

PUBLIC SERVICES ACT ADVOCACY PAPER 2018



EU - PHILIPPINES
BUSINESS NETWORK

ABOUT EPBN



OUTREACH



SUPPORT SERVICES



ADVOCACY

The EU-Philippines Business Network (EPBN) established in January 2014, is a project co-funded by the European Union and implemented by a consortium of European business organizations based in the Philippines. Led by the European Chamber of Commerce of the Philippines (ECCP), partner chambers 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 Chamber of the Philippines, and Spanish Chamber of Commerce of the Philippines.

The overarching objective of EPBN is to support European companies, especially small-medium enterprises, to increase exports to and investments in the Philippines by facilitating market access and ensuring a level playing field for all companies.

Adopting a threefold approach of outreach, support services and advocacy, EPBN provides a strong support system at every stage of entry to the Philippine market for European businesses. In delivering these services, EPBN cooperates closely with its partner organizations in other Association of South East Asian Nation (ASEAN) countries to provide information on ASEAN as a market, promoting the Philippines as a gateway to the region.



PUBLIC SERVICES ACT ADVOCACY PAPER 2018

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Positions expressed in the advocacy papers are the result of the activities of the 14 Sector Committees working under the EU-Philippines Business Network.

METHODOLOGY

The 2018 edition of the EPBN Advocacy Papers features issues and recommendations formed after extensive discussions between members of the EPBN sector committees, dialogues and meetings with representatives from the Philippine Government, the EU Delegation to the Philippines and other EU national chambers and embassies. The EPBN has also taken into consideration the information gathered from organizing different events, participating in numerous hearings and committee meetings in both chambers of the Philippine Congress, as well as in private sector consultations held by several executive and regulating agencies of the government.

Further, the recommendations stated in each paper were created based on the discussions during the quarterly sector committee meetings, most of which were conducted with a representative from a concerned government agency based on the issues to be discussed. In close cooperation with the sector committee leaders and members, the EPBN secretariat thoroughly analyzed every issue and advocacy recommendation to ensure that they are in line with EU business interests and priorities. Once the secretariat has finalized the first draft of each sector paper, it was then circulated to the Committee members, Market Access Team Meeting for consultation and subsequently, gathered inputs to be included in the final draft of the papers.

The assessment of the status of each recommendation included in 2017 EPBN Advocacy Papers were examined under the following criteria:

Completed/Substantial Progress: Recommended action has either been completed or there has been significant progress towards the realization of the recommendation.

Some Progress: Movement towards realizing the recommendation has been made, but substantial work still needs to be done to fully achieve and complete the proposed measure.

No Progress/Retrogression: Minimal progress or no movement towards attaining the recommended reforms were done, or the status of the issue has worsened and has evolve to an even bigger bottleneck for EU businesses in the former year.

ABOUT THE THEME



EU AND THE PHILIPPINES: Jointly Pursuing Competitiveness for Inclusive Growth

Since its launch in January 2014, the EU-Philippines Business Network (EPBN) has strived to create an attractive investment and trade environment for EU businesses in the Philippines.

This 2018, we look at how the current administration's initiatives and programs in line with its Socioeconomic Agenda and priorities have substantially progressed – Build, Build, Build Program, tax reform, ease of doing business, labor protection furthered through the Executive Order on Contractualization, sustainable development and climate adaptation, and universal healthcare, among many others. In addition, the Philippines' economy is maintaining steady growth, the EU continues to be one of the top trading partner of the Philippines, and the EU-Philippines Partnership Cooperation Agreement has been put into force – a major milestone for the EU-Philippine relations.

With this, the EU-Philippines Business Network (EPBN) is organizing the EU-Philippines Business Summit 2018 with the theme "EU and the Philippines: Jointly Pursuing Competitiveness for Inclusive Growth" on 18 October 2018, at Solaire Resort Hotel, Paranaque. During the Summit, EPBN will hand over the 4th edition of the EPBN Advocacy Papers which contains a wish list of reforms towards a competitive, fair and more inclusive economic environment. We sincerely hope that the EU-Philippine economic ties will be deepened further. Rest assured that European business community will remain as the Philippine government's partner in achieving competitiveness and inclusive growth.

