Navigating the New Landscape: Amendments to the Philippine Public Service Act and Their Impact on Ownership of Public Services

1. Executive Summary

The Philippine Public Service Act (PSA), originally Commonwealth Act No. 146 enacted in 1936, has for decades provided the foundational legal framework for the regulation of public services in the nation.[1] A significant overhaul of this framework occurred with the enactment of Republic Act No. 11659 (RA 11659) on March 21, 2022. This amendatory law introduces comprehensive changes primarily aimed at modernizing the regulatory environment, most notably by substantially narrowing the definition of "public utility" and, consequently, liberalizing foreign ownership restrictions in numerous economic sectors.[1]

The core amendments under RA 11659 revolve around a reclassification of services. The law now provides an exclusive list of what constitutes a "public utility," thereby removing many industries from the purview of the 1987 Philippine Constitution's 60% Filipino ownership requirement.[1] This reclassification renders these sectors "public services," potentially opening them to 100% foreign ownership. The explicit goal is to attract greater foreign investment, foster competition, and improve the quality and affordability of services.[6] Alongside this liberalization, RA 11659 introduces the concept of "critical infrastructure," a new category of public services subject to specific foreign ownership limitations (generally a 50% cap, waivable if reciprocity is accorded by the foreign investor's country) and robust national security safeguards.[2]

These amendments signify a pivotal policy shift towards economic liberalization, apparently driven by a long-perceived need to attract substantial foreign capital for infrastructure development and to enhance the efficiency and competitiveness of essential services. This move, however, is carefully counterbalanced by an explicit recognition of national security imperatives. The resulting legal framework is thus multi-layered, seeking to harness the benefits of foreign investment while retaining state control over genuinely strategic assets and providing mechanisms to vet investments that may pose risks to national security. The law reflects an attempt by the Philippine government to adapt an 85-year-old statute [3] to the demands of a globalized economy and the pressing need for infrastructure modernization, while simultaneously addressing contemporary concerns about the security implications of foreign control in vital sectors.

2. The Foundation: Commonwealth Act No. 146 and Traditional Ownership

Limitations

Commonwealth Act No. 146 (CA 146), enacted in 1936, served as the cornerstone for the regulation of public services in the Philippines for over eight decades.[1] Under this original Public Service Act, the term "public service" was defined broadly, encompassing a wide array of industries. These included common carriers (land, water, and air), telecommunications, broadcasting, gas, electric power, water supply, and other similar services offered to the public for compensation.[1] Notably, CA 146 did not draw a sharp statutory distinction between "public service" and "public utility"; the terms were often used interchangeably.[3] This lack of precise differentiation, coupled with subsequent judicial interpretations, resulted in most entities engaged in public service activities being subjected to the more stringent regulatory regime and ownership restrictions applicable to "public utilities".[3]

A critical element of this regulatory regime was the constitutional limitation on foreign ownership. Article XII, Section 11 of the 1987 Philippine Constitution unequivocally states that no franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least 60% of whose capital is owned by such citizens.[3] This "60-40 rule" was a fundamental tenet of Philippine national economic policy, designed to ensure that control over services deemed essential to the public welfare and national interest remained in Filipino hands.

To enforce these regulations, CA 146 established the Public Service Commission (PSC).[12] The PSC was vested with extensive powers, including general supervision and control over all public services, the authority to issue Certificates of Public Convenience (and Necessity), the power to fix and determine just and reasonable rates, and the mandate to promulgate rules and regulations concerning service standards.[1] Over time, the functions of the PSC were decentralized and transferred to various specialized administrative agencies corresponding to different sectors, such as energy, transportation, and communications.[1]

The broad and often ambiguous application of the "public utility" concept under the old PSA, combined with the strict 60-40 constitutional ownership cap, was widely perceived as a significant impediment to foreign investment in many sectors. Capital-intensive industries, such as telecommunications and transportation infrastructure, which could have substantially benefited from foreign capital, technology, and expertise, faced considerable entry barriers. This "regulatory risk," as termed by the Senate Economic Planning Office [11], likely discouraged foreign investors seeking controlling stakes or substantial participation, contributing to underinvestment, limited competition, and, in some instances, suboptimal service quality and coverage in these critical areas. The amendments introduced by RA 11659 were, in large part, a response to these long-standing concerns.

