



Constitutional Change Isn't Only Desirable,  
It's Essential:  
It IS Time to Change the Constitution



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# THE WALLACE REPORT

## Constitutional Change Isn't Only Desirable,

### It's Essential:

## It IS Time to Change the Constitution

"Inclusive growth" is the new buzz phrase, but it's too general. What does it mean? I prefer "jobs focus", it more specifically says what is needed over and above almost everything else: Jobs. Over the past 13 years (since 2000) the economy measured by real gross domestic product (GDP) has grown cumulatively 63%. However, instead of a similar growth in jobs created not only was there no growth, there was actually a decline. Using the same definition of unemployment (it was changed in 2005) which for comparison you must do, the number of jobless Filipinos rose to an estimated 4.2 million from 3.5 million in 2000, which translates to some 700,000 more without work today. And these are government figures which I believe are grossly understated, particularly if you consider that many of the so-called jobs are unpaid (helping dad on the farm) or grossly underpaid. Whatever it is, it's unacceptably high, and getting worse. A more believable Social Weather Stations says that there are 12.1 million unemployed Filipinos as of end-2013, this is much higher compared to 9.9 million without a job in November 2010. The country's unemployment situation is worsening because there aren't enough businessmen expanding or building new businesses.

### A MORE OPEN ECONOMY WILL PROVIDE JOBS

Many things need to be done to fix this state of affairs and they have been discussed endlessly—with far too little effort to correct them. But the one I wish to focus on here is the constitution, because if the restrictions on foreign investment are removed it WILL lead to more jobs created. There is inescapable logic to this. If CNN puts an office in Manila it hires people. But more importantly it puts more focus on the Philippines so other foreign companies take interest, and end up investing thus creating more jobs. This cycle occurs with all investments. The multiplier effects to the local economy are realized. If a foreign construction firm wins a government project it not only hires workers it needs caterers for the food, suppliers of materials and equipment and so on where more jobs are created too. Not only in businesses that come into those once closed sectors, but into many other sectors as the world takes notice of a country that is now vastly different, is open and welcoming. Foreign companies now decide to come and look where before they were preferring elsewhere.

Opening up will get the CNN and the BBC to take notice: ***"In this world of controversy and turmoil today here is a country, the Philippines, that is proving its stability and confidence in itself by opening up to the world. A true democracy with fair labor laws and a talented people, it must be on your list of places to look at as you expand or relocate your business."***

There's a huge inequality that exists today—79% of the population belong to the low-income group, while only 5% is in the high-income group, and the middle class is way too small at only 16%—that badly and urgently needs leveling. This can only be done through job creation and good, well-paying jobs; there is no other way. And everything that will help create jobs must be done. It's no good saying things are going well so we don't need further change because even if it were only 100 people without a job it's 100 people who shouldn't be. And when the fact is that there are more jobless people today than 10 years ago, than 3 years ago everything that can create jobs must be tried. If opening the economy through constitutional change will only create a few thousand jobs, that's a few thousand jobs, but I believe based on evidence elsewhere it will be hundreds of thousands of jobs, possibly millions.

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#### JOB CREATION IS THE ONLY WAY TO SOLVE POVERTY.

President Aquino seemed to have recognized the need to create jobs when he said he wants to create a *Daang Matuwid* (straight path) where the economy is opened up, expanded, jobs created in a fair and honest manner. As we've seen in the past couple of decades Filipino businessmen have done a great job, however their capital is limited, the amount they can do is limited and too few of them capture too much in several key sectors where wider ownership could provide a more competitive environment for better products or services. So I'm at a complete loss to understand the president—if he's correctly reported—as to why he doesn't want to review the constitution, when it fits in with his overall vision.

The president wants proof that foreign investment will benefit Filipinos. He said: *"Then with regards to our constitution, it's important that it serves our interest, to make sure it serves our interest before the interest of foreigners"*. I couldn't agree more. It has been proven incontrovertibly that foreign investment serves the interest of a country's people more than it does the foreigner. The most dramatic example nearby is China. China was a backwater (GDP per capita of \$193 in 1980, the Philippines was a much higher \$685) until it opened up to foreign investment. US\$2 trillion poured in (the Philippines received a measly \$36 billion), it was the trigger to explosive growth, to a GDP per capita today of \$7,784 P.A. or a 3,933% increase from the 1980 level. The Philippine GDP per capita grew by only 278% during the comparable period to reach an unacceptably low \$2,587.

#### THE PRESIDENT'S REASONS FOR RELUCTANCE

1. "The economy is doing well (it is consumption-led, enough jobs aren't being created)"
2. Investment is pouring in "Prove to me we need it." (FDI in the past 18 months \$3.6B, Vietnam \$14.2B).
3. It will distract Congress from passing laws
  - a. It won't, different committee
  - b. This is of equal or higher importance than most proposed laws.
  - c. We have enough laws
4. Congress will open it up to change in the political structure
  - a. He can control Congress
  - b. The public can oppose it through an active internet (social media)
  - c. A parliamentary system would be better anyway

He added: *"Nobody has demonstrated with absolute certainty that if we overhaul the Constitution, we'll have corresponding economic gain,"* Nothing is absolutely certain into the future (except death), but example after example worldwide shows that open economies fare best, their people are better off in an economy. The odds are very high that opening up the economy further will lead to more rapid growth in the Philippines. Noted, respected Philippine economists all support this change (the Foundation for Economic Freedom has come out openly and strongly in support), businessmen support this change (average of 90%) in three surveys we conducted (15 business chambers, Rotary Club of Makati West, and the Wallace Business Forum members, see Annex A). Congress supports this change, it was the first bill filed by the Speaker. The communist or left group that is vocal on issues where its stance opposes free market etc. is against it. That must tell you something. Look at the people that support versus those that oppose and decide which side you'd rather be on.

#### OVER 80% OF BUSINESSMEN WANT AN OPEN CONSTITUTION

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As the members of the highly respected Foundation for Economic Freedom (FEF) said: *"We want our growth transformed from a consumption-driven one to an investment-driven one because only an investment-driven growth will grow jobs and reduce unemployment, increase productive capacity, improve competitiveness, and put the country on a higher plane of sustainable growth,"* They went on to say: *"Timing is right because [Aquino] enjoys a high trust rating and there's no fear he will use Cha-Cha to extend his power,"* *"Moreover, globalization has made liberalizing economic provisions in the Constitution more obvious and urgent."* And this is a point the President may have missed. The high GDP growth is not because of productive, job-creating activities, but consumption. Consumer spending accounts for more than two thirds of Philippine GDP. That is not a sound base for an economy. In the three years Mr. Aquino has been in power unemployment has risen from 2.8 million in 2010 to 3 million today despite GDP growth breaching the 7% mark in 2010 and averaging 6% from 2010 to 2012. And these are official figures, which have redefined a large numbers of jobless out of the labor force. Clearly GDP is not a good indicator of the well-being of a people. And it is the well-being of his people that I'm sure he'd be most concerned about.