MESSAGE FROM THE AMBASSADOR

H.E. Franz Jessen
Head of Delegation,
Delegation of the European Union of the Philippines



The EU sees trade and investment as part of the answer to challenges faced in the country in terms of inclusive and pro-poor growth. Indeed, the EU and its industries have a positive agenda that is values-based and comes with an open dialogue to ensure nobody is left behind in strengthening its trade relations. It also recognizes the importance of opening new markets that contributes to growth on both ends. This is why the EU has even in times of economic turmoil led global efforts to fight protectionism, and promoted open trade and investment at home and abroad.

The EU economy grew at its fastest rate in 10 years in 2017 at 2.4%. For the first time since 2007, all EU member states saw their economies expand. Robust growth is facilitating further reduction in government deficit now at less than 1% of GDP as well as debt levels and an improvement in labour market conditions with unemployment rate of 7.6% falling to almost the pre-crisis level. More important to our trading partners is the fact that our trade continues to grow strongly resulting to an 8% growth in EU imports and exports of goods to the world.

This shows that the EU economy is competitive, yet open and it will remain so and continue to benefit Philippines' development agenda. Philippines total trade with the EU increased by 16% in 2017 due to the remarkable 32% growth of PH exports to the EU market partly thanks to the increasing utilisation of the GSP+ preferences. Strong growth is particularly seen in sectors benefiting from GSP+ trade preferences, such as agri-food products. On top of this, sizable portion of all newly reported approved investments in the Philippines were sourced from the EU – contributing to the creation of more quality jobs.

The economic expansion in Europe is set to continue at a solid pace in 2018 and next, supporting further job creation. However, the EU also recognizes risks on the horizon. That is why the EU is working hard to make its economy even more resilient through many useful and necessary reforms – necessary to further improve productivity and investment as well as to ensure a more inclusive growth model.

I look forward continuing to work together to the benefit of effective value chains and supply chains so that the Philippines can take advantage of its position in the region and of its competitive skills and people. I warmly welcome this advocacy book as a good basis of our continued collaboration in our pursuit of enhancing and strengthening EU-Philippine trade and commercial relations.

MESSAGE FROM THE STEERING COMMITTEE CHAIRMAN

Mr. Guenter Taus
EPBN Steering Committee Chairman



The EU-Philippines Business Network (EPBN) is pleased to present to you the 4th edition of its Advocacy papers with the theme, “EU and the Philippines: Jointly Pursuing Competitiveness.” Pursuing competitiveness and sustainable growth has been at the front and center of our agenda.

The European business community has always looked towards close cooperation with the Philippine Government to achieve mutually beneficial goals, which strengthen the country’s investment and trade environment in support of increased competitiveness and long term, sustainable and inclusive growth.

Several positive reforms in 2018 were the Ease of Doing Business Act, the Build Build Build Program, the implementation of Universal Healthcare and the issuance of Memorandum Order No. 16, which eases restrictions on certain investment areas.

Despite these improvements, there are still several key barriers stifling EU-Philippine trade and investment. In particular, we look forward to passage of the Amendments to the Public Services Act of 1936 into law. These Amendments result in an open market coupled with stronger regulations which in turn will increase the quality of public services while lowering costs.

Moreover, we advocate for the reassessment of the licensing requirements from the Philippine Contractors Accreditation Board. A level playing field in infrastructure paves the path for the realization of the “Golden Age of Infrastructure” envisioned by President Duterte.

Finally, we strongly urge the government to consider the massive economic growth and job creation that fiscal incentives under the Philippine Export Zone Authority have brought about. An ambitious corporate income tax reduction in addition to other incentives will aid the Philippine in competing with other countries in the region.

These amendments would be a game-changer for the Philippines and they assist in EU investments contributing to Philippine development. It is in this context that the EPBN presents its recommendations towards a competitive, fair and more inclusive economic environment for the benefit of the Philippines and the EU.



MALACAÑAN PALACE
MANILA



MESSAGE

My warmest greetings to the **EU-Philippines Business Network (EPBN)** as it publishes the newest edition of its **Advocacy Papers**.

