,000	5,325,300,252,000.00	5.33 trillion PhP
Page 13	2014	USD	5,700,000,000	253,052,640,000.00	253.05 billion PhP
Page 13	2013	USD	87,000,000,000	3,692,819,400,000.00	3.69 trillion PhP
Page 13	2013	USD	76,000,000,000	3,225,911,200,000.00	3.23 trillion PhP
Page 13	2013	USD	11,000,000,000	466,908,200,000.00	466.91 billion PhP
Page 13	2014	USD	29,812,000,000	1,323,509,702,400.00	1.32 trillion PhP
Page 13	2014	USD	27,515,000,000	1,221,533,928,000.00	1.22 trillion PhP
Page 13	2014	USD	31,452,000,000	1,396,317,830,400.00	1.40 trillion PhP
Page 13	2013	USD	29,752,000,000	1,262,859,342,400.00	1.26 trillion PhP
Page 14	2013	EUR	10,800,000,000	609,057,360,000.00	609.06 billion PhP
Page 15	2012	EUR	2,600,000,000	174,004,740,000.00	174.00 billion PhP
Page 15	2014	EUR	189,000,000.00	11,159,164,800.00	11.16 billion PhP
Page 15	2013	EUR	382,000,000	21,542,584,400.00	21.54 billion PhP
Page 29	2013	USD	3,860,000,000	163,842,332,000.00	163.84 billion PhP
Page 29	2013	USD	125,460,000,000	5,325,300,252,000.00	5.33 trillion PhP
Page 59	2013	EUR	8,000,000,000	451,153,600,000.00	451.15 billion PhP
Page 61	2014	USD	19,000,000,000	843,508,800,000.00	843.51 billion PhP
Page 63	2013	USD	16,000,000,000	679,139,200,000.00	679.14 billion PhP
Page 63	2006	USD	3,200,000,000	164,205,760,000.00	164.21 billion PhP
Page 69	2014	USD	2,276,620,000	99,641,510,526.00	99.64 billion PhP
Page 69	2013	EUR	4,200,000,000	236,855,640,000.00	236.86 billion PhP
Page 69	2013	EUR	4,800,000,000	270,692,160,000.00	270.69 billion PhP
Page 69	2014	USD	4,670,000,000	207,325,584,000.00	207.33 billion PhP
Page 72	2013	USD	5,200,000,000	5,200,000,000	220.72 billion PhP
Page 74	2014	USD	11,000,000	488,347,200.00	488.35 million PhP
Page 74	2014	USD	5,000,000	221,976,000.00	221.98 million PhP
Page 76	2013	USD	3,000,000,000	127,338,600,000.00	127.34 billion PhP
Page 76	2011	USD	97	4,201.37	4201.37 PhP
Page 76	2001	USD	29	1,478.79	1478.79 PhP
Page 81	2013	USD	4,840,000,000	205,439,608,000.00	205.44 billion PhP
Page 85	2009	EUR	2,000,000	132,757,561.93	132.76 million PhP
Page 85	2009	EUR	6,000,000	398,272,685.79	398.27 million PhP

Bangko Sentral ng Pilipinas, Cross Rates of the Pesos, in pesos per unit of foreign currency, in period averages
 Bangko Sentral ng Pilipinas, Reference Exchange Rate Bulletin, Treasury Department, Bangko Sentral ng Pilipinas,
http://www.bsp.gov.ph/statistics/efs_ext3.asp.

²⁴¹ The table presents the pre-converted figures and the converted values given their corresponding exchange rates (ER) as shown in Annex 3. While the BSP provides statistics on exchange rates for both end-of-period and periodic average, the average exchange rates were used as they are more representative of the ER movement for the entire period (i.e., year) relative to that of the year-end.



EU business in the Philippines

Supporting sustainable and inclusive economic growth

Overarching objectives for EU business in the Philippines

WIN-WIN SITUATIONS



Fair competition



Level playing field for all



Employment generation



Skill development



Easy market access

which will lead to...

- Stronger trade and investment ties between the EU and the Philippines
- Long-term sustainable and inclusive economic growth



HOW?



Enactment of a fair competition law



Improvements to the national procurement framework



Removal of professions from the FINL



Enactment of a Customs Modernization and Tariff Act



Investor friendly approach to the rationalization of fiscal incentives



Establishment of a Department of ICT



Adoption of the co-loading bill



Improvements to the PPP framework



Increased IPR protection and enforcement



Retail trade liberalization

...and legislative, regulatory and administrative reforms to the investment and trade environment for 14 sectors. A full list of recommendations can be found in the [EPBN Advocacy Papers](#).

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