**GDP IS NOT A GOOD INDICATOR OF THE WELL-BEING OF A PEOPLE.**

Surely if these experts on studying the economy, who are Filipinos that care for their country, think a more open economy is desirable then they should be listened to.

### FEF WANTS AN OPEN CONSTITUTION

#### BENEFITS OF FDI

- Quality employment creation
- Transfer of technology, skills & know-how
- Managerial capacity is enhanced
- Inflow of capital
- Wider ownership of sectors
- Greater access to world market

The President wants facts to prove constitutional change is necessary. Well the facts are there, opening up an economy leads to rapid growth. Now it may not have been through constitutional change, as in most countries such changes are not needed, it can be done by law or executive fiat, but in the Philippines it is. Which in itself tells you the need to change the constitution—it's out of step with other democracies. The constitution is restricting FDI inflows. There are other factors too to be addressed, oh most are being, but too slowly. And that's the point, opening up the constitution is not a magic wand that solves all, it's just one important factor amongst several that are necessary in an overall opening up and improving of the economy. But it is an important factor and should not be left out.

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In country after country foreign investment has led to much more rapid growth (look at Singapore and South Korea), and a wider ownership of the growth. Exports increase dramatically as the foreigner creates products for their own market that they know so well.

<b>THE OECD AND UNCTAD HAVE EMPHASIZED THE BENEFITS OF AN OPEN CONSTITUTION</b>
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As a well-researched paper says: *“The overall benefits of FDI for developing countries’ economies are well documented. Given the appropriate host-country policies and a basic level of development, a preponderance of studies shows that FDI triggers technology spillovers, assists human capital formation, contributes to international trade integration, helps create a more competitive business environment and enhances enterprise development. All of these contribute to higher economic growth, which is the most potent tool for alleviating poverty in developing countries. Moreover, beyond the strictly economic benefits, FDI may help improve environmental and social conditions in the host country by, for example, transferring ‘cleaner’ technologies and leading to more socially responsible corporate policies.”* (“Foreign Direct Investment for Development, Maximising Benefits, Minimising Costs,” OECD, 2002)

In another portion citing the United Nations Conference on Trade and Development’s Midrand Declaration in 1996, the paper says: *“[T]he Philippines expressly supported the proposition that FDI is a driver of growth. Paragraph 36 of that Declaration states, ‘Foreign direct investment can play a key role in the economic growth and development process. The importance of FDI for development has dramatically increased in recent years. FDI is now considered to be an instrument through which economies are being integrated at the level of production into the globalizing world economy by bringing a package of assets, including capital, technology, managerial capacities and skills, and access to foreign markets. It also stimulates technological capacity-building for production, innovation and entrepreneurship within the larger domestic economy through catalyzing backward and forward linkages.”*

The paper says further: *“Arguing that restrictions on foreign ownership are not a factor in affecting FDI is illogical. If a foreign firm faces a negative list where investment cannot take place or is very restricted, then of course there can be no or only limited investment in those areas, immediately limiting the range of prospects. Additionally, it defies logic to say that lifting restrictions will not open new doors as those doors are then open.”*

There’s been some argument that foreign investment isn’t needed. I haven’t seen any research done that links FDI (Foreign Direct Investment) to economic (measured by GDP) growth, but I don’t think anyone would dispute but that China got rapidly and massively started to rise to number 2 in the world by foreign investment whilst the Philippines has been the slowest growing economy amongst its comparable neighbors, and has attracted the least foreign investment. And has the most foreign ownership restrictions. Surely that alone says it is needed. Or, at the very least is worth the try given the failure to provide enough jobs as the economy is currently structured. What after all do you have to lose.

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Country	GDP Growth Cumulative (1980-2012)	GDP per Capita (\$)		Growth	Total FDI (1980-2012)
		1980	2012	2012 vs 1980	
Singapore	224%	4,913	51,709	953%	\$480.5 billion
Malaysia	197%	1,803	10,432	479%	\$138.8 billion
South Korea	195%	n/a	22,590	-	\$85.4 billion
Indonesia	182%	536	3,557	564%	\$122.4 billion
Thailand	181%	683	5,480	702%	\$130.4 billion
Vietnam	181%	n/a	1,755	-	\$75.2 billion
Philippines	110%	685	2,587	278%	\$36 billion
Japan	70%	9,308	46,720	402%	\$139.3 billion
China	36%	193	7,784	3,933%	\$2 trillion
North Korea	n/a	n/a	1,700	-	\$792 million

Source: World Bank

**CHARTER CHANGE ISN'T UNNECESSARY, AS THE PRESIDENT CLAIMS, IT'S ESSENTIAL.**

The Constitution was written in a far different world, where there was no “one world” but many fiefdoms (countries of independence), where technology was in its infancy. It was a time when national confidence had been destroyed by the Marcoses, and protectionism seemed a reasonable position to take. That is no longer the case. As a June 19, 2013 letter to the President showed ten Filipino business chambers (Annex B) recognized the benefits a more open economy could bring—without threatening their own businesses.

Business wants a more open economy. Congress does too, both Houses expressed their desire for constitutional change in the last Congress. The Speaker has already filed a resolution seeking constitutional change. I fully support his move to open up the economy by amending the Constitution to add the words “unless otherwise provided by law,” and then rapidly pass laws to provide that opening up. Mind you, I'd rather see the restrictive articles fully removed from the Constitution, but political reality tells me the Speaker's approach is the only one with a chance given the President's reluctance. The Senate indicated its support in the last (15<sup>th</sup>) Congress. During the Wallace Business Forum's August 2013 roundtable Senate President Drilon, though less optimistic, proposed that the best way to deal with it is to convince the President they can and will limit the amendments to the economic provisions only.

The very clever suggestion of the Speaker **doesn't change the constitution**, all it does is re-assign the power to change certain articles of the constitution to Congress. If Congress wants to it needed change anything if after review and examination, they decide that the articles as written still apply in today's world.

**THE CONSTITUTION ISN'T CHANGED, IT'S TRANSFERRED TO CONGRESS TO MAKE CHANGES**

**“OR AS OTHERWISE PROVIDED BY LAW”—THE CONGRESS MAKES THE CHANGES**

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This is what virtually all democracies do, they set general principles and policies in the constitution then implement them through specific laws that are suited to the times. In this rapidly changing world this is a very desirable feature.

Nobody disputes that there are some strategic industries that should be protected—all countries have them. But these protections should be by law under general constitutional provisions so they can be changed as circumstances change.