The Philippine government welcomes this publication which contains the EPBN's wishlist of reforms in the areas of economic liberalization, global competitiveness and other topics. Rest assured that this administration and its team of economic managers will look closely into the suggestions of the network, especially if it will help us in shaping a much stronger and more resilient Philippine economy.

We also appreciate the European business community's recognition of this administration's strong resolve in ensuring ease of doing business, sustaining infrastructure development and uplifting Filipino lives. It is our hope that the network will remain our steadfast partner in achieving mutually beneficial goals, especially in strengthening the country's competitiveness, investment and trade environment, and long term, sustainable and inclusive growth.

I wish you success in your endeavors.

RODRIGO ROA DUTERTE

MANILA
August 2018

WHERE ARE WE NOW?

THE PHILIPPINES: A MACROECONOMIC OVERVIEW

The Philippines has been recently dubbed as one of the fastest growing economies in Southeast Asia. With a 6.7% GDP growth in 2017, it is among the highest in the region next to China (6.9%) and Vietnam (6.8%).¹ ADB, IMF and the World Bank maintain their bullish forecast on the Philippine economy for 2018 and 2019,^{2,3,4} which is largely attributed to its strong economic performance in 2017 and its growth prospects. The current administration's commitment to increase public infrastructure spending as well as rising domestic demand, remittances, and employment are also expected to heavily fuel the economy.

On the local scene, Services remain to cover most of the GDP with 57.46%, followed by Industry at 34.01%, and Agriculture at 8.53%.⁵ From a dip in last year's agriculture sector, 2017 has posted a 3.9% growth. Overseas Filipino Workers (OFW) remittances, household consumption, exports of goods and services, and manufacturing posted growth,⁶ while unemployment rate increased to 5.7%.⁷

As for investments, the Bangko Sentral ng Pilipinas reports that foreign direct investment net inflows reached USD 10 billion in 2017, showing a 21.4% increase from the previous year.⁸ On the other hand, 2017 posted a negative trade balance amounting to USD 27,380 million.⁹

While global competitiveness, as evaluated by the World Economic Forum, improved by a notch in ranking,¹⁰ it is imperative that the Philippines continuously builds on its current successes for competitiveness and inclusive growth.

Indeed, the Philippines has made great strides in various aspects; however, a lot of work still needs to be done. A number of important measures, including **amendments to the Public Services Act, Retail Trade Liberalization Act, and amendments to restrictive economic provisions of the Constitution**, have yet to materialize. Furthermore, boosting the Philippine manufacturing sector, deepening the ASEAN integration, and enhancing customs facilitation are all crucial for the Philippine economy to step up in the global arena.

1 WorldBank. (2018) *Philippines Economic Update: Investing In The Future April 2018*. Retrieved 5 September 2018 from <http://pubdocs.worldbank.org/en/280741523838376587/Philippines-Economic-Update-April-15-2018-final.pdf>.

2 ADB. (2018). *Philippine GDP expected to grow by 6.8% in 2018 and by 6.9% in 2019*. *ADB Report*. Retrieved 5 September 2018 from <http://www.adb.org/countries/philippines/economy>.

3 WorldBank. (2018). *Philippines Growth to Remain Strong Despite Global Uncertainties*. Retrieved 5 September 2018 from <https://www.worldbank.org/en/news/press-release/2018/07/13/philippines-growth-to-remain-strong-despite-global-uncertainty>.

4 Reuters. (2018). *IMF sees the Philippines' GDP growth at 6.7% percent in 2018 and 2019*. Retrieved 5 September 2018 from <https://www.reuters.com/article/us-philippines-economy-imf/imf-sees-philippines-gdp-growth-at-67-percent-in-2018-2019-idUSKBN1KF0A2>.

5 Philippine Statistical Authority. (2018). Retrieved from 3 September 2018 <http://psa.gov.ph/regional-accounts/grdp/highlights>.

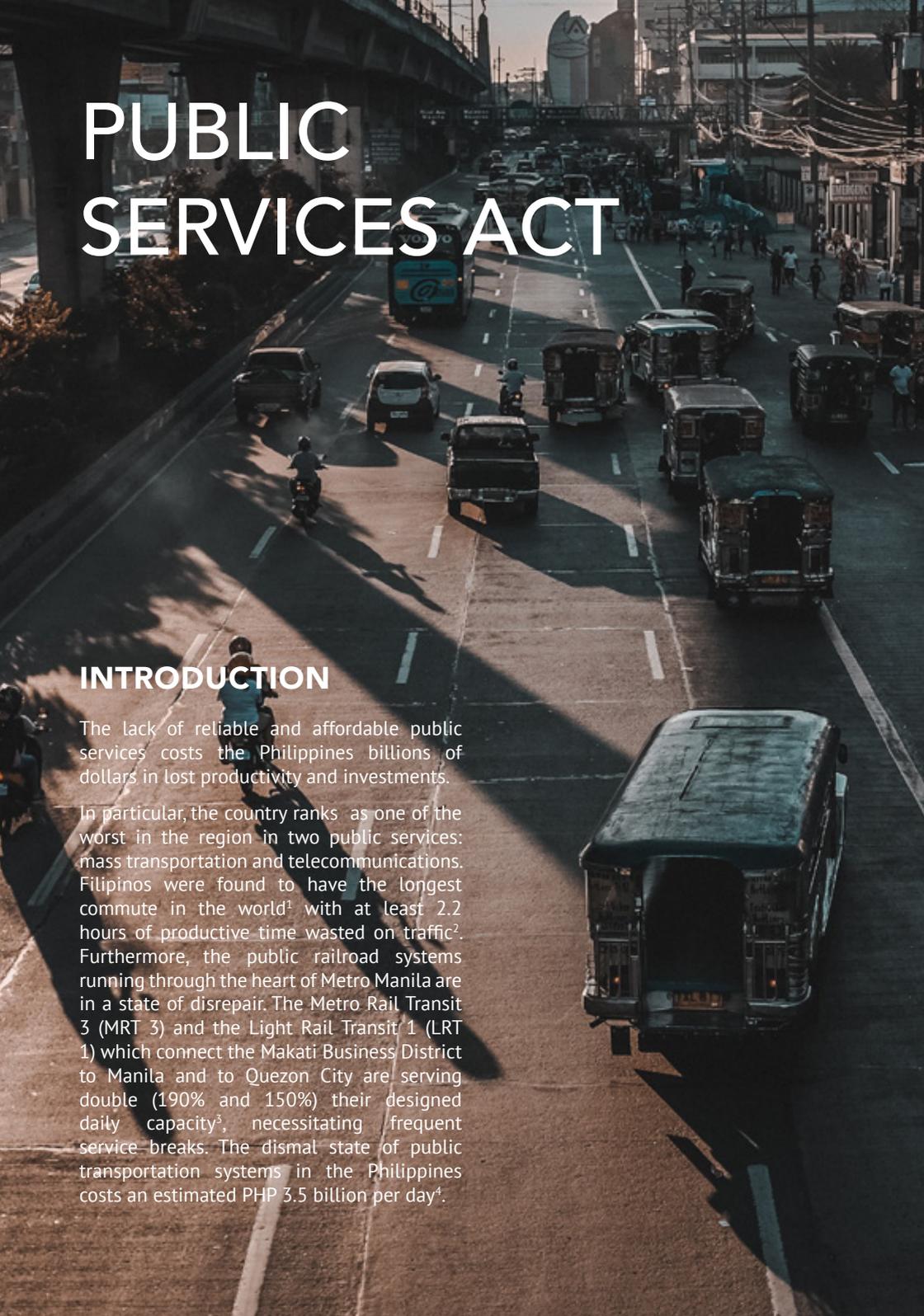
6 Ibid.

7 Philippine Statistics Authority. (2017). *2017 Annual Labor and Employment Status*. Retrieved 3 September 2018 from <http://psa.gov.ph/content/2017-annual-labor-and-employment-status>

8 BSP. (2018). *Full-Year 2017 FDI Hit All-Time High of US\$10 Billion*. Bangko Sentral ng Pilipinas. Retrieved 4 September 2018 from <http://www.bsp.gov.ph/publications/media.asp?id=4630>.

9 BSP. (2018). *Selected Economic Indicators*. Retrieved 4 September 2018 from http://www.bsp.gov.ph/statistics/spei_new/tab48_sas.htm.

10 National Competitiveness Council. June 2018. *Global Competitiveness Report Card*. Retrieved 20 June 2018.



PUBLIC SERVICES ACT

INTRODUCTION

The lack of reliable and affordable public services costs the Philippines billions of dollars in lost productivity and investments.

In particular, the country ranks as one of the worst in the region in two public services: mass transportation and telecommunications. Filipinos were found to have the longest commute in the world¹ with at least 2.2 hours of productive time wasted on traffic². Furthermore, the public railroad systems running through the heart of Metro Manila are in a state of disrepair. The Metro Rail Transit 3 (MRT 3) and the Light Rail Transit 1 (LRT 1) which connect the Makati Business District to Manila and to Quezon City are serving double (190% and 150%) their designed daily capacity³, necessitating frequent service breaks. The dismal state of public transportation systems in the Philippines costs an estimated PHP 3.5 billion per day⁴.

Apart from the transportation sector, telecommunications services are also one of the slowest and most expensive in the region. The Philippines has one of the slowest internet connections in the world with a download speed that is half the global average.⁵ The country also has one of the most expensive internet connectivity plans compared to other Asian countries with similar economies⁶. Telecommunications coverage is also low at 58.83% despite the Philippines' status as the "Social Media Capital" of the world⁷. A lack of healthy competition is most apparent in the telecommunications sector, as only two major players cater to a country of 107 million people.

Problems in services are caused by the expansive definition of "public services" in the Philippine Public Services Act (PSA) of 1936, which triggers competition restrictions in the 1986 Constitution. The term "public utility" was used in Act Nos. 2307, 269 and 3108. It was then interchangeably used with "public service" in a later law (Commonwealth Act CA No. 146) and subsequently abandoned and replaced with "public service" in CA No. 454. The subsequent enactments, RA No. 1270 and RA No. 2677, also only defined "public service". The Supreme Court has thereafter interpreted "public utility" to be "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" and explained that the term implies public use and service.⁸

Using "public service" interchangeably with "public utility" called for the application of foreign ownership restrictions imposed by the Constitution in the activities enumerated under Section 13(b) of the PSA. This limits the operation of public utility and/or public services to Filipino citizens or entities with at least 60% Filipino ownership. Further development has also been hampered by the concept of public utilities as including both services and physical infrastructure.

The lack of competition creates a bottleneck towards reliable and affordable public services. The telecommunications sector is a remarkable example; the definition of wire or wireless telecommunication systems as a public utility has created a saturated market where only two major players profit, shrinking the range of prices for telecommunication services. Thus, the cost and quality of services of the sector remains the least competitive in Association of Southeast Asian Nations (ASEAN).

1 Waze. (2016). Global Driver Satisfaction Index.

2 Boston Consulting Group. (2017). Unlocking Cite: The impact of ridesharing in Southeast Asia and beyond.

3 From the MRT 3 website, it has a designed maximum capacity of Maximum capacity of approximately 270,000 commuters daily, it currently services approximately 500,00 commuters daily; From LRT 1 manufacturer's website, it has a designed maximum capacity of 300,000 commuters daily, it currently service approximately 450,000 commuters daily

4 Japan International Cooperation Agency (2018). 36th Joint Meeting of the Japan-Philippines Economic Cooperation Committees.

5 OpenSignal. (2016). The State of LTE

6 OpenSignal. (2016). The State of LTE .

7 Ibid.

8 National Power Corporation v CA, G.R. No. 112702 (26/09/1997). JG Summit Holdings, Inc. v Court of Appeals, G.R. No. 124293, September 24, 2003.

RECENT REFORMS AND INDUSTRY DEVELOPMENTS

Amending the Public Services Act (PSA) under House Bill 05828⁹ and Senate Bill 1754¹⁰ will open key sectors to competition and strengthen the regulatory and legal framework of public services.

The Amendments to the PSA will reduce ambiguities in the Philippine law by clearly delineating between “public services” and “public utilities”. Public Utilities are considered to be public services when the following criteria are met:

- The service regularly supplies and directly transmits to the public through a network a commodity or service of public consequence;
- The service is necessary to the public and a natural monopoly that needs to be regulated when the common good so requires;
- The service is necessary for the maintenance of life and occupation of residents and;
- The commodity or service is obligated to provide adequate service to the public on demand.

Following the definition above, House Bill 05828¹¹ and Senate Bill 1754¹² provide an exclusive list of “public utilities” to include only the following: transmission of electricity¹³, distribution of electricity¹⁴; and water works and sewerage systems¹⁵. The Amendments to the PSA recognize the changing landscape of public services and mandate NEDA and the Philippine Competition Commission (PCC) to recommend changes to the list of public utilities if necessary.

⁹ An Act Providing for the Definition of Public Utility, further amending for the purpose Commonwealth Act No. 146, otherwise known as the “Public Service Act”, As Amended, http://www.congress.gov.ph/legisdocs/first_17/CR00295.pdf accessed on 18 June 2018.

¹⁰ An Act Amending Commonwealth Act No. 146, otherwise known as the Public Service Act, As Amended, and for other Purposes, <https://www.senate.gov.ph/lisdata/27631238961.pdf> Accessed on 18 June 2018.

¹¹ An Act Providing for the Definition of Public Utility, further amending for the purpose Commonwealth Act No. 146, otherwise known as the “Public Service Act”, As Amended, http://www.congress.gov.ph/legisdocs/first_17/CR00295.pdf Accessed on 18 June 2018.

¹² An Act Amending Commonwealth Act No. 146, otherwise known as the Public Service Act, As Amended, and for other Purposes, <https://www.senate.gov.ph/lisdata/27631238961.pdf> Accessed on 18 June 2018.

¹³ As per SB 1754, the transmission of electricity “refers to the conveyance of electricity through the high voltage backbone system”

¹⁴ As per SB 1754, the distribution of electricity “refers to the conveyance of electric power by a distribution utility through its distribution system pursuant to the provisions”

¹⁵ As per SB 1754, water works and sewerage systems “refers to the entire water systems to ensure an uninterrupted and adequate supply and distribution of portable water for domestic and other purposes and the maintenance of sewerage systems”

Apart from reducing ambiguities in the law, this enumeration of “public utilities” and “public services” liberalizes the public services sector by effectively removing the restriction on foreign ownership and divestment provided under Section 11, Article XII of the Constitution on all other industries and activities enumerated as “public services” in the PSA. This opens railroads, telecommunications, and common carriers sectors to more players, thereby fostering competition.

HB 5828 was classified as a priority bill by the Duterte administration and has passed the third and final reading in the House of Representatives. On the other hand, the Senate Committee on Public Services, Economic Affairs and Finance has endorsed its senate counterpart bill, SB No. 1754 for plenary deliberations via joint Committee Report No. 301, published on May 19, 2018. This Bill was sponsored by the Senate Committee on Public Services Chairman, Sen. Grace Poe. The bill is currently pending in second reading for interpellation and amendments since March 20, 2018 and was moved from the Calendar for Ordinary Business to the Calendar for Special Orders for priority action.



EPBN ADVOCACY

The EU-Philippines Business Network strongly encourages the Philippine government to pass the Public Services Act Amendments. Given that the Philippines has the most expensive rate of electricity in Southeast Asia¹⁶, transmission and distribution of electricity should also be opened up for competition. This will provide Filipino consumers with more options for cheaper and more dependable service. The balance of an open market and strong regulation created by these amendments is expected to lead to better quality services and would contribute to EU trade benefiting Philippine development.

Competition in public services sectors would benefit Filipinos since it results in better quality services. Results in a study by the World Trade Organization (WTO) and the European Competitive Telecommunications Association (ECTA) show that in competitive markets where non-discrimination is strongly enforced, citizens and business get better public services at lower prices¹⁷. By contrast, countries with poor competition and poor enforcement of regulations, similar to the Philippines, fall behind the average in terms of quality and usage of public services¹⁸.

In addition to benefits for Filipinos, liberalization creates advantages for established players in public services since it allows them to access foreign capital. With the current foreign ownership restrictions, firms in public services have limited options in procuring foreign capital. Local banks and partners, on the other hand, remain hesitant or unable to fund the necessary infrastructure, creating an impasse in which public services companies need foreign capital to improve services but are handicapped by the current foreign ownership restrictions. This is clearly visible in the telecommunications sector where new cell sites and fiber optic cables have to be built in order to improve connectivity and quality of services. In the previous EPBN Advocacy Forum for Public Services¹⁹, market leaders in telecommunications named foreign restrictions in the Philippine market as one of the reasons for underperformance.

16 Department of Energy. Philippine Electricity Rates Still Highest in Southeast Asia, 25 August 2017. <https://www.doe.gov.ph/energists/index.php/83-categorised/electric-power-industry/12561-philippine-electricity-rates-still-highest-in-southeast-asia> Accessed on 15 September 2018.

17 European Competitive Telecommunications Association. (2010). ECTA Regulatory Scorecard 2009.

18 Ibid.

19 Euro-PH Advocacy Forum on Public Services Act held at Makati Shangri-la on 21 September 2017

Furthermore, the Amendments to the Public Services Act also support operations of administrative agencies by strengthening the regulatory framework of public services through the following:

- **Envisioning a clear role of administrative agencies** in determining the list of public utilities. This leaves policy space and discretion to the expertise of the bureaucracy without unnecessarily restricting foreign investments.
- **Adjusting applicable penalties and fees.** The Amendments institute higher penalties for failure to comply with the terms and conditions of any certificate, order, decision or regulation of the regulating agencies.
- **Applying a mechanism for fixing rates** of public services and public utilities based on a reasonable rate of return. HB 05828 and SB 1754 determine “reasonable rate of return” for public utility providers using a changing formula involving real time fluctuations, inflation, and other factors. This formula for “reasonable rate of return” replaces the fixed rate of return set by the Supreme Court at 12%²⁰.
- **Recognizing the transfer of jurisdiction** from the Public Services Commission to various administrative agencies such as DOTr, LTFRB, LTO. This recognition provides a legal basis for administrative agencies to enforce the law.

Altogether, the adjustment of applicable fees, the new mechanism for fixing rates, and the legal transfer of jurisdiction to administrative agencies are expected to increase the enforcing power of regulatory bodies to prevent abuses.



EPBN INTERVENTIONS

To increase investment in the Philippines and thus increase jobs, liberalization and regulatory reform are needed to bring competition and innovation to public services. Amending the Public Services Act to increase competition and increase enforcement by regulatory bodies will result in a balance of an open market and strong regulation, which is expected to lead to better quality services.

In this regard, EPBN actively advocates for the passage of SB No. 1754. To this end, EPBN has engaged in the following activities:

- Organized the Euro-PH Advocacy Forum: Public Services Act last September 21, 2017;
- Released a series of position papers and media statements calling for the amendments to the Public Service Act;
- Attended the Senate hearing on the Public Services Act last February 15, 2018;
- Wrote a letter in May 2018 to the Office of Executive Secretary Salvador C. Medialdea requesting that the passage of SB No. 1754 be certified as urgent; and
- Wrote a letter in May 2018 to President Rodrigo Duterte requesting that the passage of SB No. 1754 be certified as urgent.



ASSESSMENT OF RECOMMENDATIONS

Advocacy	Recommendations	Completed	Substantial Progress
<p>Amendment of the Public Service Act of 1936</p>	<p>Amend the Public Service Act of 1936 by enumerating what constitutes “public utilities” which falls under the restriction of Section 11, Article XII of the Constitution.</p>		<p>HB 05828 was classified as a priority bill for the Duterte administration and has passed the third and final reading in the House of Representatives. Its counterpart bill, SB 1754 was endorsed to plenary discussion.</p>

Some Progress	No Progress	Retgression



EU-PHILIPPINES BUSINESS NETWORK



Unit 1903, 19th Flr., Philippine AXA Life Center Bldg.,
Sen. Gil Puyat Ave. cor. Tindalo Street,
Makati City, Metro Manila, Philippines, 1200



+63 (2) 845 1324



info@epbn.ph



www.epbn.ph



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