

Executive Summary

1. Introduction

Reforming the 1987 Constitution has been a long-standing issue, with previous efforts centered on attempts to shift from a presidential to a parliamentary-federal type of government. It was only President Joseph Estrada's Constitutional Correction for Development (CONCORD) that zeroed in on the economic provisions of the Constitution, particularly the need to free up key sectors of the economy to foreign ownership. Today, the call for constitutional reforms has been taken up once more by the leadership of both Houses of Congress with the proposal of amending restrictive economic provisions.

The provisions in question

As a general rule, foreign participation in Philippine enterprises can only go as high as 40 percent save for cases allowed for by Republic Act No. 7042 or the Foreign Investment Act. But for certain sectors expressly indicated in the Constitution, e.g. natural resources, public utilities, and media, the rule is inflexible as embodied in Article XII (National Economy and Patrimony) and Article XVI (General Provisions).

The raison d'être

During Estrada's CONCORD as in the present, the rationale for liberalizing the economic provisions of the Constitution has been to help the domestic economy become more conducive to investments and, in the process, increase competition towards ultimately improving social welfare. The current crises besetting the major players in the global economy is an opportune time to implement reforms that could propel the economy to greater heights.

2. Literature Review

Why place so much importance on foreign capital?

Foreign direct investments (FDIs) represent long-term asset acquisitions that result in increased production capacity and have been regarded as one of the key ingredients supporting the growth of developing economies. The theoretical underpinnings of the economic impact of FDIs are well-developed in the literature, with the Solow-Swan growth model emphasizing the importance of savings and capital accumulation in shifting the economy to a higher long-term growth path. FDIs supplement domestic savings, which is characteristically low in the case of the Philippines, and create spillovers in technological and management know-how.

Various empirical studies have built up the evidence regarding the efficiency gains from FDIs, as well as their spillovers. A review of the literature reveals conflicting results from empirical works arising from differences in research design, methodology, and data sources. Results notwithstanding, material evidence on the benefits of FDIs is well-documented.

Zooming in on rules and regulations

The constitution frames the body of fundamental laws and political constitutions that are critical in setting the way economic agents behave. By extension, one could say that a nation's economic performance is affected by the way the basic law of the land is written. Sicat and Sicat (2004) find that constitutional construction is generally an important factor in economic development, although economic competitiveness is the more powerful force in determining economic performance.

In another study, the same authors maintain that Constitutions should be simply written based on general principles rather than specific rules, allowing greater freedom in the movement of factors of production in pursuing economic activity. Citing the Philippines as an example, they assert the 1987 Constitution's restrictive provisions as an impediment to efficient movement of factors of production and ultimately to investment promotion. The difficulty of removing this impediment lies in its being "maintained by an alliance of the ruling classes and many nationalistic elements that favor restrictions."

3. Stylized Facts

The Philippines has been a laggard in attracting FDI inflows among major Southeast Asian economies alone, pulling in an average of \$1.6 billion a year from 2000-2010. This pales in comparison with Singapore (\$19.6 billion), Thailand (\$6.8 billion), Malaysia (\$4.7 billion), Indonesia (\$3.8 billion) and even Vietnam (\$3.9 billion). The Philippines has some of the most restrictive regimes in terms of foreign ownership in the region. In natural resources, for instance, the country has the lowest allowable share of foreign equity ownership.

4. Clarifying Concerns and Policy Implications

Summary of arguments for constitutional reforms

Efficiency gains. The primary motivation in amending the restrictive economic provisions of the charter is that these hinder the free flow of factors of production, most notable foreign capital and technology, and constrains and alters the behavior of economic agents. Furthermore, these also represent additional costs of compliance (and circumvention) or foregone opportunities. In other words, there is a case for efficiency gains to be had from removing these economic restrictions.

Weak state captured by oligarchs. The Philippines is a "weak state" subject to capture by oligarchs and vested interest groups who have hijacked the domestic economy. This complicates economic management and undermines the openness of the economy through protectionist and inward-looking policies embodied in the 1987 charter. This emphasizes the need for liberalizing protected industries captured by the oligarchy by allowing competition through the lifting of economic restrictions in the Constitution.

Corruptive effect. Constitutional restrictions result in adverse selection problems, where the country becomes more likely to attract foreign investors who have no qualms about breaking or going around the rules with the cooperation of state instrumentalities. This ultimately leads to opportunities for corruption.

Response to arguments against constitutional reforms

One of the more compelling arguments against constitutional reforms is the demand for evidence-based decision-making, implying that the assertions regarding the need to amend the constitution are not supported by empirical evidence. Acknowledging the difficulty of directly quantifying the exact economic effects of constitutional provisions, we point out that the so-called evidence-based arguments against amending the Constitution are also subject to the same limitation and only support claims indirectly. We discuss these in detail with our corresponding counter-arguments.

Possible safeguards

The best safeguard against political exploitation of the process of constitutional amendments is the people's vigilance and the weight of public opinion. It is the public that will have the final say on whether to approve amendments to the Constitution and it should be forcefully brought to bear on Congressional representatives whose interests exactly are they tasked to represent.