3. Transformative Changes: Republic Act No. 11659 – Amending the Public Service Act

Republic Act No. 11659 was signed into law on March 21, 2022, heralding a new era for the regulation of public services in the Philippines. The declared policy behind these amendments is to encourage private enterprise, expand the base of investment in the country, and ultimately provide efficient, reliable, and affordable basic services to all citizens.[1]

Core Amendment: Redefining "Public Utility"

The most fundamental change introduced by RA 11659 is the drastic narrowing of the definition of "public utility." Instead of the broad, encompassing interpretation under the old regime, the amended law now provides an exclusive, enumerated list of services that are to be considered public utilities.[1] These are specifically:

- Distribution of Electricity;
- Transmission of Electricity;
- Petroleum and petroleum products pipeline transmission systems;
- Water pipeline distribution systems and wastewater pipeline systems, including sewerage pipeline systems;
- Seaports; and
- Public Utility Vehicles (PUVs).[2]

Crucially, the law explicitly states that "no other person shall be deemed a public utility unless otherwise subsequently provided by law".[19] For these enumerated public utilities, the constitutional 60% Filipino ownership requirement, as mandated by Article XII, Section 11 of the Constitution, remains fully applicable and unchanged.[2]

The following table provides a comparative overview of how key sectors are treated with respect to their classification and foreign ownership limits before and after the enactment of RA 11659:

Table 1: Evolution of "Public Utility" Definition and Foreign Ownership Limits

Sector	Status & Foreign Ownership Limit under CA 146 (pre-RA 11659)	Status & Foreign Ownership Limit under RA 11659
Telecommunications	Generally considered Public Utility; 60% Filipino ownership required [3]	Reclassified as Public Service; Generally open to 100% foreign ownership, but designated Critical Infrastructure (subject to 50% cap unless reciprocity, and national security review) [4]
Airlines/Air Carriers	Generally considered Public Utility; 60% Filipino ownership required [3]	Reclassified as Public Service; Generally open to 100% foreign ownership [1]
Railways	Generally considered Public Utility; 60% Filipino ownership required [3]	Reclassified as Public Service; Generally open to 100% foreign ownership [1]
Expressways & Tollways	Generally considered Public Utility; 60% Filipino ownership required [11]	Reclassified as Public Service; Generally open to 100% foreign ownership [5]
Shipping (Domestic)	Generally considered Public Utility; 60% Filipino ownership required [3]	Reclassified as Public Service; Generally open to 100% foreign ownership [4]
Distribution of Electricity	Public Utility; 60% Filipino ownership required [3]	Remains Public Utility; 60% Filipino ownership required [2]
Transmission of Electricity	Public Utility; 60% Filipino ownership required [3]	Remains Public Utility; 60% Filipino ownership required [2]
Water Pipeline Distribution Systems and Wastewater/Sewerage	Public Utility; 60% Filipino ownership required [3]	Remains Public Utility; 60% Filipino ownership required [2]
Seaports	Generally considered Public Utility; 60% Filipino ownership required [3]	Remains Public Utility; 60% Filipino ownership required [2]

Public Utility Vehicles (PUVs)	Public Utility; 60% Filipino ownership required [3]	Remains Public Utility; 60% Filipino ownership required [2] (Note: TNVS excluded from PUV definition [36])

This legislative re-engineering of what constitutes a "public utility" is central to RA 11659. By providing a narrow, statutory definition, Congress has effectively altered the scope of the 60-40 constitutional limitation on foreign ownership, achieving a significant degree of economic liberalization for many sectors without resorting to the more complex process of constitutional amendment. This approach, however, forms the very basis of the legal challenges questioning the law's constitutionality, as it touches upon the legislature's power to define terms that have profound constitutional implications and potentially alters the established understanding of national patrimony provisions.

Liberalization of Foreign Ownership in "Public Services"

As a direct consequence of the narrowed definition of "public utility," numerous sectors previously subject to the 60-40 ownership rule are now classified merely as "public services".[1] These reclassified public services are now, in principle, open to up to 100% foreign ownership, subject to applicable laws and the specific regulations pertaining to "critical infrastructure" discussed below. Key examples of such liberalized sectors include telecommunications, airlines/air carriers, railways, expressways and tollways, and domestic shipping.

"Critical Infrastructure": A New Category with Specific Rules

RA 11659 introduces a new and significant regulatory category: "critical infrastructure." This is defined as any public service that owns, uses, or operates systems and assets, whether physical or virtual, so vital to the Republic of the Philippines that their incapacity or destruction would have a detrimental impact on national security.[2]

Telecommunications services are explicitly classified as critical infrastructure under the law.[9] Furthermore, the President of the Philippines, upon the recommendation of the National Economic and Development Authority (NEDA), may declare other public services as critical infrastructure through an executive order.[2] NEDA is tasked with conducting reviews for such declarations, considering the potential impact on national security and engaging in consultations with relevant stakeholders.[9]

For entities engaged in the operation and management of critical infrastructure, specific foreign ownership limitations apply. