Joint Foreign Chambers of the Philippines

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Philippine Association of Multinational Companies Regional Headquarters, Inc.

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November 12, 2018

Statement of the Joint Foreign Chambers of the Philippines on the 11th Foreign Investment Negative List

The Joint Foreign Chambers of the Philippines (JFC) welcome the 11th Foreign Investment Negative List (FINL) promulgated in Executive Order 65 by President Rodrigo R. Duterte on October 31.

However, we expect only modest gains in foreign direct investment to result from the changes made in the new FINL. The list contains 11 changes from the previous lists, but most are minor. Sec. Pernia described them as "marginal improvements" and "baby steps."

They are not minor for lack of trying by NEDA. For the first time, the NEDA actively sought with other government agencies to initiate reforms in the FINL through administrative changes. But their output was constrained by the many laws, some over 80 years old, which cannot be changed by the Executive Branch.

Meaningful reforms in the FINL require Congress to pass relevant laws, including amendments to the restrictions on foreign ownership in the Philippine Constitution. Sec. Pernia commented that the economic managers want more areas and activities liberalized order to compete in ASEAN.

Without such reforms, the Philippines will continue to be rated by OECD as the most restrictive of 67 countries in its FDI restrictions (see attached).

The new list responds to Memorandum Order 16 signed by President Duterte on November 21, 2017, which instructed the bureaucracy "to exert utmost efforts to lift or ease restrictions on certain investment areas or activities with limited foreign participation." MO 16 seeks to implement Point 3 of the president's Socioeconomic Agenda.

The president listed the following 8 sectors in which he sought reforms:

1. Private recruitment, whether local or overseas employment;
2. Practice of particular professions, where allowing foreign participation will redound to the public benefit;
3. Contracts for construction and repair of locally-funded public works;
4. Public services, except activities and systems that are recognized as public utilities such as transmission and distribution of electricity, water pipeline distribution system, and sewerage pipeline system;

5. Culture, production, milling, processing, and trading except retailing, of rice and corn and acquiring by barter, purchase or otherwise, rice and corn and by-products thereof;
6. Teaching at higher education level;
7. Retail trade enterprises; and
8. Domestic market enterprises.

Most domestic market business activities involving over US$ 200,000 in capital are open to 100% foreign investment under RA 7042 or the Foreign Investments Act of 1991, as amended by RA 8179. While the FINL is important as a guide that foreign investors can consult to understand restrictions on their potential investments, the list can be misunderstood and give the impression that the country is closed to foreign investment.

We urge the 17th Congress to prioritize making the FINL more positive. There is still time in the next few months to pass at least four reform measures. These are:

1. Public Service Act amendments. The House passed its bill that reforms this 82 year old law in November 2017. The Senate Committee on Public Services quickly held hearings and reported out the bill. It is now pending final passage.

2. Open Access. The House also passed its bill in 2017 that reforms the 23 year old old Telecommunications Act. The Senate bill reached the plenary in March 2018 where it is pending final passage. This bill will allow improved and less expensive internet services for all Filipinos.

There are no more important bills than these two bills which can be approved soon by Congress and that will support more investment and competition to enable the Philippines to improve its public services to realize the government's *Ambisyon Natin* aspiration.

3. Foreign Investment Act amendments. A third measure is the FIA Act amendments bill of Rep. Arthur Yap approved by the House Committee on Economic Affairs. This straightforward reform measure will encourage hundreds of new foreign investors investing a minimum of US$100,000 and will simplify the FINL by removing the practice of professions from the FINL. The FINL is about investment and causes confusion by listing professions regulated by law.

4. **Retail Trade Act Amendments.** Although the Philippines is a major consumer of imported goods, it tightly restricts foreign retailers. The new policy of the Duterte Administration, in line with MO 16 (see #7 above), is to reduce the minimum capital requirement from US$2.5 million to $200,000. This is proposed in bills in Congress that had committee hearings in March and October 2018. As soon as these bills are enacted, the reform can be included in the next FINL.

We look forward to MO 16 being implemented not only by the Executive Branch but also by Congress. There have already been hearings in the Senate to understand better the contents of the FINL and what legal reforms are needed to update laws that serve no real purpose in the 21st century yet restrict foreign investment, job creation, and technology transfer into the economy.

JFC members plan to meet with NEDA, the PRC, the PLLO, and leaders in Congress to continue discussing reforms to invite more foreign investment into the country.

The JFC is a coalition of the American, Australian-New Zealand, Canadian, European, Japanese, and Korean chambers and PAMURI. We represent over 3,000 member companies engaged in over $100 billion worth of trade and some $30 billion worth of investments in the Philippines. The JFC supports and promotes open international trade, increased foreign investment, and improved conditions for business to benefit both the Philippines and the countries the JFC members represent.

Sincerely,

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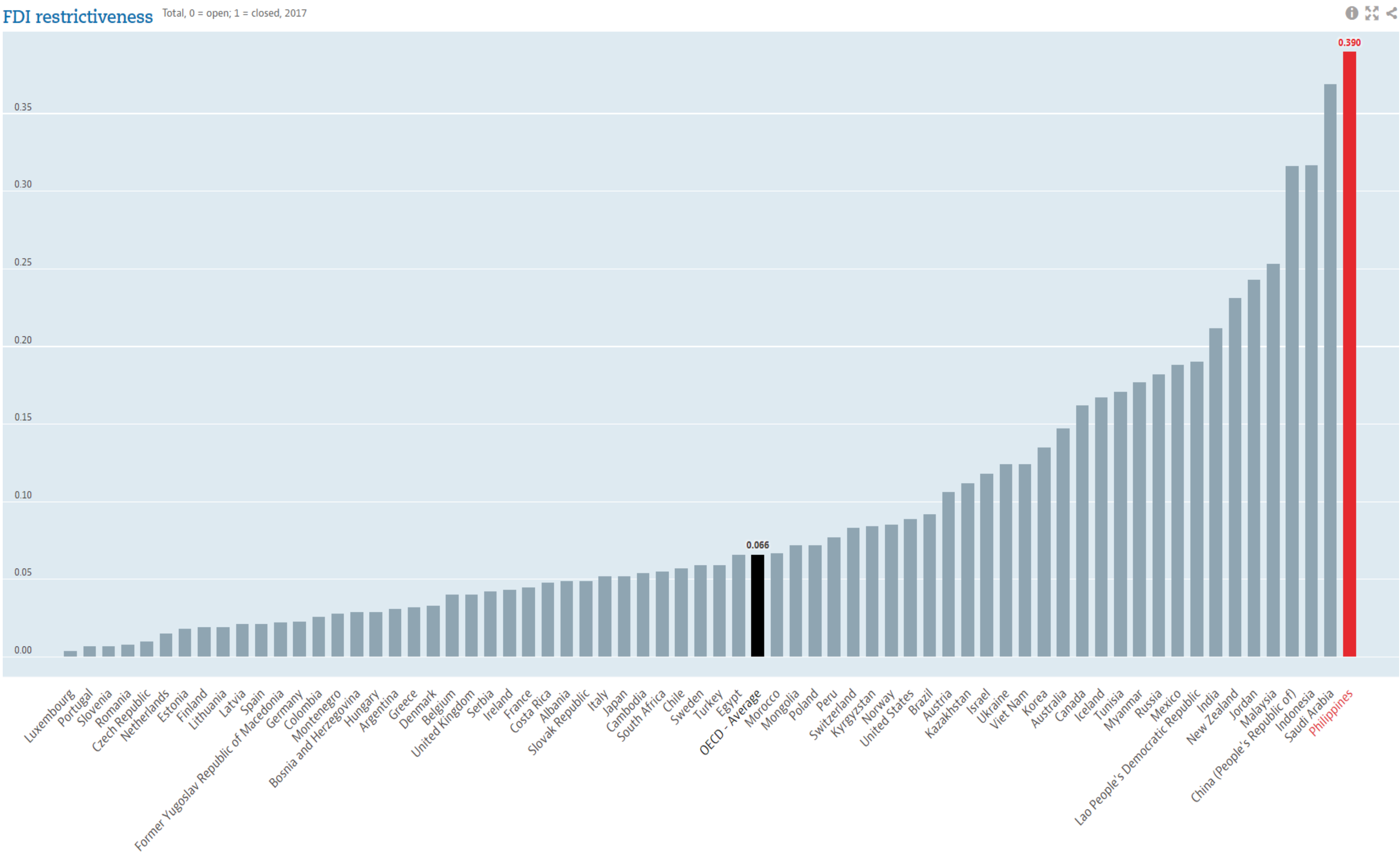
Attachment: OECD FDI Restrictiveness Index 2017

OECD FDI Restrictiveness Index 2017



Source: Organisation for Economic Co-operation and Development, 2017