#### SECTORS THAT NEED PROTECTION SHOULD BE PROTECTED BY LAW NOT A CONSTITUTION

So we need to amend the Constitution to allow the economic provisions to be overhauled; they're too inward-looking and out of touch with the 21st-century reality of global interdependence and interrelationships. And they need to adapt to changes in the economic environment—e.g., labor flexibility, information age, etc. As they're currently written, these provisions promote an economic structure that doesn't reflect and best use the strengths of the Philippine economy and its people.

#### THE 1987 CONSTITUTION DOESN'T BEST USE THE STRENGTHS OF THE ECONOMY AND ITS PEOPLE.

The one fundamental change I'd like to see is: GET RID OF THE SPECIFICS. The Constitution is the fundamental document of the land and should set the general policies and philosophies of the country; the details should be defined by law that can change as the world changes. The economic clauses in the present Constitution are far too detailed and restrictive as to belong in a Constitution. Today there are no (economic) borders in the world, except as arbitrarily dictated by a country's leaders. Or, in our case, by an overly restrictive Constitution. The Constitution should establish the general principles and grand objectives that a nation should strive for in a general way that can withstand the passage of time. Congress can then pass laws that can be changed as the world changes. As the needs of the people change. And both are changing rapidly in today's modern technological world.

#### THE CONSTITUTION SHOULD ESTABLISH THE GENERAL PRINCIPLES AND GRAND OBJECTIVES

##### CONSTITUTIONAL REFORMS

Economic Provisions of the Constitution need to be overhauled.

- They're too inward-looking and out of touch with the 21<sup>st</sup> century reality of global interdependence
- They need to adapt to changes in the economic environment, e.g., labor flexibility, information age, etc.
- They promote an economic structure that doesn't best utilize the strengths of the RP economy

The Constitution should set the general policy/philosophy of the nation.  
Law should define the specific limits.

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I believe the current economic provisions are one of the root causes of our economic problems. These restrictive provisions have essentially shaped the country's inward-looking and "nationalistic" economic policies for decades. They are major barriers to economic progress as they have made doing business here costly and limited. And led to regulatory capture by too few companies in some sectors. **Foreign capital is needed to spur business, bring in new technology, provide healthy competition, generate jobs, provide income, and ultimately lift many Filipinos from poverty.**

We need massive job creation. Strictly Philippine investment just can't do it, that's a proven fact as more Filipinos without a job today than a decade ago shows. We need to revive the manufacturing sector to create many of the jobs. Domestic demand for products won't do it, we must internationalize.

#### WE NEED GREATER COMPETITION, WIDER OWNERSHIP OF PUBLIC UTILITIES.

Building of public services can expand much, much more rapidly as more companies become available to provide them. One of my clients would like to help computerize government services (a growing essential) as they have the expertise and experience of elsewhere, but they can't because they can't find a 60% partner. A partner they don't need, except the constitution mandates it.

One argument raised against opening up is the fear that if you allow foreigners to control businesses they'll dominate them, and take all their profits out. They'll gouge the country for their own gain. Not true. The figures from the Business World Top 1,000 Corporations show that in the last two to three years, multinational companies (MNCs) have made an average of about P80 billion annually in profit, but Central Bank figures show that only 30-40 percent of it was remitted overseas during that period. The rest was ploughed back into expansion — creating more jobs for Filipinos.

#### MNC'S RE-INVEST 60-70% OF THEIR EARNINGS BACK INTO THE COUNTRY.

MNCs employ an estimated 1 million Filipinos directly, many, many more when you add the jobs they provide for subcontractors, suppliers, distributors, dealers, retailers, etc. In the BPO sector alone the entry and expansion of more US-based and European-based call centers and other services over the next few years could lead to direct employment by MNCs of up to 2 million Filipinos. And they pay at least 30 percent more than do most local companies.

Over 10 million Filipinos have had to leave their families, separate from their spouses to seek a living overseas. In many, many of those cases that living overseas is working for a foreign company. Wouldn't it be far, far better (and kinder to the family) to bring the companies here?

#### PROTECTIONIST ECONOMIES QUITE SIMPLY DON'T WORK.



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Protectionist economies quite simply don't work, and I challenge those who think they do to give me some examples. I'll give them just one to make my point: Korea. Open South Korea is one of the world's most dynamic countries with a per capita GDP of \$22,590. While protectionist North Korea is one of the world's unmitigated disasters. No one knows its per capita GDP, or even if it has one. Some guesstimates place North Korea's GDP per head at \$1,700 only. But it's the same people, with the same ethnic background. South Korea attracted US\$56 billion in FDI's from 2000 to 2012. North Korea started allowing foreign investment in the mid-1980's, but retained most of its restrictive policies. Despite opening up selected sectors to FDIs, the country of some 24 million people failed to attract any major investment. According to World Bank, NoKor attracted a measly \$560M from 2000 to 2012, accounting for a paltry 1% of South Korea's FDIs during the period.

There is only one closed economy in the world today, North Korea the rest are open or semi-open economies. China is now obviously an open economy, having joined the WTO in 2001. And having taken off dramatically since it opened up. Vietnam is opening up too, and has been competing aggressively for FDI's during the past 5-10 years. In the past 5 it garnered some \$39 billion of FDI, the Philippines only one fourth of that at \$11 billion.

It will soon overtake the Philippines the way it is going. Which all proves that a closed economy is an archaic concept that, quite simply and provably doesn't work today.

*"Simplifying procedures and providing incentives" and "keeping a level playing field" with "a determined push for good governance by the national leadership..." are indeed needed as the president rightly acknowledges. But they aren't sufficient; wider, more dramatic change is needed.*

**OPENING THE ECONOMY BY CONSTITUTIONAL CHANGE  
WILL GET GLOBAL HEADLINES, FIDDLING WITH LAWS WON'T.**

The businessmen of the world need to be jolted into awareness and interest that the Philippines even exists. Fiddling with bits and pieces here and there is too nebulous, too incremental—you don't notice the changes. But a sudden: *"We have fully opened our economy"* brings instant interest. It will get global front page attention: "Here's a country worth looking at" that fiddling with a few laws won't do. CNN will report some good news on the Philippines for a change. The idea of changing laws to create greater openness won't work anyway. There are areas where opening up with issuance of a law can't be done. The constitution is very specific on what is not allowed, so no law can be created that violates the prohibition. So to say change can be done *"...without the need to amend the 1987 constitution"* is just not possible.

**THE IMF IS A DISINTERESTED THIRD PARTY, IT BELIEVES CONSTITUTIONAL CHANGE IS NEEDED**

The IMF Executive Board in its report on consultation with the Philippine government said (and I quote):

*"Unemployment is around 6½ percent—high from a regional perspective—and the poverty rate remains stubbornly elevated. The weak investment climate of poor infrastructure, limited competition due to **tight restrictions on foreign investment and concentrated ownership**, and continued red tape and corruption are seen as contributing factors."*

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The President is trying to fight corruption (a Herculean task if ever there was one), has doubled the infrastructure budget and given importance to PPP, however reducing red tape is still only promised, too little has actually been done, but at least it's being attempted. Opening up the economy with constitutional change though is still being resisted by the President.

The IMF directors went on to say: *"To catalyze private investment, directors encouraged the authorities to **relax limits on foreign ownership**, execute public-private partnership in a transparent manner, and strengthen the medium-term fiscal framework."*

The IMF has nothing to gain by these recommendations (there were more good ones, but not relevant to this discussion), it has no vested self-serving interests. It is a genuinely disinterested, impartial, knowledgeable third party. It believes constitutional change is necessary for faster and, importantly, wider growth of the economy.

<b>AN OPEN ECONOMY WILL BE NEEDED TO JOIN TPP</b>
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In 2011, the broad framework for a Trans-Pacific Partnership (TPP) was developed, which aims to build a high-standard, comprehensive and ambitious agreement that will enhance trade and investment, promote innovation, boost growth and create more jobs in TPP partner countries. Fourteen countries so far are active participants in the TPP, including the U.S. and Asian countries specifically Brunei, Japan, Malaysia, Singapore and Vietnam. The goal is to further expand membership. Negotiations on various issues such as competition, cooperation, E-commerce, labor, cross border and legal issues are making substantial progress as participants are eager to conclude an agreement as soon as possible.

For the Philippines to be eligible to participate in this grand undertaking that is likely to emerge as the world's most dynamic economic bloc it must ease foreign ownership restrictions on various areas of investment. The Philippine must belong to this partnership if it is to grow. But it won't be able to if its constitution is not changed and continues to protect.

### SOME THINGS WE THINK NEED TO BE CHANGED...

PROVISIONS	SALIENT POINTS	PROPOSED CHANGES	REASONS
Art II, Sec 17	Priority to education, Science and Technology, to foster patriotism and nationalism...	Focus on the (educational) development of the individual; Allow foreign schools to establish branches in the Philippines	Education is the best way to lift people from poverty, so make it widely available. And give the widest possible range of choices.
Art II, Sec 19	A self-reliant and independent national economy effectively controlled by Filipinos	Delete	World is becoming increasingly interrelated and interdependent. Even fully open Filipinos will control.
Art XII, Sec 1	Promotion of industrialization ... based on sound agricultural development and agrarian reform	Needs to be re-written or better, just deleted	Industrialization and agricultural development should not be singled out. Other sectors (e.g., services—IT, which hardly existed in 1986) can also provide the development the economy needs.  The Admin can promote without the constitution telling it to.

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Art XII, Sec 2	State may allow dev't of natural resources by Filipinos	Allow majority or even full foreign ownership in the development of natural resources	The huge levels of capital needed and the technical expertise that goes with it are not fully available in the domestic market. As the mining industry began to show until halted by a tax review.
Art XII, Sec 3	Restriction on the amount and type of land that can be owned, and who can own it	Remove restrictions, and allow foreigners to own land to build a factory, office or house for their own use	Amount of land foreigners would own would be small, yet would provide an incentive, and also recognize a fair reciprocity – Filipinos can own land in other countries. Limit it to won use.
Art XII, Sec 9	Establishment of an independent economic and planning agency	Not necessary to be in the Constitution	Organization of the Administration should be decided by the president, with Congress' approval. Other departments are not mandated.
Art XII, Sec 10	At least 60% Filipino ownership in certain areas of investments	Delete and remove any reference to "Preference for Filipinos"	Filipinos do not necessarily protect the National Patrimony better than foreigners. The Admin can control
Art XII, Sec 11	Franchises, etc. reserved to Filipinos or Filipino-owned companies	Allow full foreign ownership	Franchise sector is booming; huge potential for job & revenue generation. Filipinos can more than compete against any foreigner.
Art XII, Sec 12	Trade policy that serves the general welfare	Unnecessary	Simple commercial economics in an open market will ensure this is the case.
Art XII, Sec 14	Practice of professions limited to Filipino citizens	Foreigners should be allowed to practice their professions	Would help accelerate technology transfer and development, create more jobs. Not enough Filipinos in some professions. Other countries allow Filipino professionals to practice.
Art XIII, Sec 3	Promotion of security of tenure of workers... Entitlement of workers to a living wage	Delete Needs to be better defined as a general policy – if in at all	It encourages mediocrity and is anti-worker. Being confused by labor unions with minimum wage.
Art XIII, Sec 4	Mandate to undertake agrarian reform	Revise to allow both large and small plots	Agrarian reform has been a major inhibitor to agricultural dev't; some crops need large land areas for competitive efficiency and low cost.
Art XIV, Sec 6	Filipino as National language	Amend, to stress importance of learning English Preferably to also learn in English (as it was 50 years ago)	English is now the world's lingua franca, other countries are scrambling to learn English
Art XVI, Sec 11 (1)	Mass media ownership limited to Filipinos	Delete Foreign ownership should be allowed	Modern technology has made this restriction redundant – foreign media is already here
Art XVI, Sec 11 (2)	Advertising industry open only to companies with at least 60% Filipino ownership	Delete	Constitutions do not cover advertising period. It should be provided by law –if at all

**SOME ECONOMIC RESTRICTIONS ARE 79 YEARS OLD**

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Some of these provisions weren't written for the 1987 constitution. They were just extracted, with some minor amendments from the 79-year old 1935 constitution. This is the case particularly on constitutional restrictions on land ownership; exploration, development, and utilization of natural resources; and operation and management of public utilities; and ownership of educational institutions. (*see Annex C*).

The dream of many Filipinos is to gain a foreign education to add to what they've learnt here. They dream of going to Harvard, but the cost is prohibitive. Why not bring Harvard here? What it will have to charge will, alone, be enough to make it no threat to local colleges. Anyway, do we want to protect colleges or open up opportunities for students? Foreign colleges can bring research and new technologies to the Philippines, too, an area where we have been particularly weak as a survey ranking universities showed. Indonesia recently passed a law (it does not need constitutional change) to allow foreign ownership of educational establishments. The world has changed, changed dramatically, we cannot be trapped in history.

#### PROTECT COLLEGES FROM COMPETITION OR GIVE STUDENTS THE WIDEST CHOICE

International news is on our LED screens at home, but they can't have an office. International news networks can't operate and invest here because the constitution bans media 100%. A law can't change that. A level playing field, innumerable incentives even good governance are of absolutely no relevance, CNN can't come. Yet I watch it everyday, it's in my home.

Twenty seven years ago, we didn't have cellphones; today, we can't leave the house without them. Imagine if the Constitution had banned mobile communications in the name of protecting national security.

Technology has removed borders. Satellite communications, fiber optic cables, digital technology were just emerging from the labs in 1987. They are a part of our lives today, so we may as well let the foreigners in as they're already in.

Another prohibition that makes no sense is to not allow foreigners to practice their profession. For law, I'd agree. We've got enough lawyers (I'm hesitant to say too many as I might upset some of my lawyer friends—and they might sue me). Why can't a professional practice his profession here? Filipino professionals are excellent. A foreigner is no threat to them they can hold their own against anyone. Just ask all those Filipino professionals who practice their profession in someone else's country. And there's that same damning point: Filipinos can practice in another country, but that country's professionals can't practice here. That's not fair. I suspect if you want Japanese to retire here they'll want Japanese doctors to look after them.

Mind you in this case the Constitution allows enabling laws to make exemptions. I suggest our lawmakers move rapidly (a word they may wish to look up in the dictionary) to pass a law to open up all professions, not just a select few as the move to do this in congress may end up doing. There will not be a sudden flood of foreign professionals I can assure you. But a few gaps where need exists might be filled. And the exchange of expertise and experience could only further improve the already impressive credentials of Filipino professionals.

Where local knowledge is essential, passing a local exam can be a necessary condition. Lawyers, for instance must know local law. But there's little else where local knowledge is needed. All human bodies are pretty much the same (some just look better than others) so as long as a doctor has passed an exam that is recognized in the Philippines he should be able to practice.

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Even if all the wondrous promises of improvement of the investment scene were achieved, it wouldn't matter a foreigner can't operate tollroads, railways, and telecom stations except as a minority partner. The constitution won't allow it, and you can't get around that if you are to operate honestly within the spirit and letter of the constitution. And we certainly need a lot more infrastructure.

#### INABILITY TO OWN LAND IS A DETERRENT TO INVESTMENT.

Maybe a 75-year lease on land seems enough, but would you want to be able to only lease the land for your house? No, you'd want to own it, passionately so. Well, foreigners don't think in some strange foreign way; they want to own, too. Filipinos can, and do, own land in America and almost everywhere else, so why not here, at the very least on a reciprocal basis? For "own use" would be fair enough. The agrarian reform law has destroyed the ability to own agricultural land, so farmers are under no "threat." And if limited to own use for house or factory, the amount of land taken would be infinitesimal.

I'm willing to bet many of those who are against foreign ownership of land have relatives who own land in other countries. So, apart from anything else, it would be only fair to have reciprocity. But that's not so much the point. What is the point is that if we want to achieve more rapid growth, allowing foreigners to own land at least for their own house, office or factory will help achieve that. As it is now, that inability to own land is seen as a deterrent to attracting investment.

#### OWN USE OWNERSHIP OF LAND WON'T TAKE LAND AWAY FROM FILIPINOS.

The preference given to Filipinos in the grant of concessions covering the national economy and patrimony should either be, preferably, deleted or amended to remove the "preference for Filipinos." As the Manila Hotel case so amply demonstrated, Filipinos do not necessarily protect the national patrimony better than foreigners might. But more importantly, distinguishing between Filipinos and foreigners should no longer be an issue in today's modern world. Whoever helps to provide jobs, to increase national wealth should be welcome. Laws can provide whatever specific protection may be necessary.

Not in the economic section, but one area the constitution unreasonably protects is the judiciary, at least as related to business. Philippine courts, particularly the Supreme Court, have almost unlimited discretion to interpret and decide on cases as they see it, too often without being fully informed of the impact on business. Or even understanding the role of business. There have been a number of cases (e.g. SC ruled in 1991 that a naphtha cracker plant should be built in Bataan, as petitioned by a politician who wanted to have the project in his hometown, not in Batangas as the proponents preferred based on their business assessment. They left the country, as they certainly should) where business has been badly hurt to the detriment of society by decisions that didn't appreciate all factors in conducting business.

Nothing could send a more dramatic message than this. *"We have truly opened our country to you to join us in our quest for a better life for our people. Come, help us build a great country".*

The ideal way to review the Constitution is through a constitutional convention. The argument that it costs more and takes more time is true, but we are talking about the Constitution, the fundamental document of the nation. You don't consider the cost, which is small on the national scale of things, anyway.

## THE WALLACE REPORT

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### ...It IS Time to Change the Constitution

#### A CONSTITUENT ASSEMBLY BY BOTH HOUSES IS THE WAY TO GO.

But the more practical way, given political realities, is for Congress as a constituent assembly to do the review, with both chambers voting separately before it goes to a plebiscite of the people. And don't raise this nonsense that it's not clear if both houses must meet jointly (which would make the Senate role meaningless) or separately, and then get together. Not making the distinction clear was an oversight of some not too bright lawyers in the 1986 con-con.

**The constitution should state general principles only and in a very general manner.  
A constitution should be written to last decades, even centuries in a fast-changing world.  
Specifics should be by law or executive action.  
An open society provably works best.**

There's concern that the review would not be restricted to the economic provisions but would shift to the political arena as well, and end up extending the terms of politicians. Maybe, but it may also lead to a serious re-think of the whole system—something that I think is needed. For instance, a parliamentary system would better suit Philippine culture. Having come from one, I think it's a better system, anyway. You don't question, or disagree with, the boss just because he's the boss. Well, I disagree with that. Rising to the top through a political process does not make you a greater expert than everyone else. The fact that you need the president's support if constitutional change is to be effected is a perfect example of this fundamental weakness in a presidential system, Philippine-style. Think about it: Why should you need (as in this system you do) the President's—one man's—support for something to succeed? In a parliamentary system, the majority decides, the prime minister can't override it. That's as it should be. So I wouldn't object if the style of government were included in the review.

#### CONGRESS CAN RESTRICT ITSELF TO REVIEW OF THE ECONOMIC PROVISIONS ONLY.

Whether the president agrees with it or not he shouldn't disagree that bringing it into public debate now after 27 years of phenomenal change in the world would be a healthy thing to do. And there are safeguards, it's no easy task to change the constitution. It doesn't require just the 50% plus one majority other laws need, it requires a 75% agreement in both houses, then 75% of a joint vote. Then a majority of all Filipinos voting in a plebiscite for any change to pass.

Some say, "Not now," it's too open to risk of political machination (to extend terms, for example). But if not now, when? With a President disinterested in a continuance in power—something that's unlikely to be ever repeated—this seems an ideal time. But if it's too controversial and will derail efforts to amend the economic sections only, let's drop it. The President with the support of business and the public can easily control that the political side doesn't get included. He has strong majorities in both Houses. He can dictate (look at the examples in the last congress where he did). Whichever is agreed to—a full review, or just the economic sections—let's do it now. We'll never have a more favorable time. And let's do it through a two-House constituent assembly that focuses on only the economic sections. It's the most feasible option for now.

## **THE WALLACE REPORT**

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**...It IS Time to Change the Constitution**

**THIS IS THE ONLY TIME IT CAN BE DONE.**

It would be good if it could be done this year with a plebiscite at year's end, but holding a plebiscite concurrent with the 2016 elections is an acceptable albeit less attractive, alternative. Either way, as long as it's done. But the president may wish to consider that if done in 2014 he's got almost two years of faster growth to his credit.

He'll leave a country in better shape than if it's delayed to 2016, or worse nothing is done.

**LET'S HAVE A 2-HOUSE CONSTITUENT ASSEMBLY – NOW.**

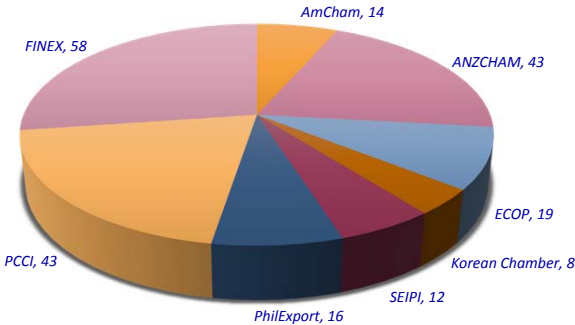
I have been a senior executive in business for over 50 years now. I've served Aussie companies, U.S. multinationals (with a 6-year stint as a regional manager for the Asia Pacific) and run my own successful business for 31 years analyzing the Philippines and its operating environment. I have nearly a hundred CEO's who listen to my comments and advice. So it's just possible I may know a little about what investors find attractive and necessary. They would more than welcome an opening of the Philippine constitution, even if the restrictions wouldn't apply to their business. It would be a strong message of a distinctly different country that would now be worth a look.

**IT'S TIME.**

**Annex A1 – Business Chambers**

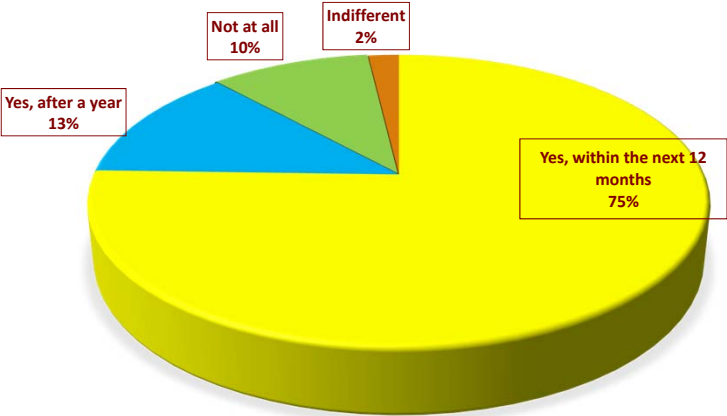
**Constitution Survey**

A total of 213 respondents



**Constitution Survey... 2**

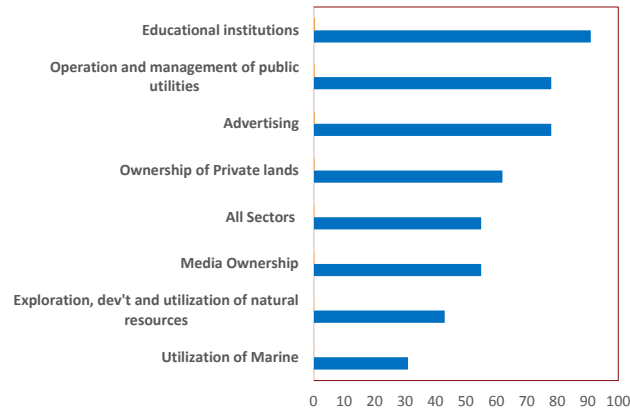
Do you favor amendments to the Constitution's economic provisions





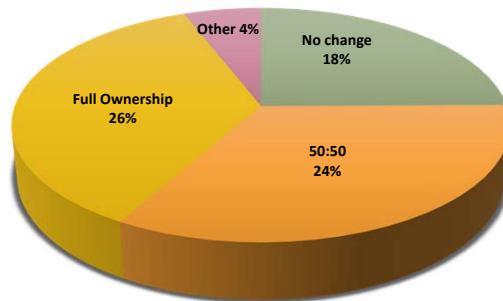
### Constitution Survey... 3

#### Sectors preferred for full foreign ownership



### Constitution Survey... 4

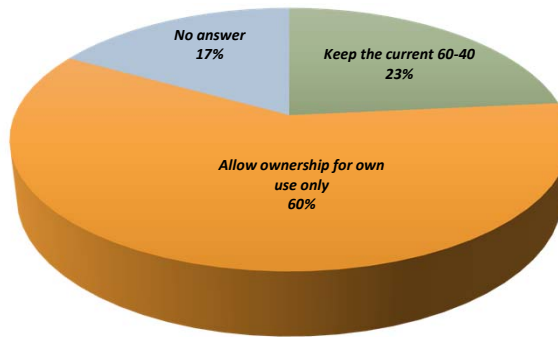
#### Preferred Media Ownership



Note: Currently no foreign ownership allowed

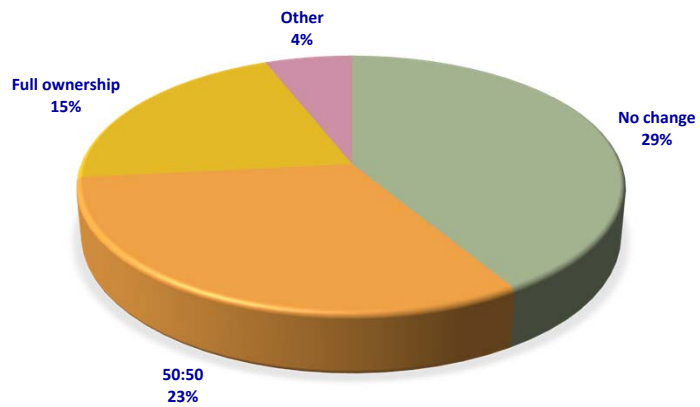
**Constitution Survey... 11**

**On land ownership**



**Constitution Survey... 5**

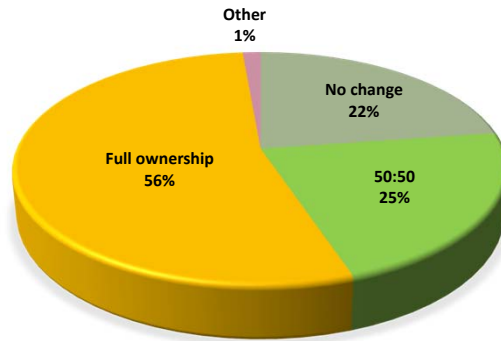
**Preferred ownership in Utilization of Marine Resources**



*Note: Currently no foreign ownership allowed*

## Constitution Survey... 6

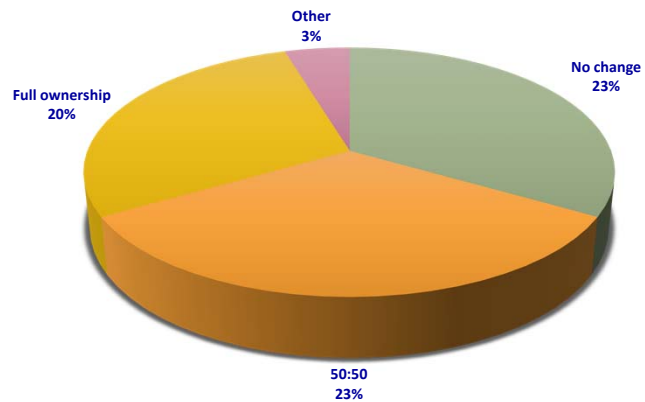
### Preferred ownership in Advertising



Note: 30% foreign ownership currently allowed

## Constitution Survey... 7

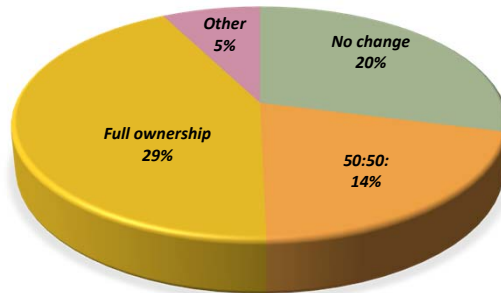
### Preferred ownership in exploration, development and utilization of natural resources



Note: 40% foreign ownership currently allowed

## Constitution Survey... 8

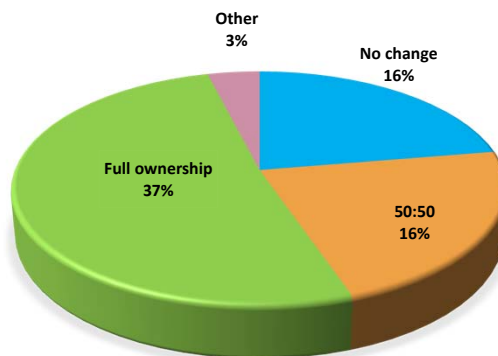
### Preferred Ownership of private lands



Note: 40% foreign ownership currently allowed

## Constitution Survey... 9

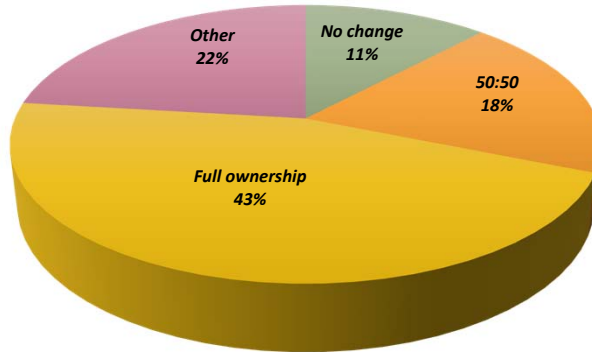
### Preferred ownership in operation and management of public utilities



Note: 40% foreign ownership currently allowed

## Constitution Survey... 10

### Preferred ownership of educational institutions



Note: 40% foreign ownership currently allowed

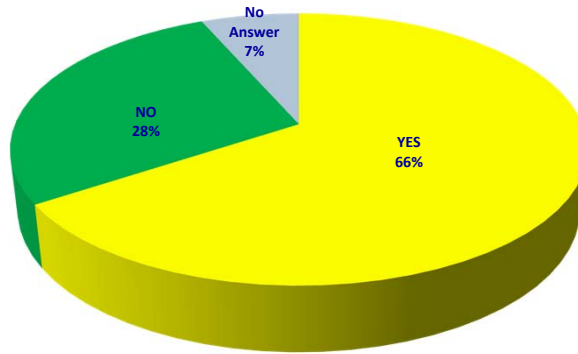
## Constitution Survey... 12

### Should land ownership be on a reciprocal basis (if Filipinos can own land in that country)



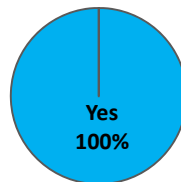
### Constitution Survey... 13

Would you include a review of the political sections of the Constitution?

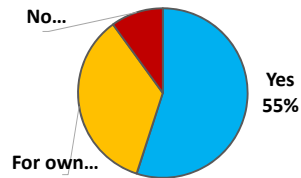


### Annex A2 – WBF Members

Should the economic sections of the Constitution be liberalized?

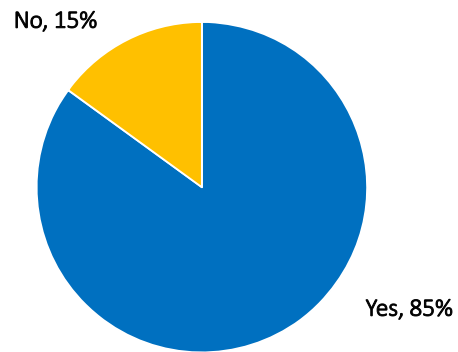


Including land...



**Annex A3 – Rotary Club of Makati West**

**Do you think the constitution should  
be amended to open up the economy?**



## Annex B



FINANCIAL EXECUTIVES INSTITUTE  
OF THE PHILIPPINES



Philippine Chamber of  
Commerce and Industry



SEIPI



MAP  
Management Association of the Philippines



PHILEXPORT

June 19, 2013



**His Excellency Benigno S. Aquino III**

President of the Republic of the Philippines

Manila, Philippines



Your Excellency:

The Philippine Business Groups, including the Joint Foreign Chambers, held a series of dialogues to put together a list of key issues and proposed measures which we strongly believe your Administration should focus on for the remainder of your term. We believe that these issues will generate the greatest impact in achieving our shared vision of inclusive growth through job generation, poverty reduction, and global competitiveness.

Since 2010, the Philippines has seen a resurgence in confidence, both in the economic side and in terms of governance, led by your administration's reforms towards a more transparent, fair and inclusive nation. The impressive economic growth rates, achievement of investment grade ratings, improving national competitiveness, and a palpable optimism and vigilance against corruption within the people are testaments to your leadership and the management of your Cabinet.

In the near term, the upcoming ASEAN Economic Community (AEC) and the Philippines' hosting of the APEC Summit, both occurring in 2015, present a golden opportunity to further institutionalize the initial efforts leading to inclusive growth.

As a crucial and necessary step, and given its current poor condition, strategic **transportation infrastructure projects must be accelerated and implemented at the soonest time.** These include projects that are in the Public-Private Partnership pipeline and other strategic transport projects. Three of these are developing the country's main international gateway, de-clogging the Port of Manila, and connecting NLEX and SLEX.

**Enacting an effective anti-trust law and competition policy** will create a level playing field that will encourage more productive investments, especially in light of impending ASEAN integration in 2015. There are several laws and issuances which do not address the complexities of the current market conditions, and as well result in overlapping jurisdictions and conflicts. Thus, we see the need for a single comprehensive law.

Smuggling continues to derail your efforts on revenue collection and job generation. It is estimated that the government is losing over P100 billion annually from these illegal activities—funds which could have been used for social programs and infrastructure. It is imperative to **overhaul the Bureau of Customs and to create an oversight body with private sector**

AUSTRALIAN-NEW ZEALAND



CANADIAN



EUROPEAN



JAPAN



KOREAN



PAMURI



**representation.** In addition, the Philippines needs **to pass the necessary law to fulfill our commitment to the International Convention on the Simplification and Harmonization of Customs Procedures,** or the Revised Kyoto Convention.

We also strongly urge the **rationalization of existing incentive-giving laws** to further spur investments in crucial and strategic sectors especially those that will help generate jobs and enhance global competitiveness. In this light, we recommend that the grant of incentives be subjected to periodic reviews and time-bound to determine its applicability based on current conditions. On the administrative side, we suggest that the **government simplify procedures, delineate functions and responsibilities, and establish a system for coordination, reporting and monitoring for investment agencies.**

In the first quarter of 2013, the mining and quarrying subsector contracted by 17%. The Philippines remains globally competitive in terms of its geology but failed to take advantage of this due to inconsistency in policies and implementation. We support **retaining the existing Philippine Mining Act, complemented by the implementation of an internationally competitive fiscal regime** to provide a stable regulatory environment that will increase investor confidence. Furthermore, we encourage **ensuring conformity of local ordinances to national policies, as well as respect for vested rights under existing agreements.**

Power continues to be a primary concern for investors. It is thus imperative that **additional power capacity is committed within your term in all three main regions of the country, measures to bring down the cost of power are implemented swiftly, and that a favorable investment climate be provided** to potential energy investors.

We strongly urge your administration **to consider amending the economic provisions in the 1987 Constitution,** which restrict greater private sector participation. Pending such Constitutional amendments we suggest an initial and immediate course of action: **to revise the Foreign Investment Negative List by reducing the list of industries where foreign participation is limited.**

As a final point, we encourage the Executive to work closely with the Judicial and Legislative branches to institute **reforms that would address issues of competence and efficiency in the justice system.** Specifically, we support internal programs that provide training and capacity building, as well as proper compensation to public employees in the judicial system. Further, we express our concern about the seemingly arbitrary issuances and interpretations, the slow disposition of cases, and the negative impact of these to business perception.

Specific recommendations developed by this joint effort are attached for your consideration. In addition, the proposed priorities of each business organization involved are included as well.

Through these measures, the business community is of firm conviction that the Philippines will continue to be among Asia's fast rising economies, while ensuring that such economic and governance gains benefit the majority of our people that are in need the most.

Thank you very much for this opportunity to bring this matter to you, Mr. President, and we indeed look forward to working with your administration towards this common goal.

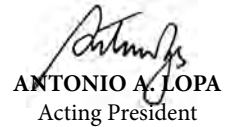
Yours sincerely,



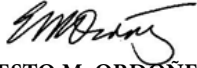
**RAMON R. DEL ROSARIO JR.**  
Chairman  
Makati Business Club



**EDGARDO G. LACSON**  
President  
Employers Confederation of the Philippines



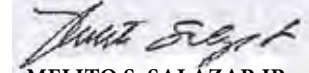
**ANTONIO A. LOPA**  
Acting President  
Philippine Chamber of Commerce & Industry



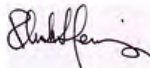
**ERNESTO M. ORDOÑEZ**  
President  
Alyansa Agrikultura



**SERGIO R. ORTIZ-LUIS JR.**  
President & CEO  
Philippine Exporters Confederation



**MELITO S. SALAZAR JR.**  
President  
Management Association of the Philippines



**RHICKE JENNINGS**  
President  
American Chamber of Commerce



**IAN PORTER**  
President  
Australian-New Zealand Chamber  
of Commerce



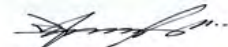
**JULIAN PAYNE**  
President  
Canadian Chamber of Commerce



**MICHAEL RAEUBER**  
President  
European Chamber of Commerce



**TAKASHI ISHIGAMI**  
President  
Japanese Chamber of Commerce



**EUN GAP CHANG**  
President  
Korean Chamber of Commerce



**SHAMEEM QURASHI**  
President  
Philippine Association of Multinational  
Companies Regional Headquarters, Inc

**CC:**

**Executive Secretary Paquito N. Ochoa Jr.**

**Cabinet Secretary Jose Rene D. Almendras**

**Sec. Cesar V. Purisima, Department of Finance**

**Sec. Florencio V. Abad, Department of Budget & Management**

**Sec. Julia R. Abad, Presidential Management Staff**

## Annex C

### Comparative Constitutional Restrictions on land ownership & exploration, development, and utilization of natural resources

1935	1987
<p><b>ARTICLE XIII, Section 1.</b> <i>All agricultural timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and limit of the grant.</i></p> <p><b>ARTICLE XIII, Section 2.</b> <i>No private corporation or association may acquire, lease, or hold public agricultural lands in excess of one thousand and twenty four hectares, nor may any individual acquire such lands by purchase in excess of one hundred and forty four hectares, or by lease in excess of one thousand and twenty four hectares, or by homestead in excess of twenty-four hectares. Lands adapted to grazing, not exceeding two thousand hectares, may be leased to an individual, private corporation, or association.</i></p> <p><b>ARTICLE XIII, Section 3.</b> <i>The Congress may determine by law the size of private agricultural land which individuals, corporations, or associations may acquire and hold, subject to rights existing prior to the enactment of such law.</i></p>	<p><b>Article XII, Section 2.</b> <i>All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens.</i></p> <p><b>Article XII, Section 3.</b> <i>Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.</i></p> <p><i>Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.</i></p> <p><b>Article XII, Section 7.</b> <i>Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.</i></p> <p><b>Article XII, Section 8.</b> <i>Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.</i></p>

1935	1987
<p><b>Article XIII, Section 8.</b> <i>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 other entities organized under the laws of the Philippines sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years.</i></p>	<p><b>Article XII, Section 11.</b> <i>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; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years.</i></p>

**Comparative Constitutional Restrictions on ownership of educational institutions**

1935	1987
<p><b>Article XIII, Section 5.</b> <i>All educational institutions shall be under the supervision of and subject to regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens. All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instruction shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy academic freedom. The State shall create scholarships in arts, science, and letters for specially gifted citizens.</i></p>	<p><b>Article XIV, Section 4.</b> <i>The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.</i></p> <p><i>Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions. The control and administration of educational institutions shall be vested in citizens of the Philippines.</i></p>

Sources: 1935 and 1987 Philippine Constitution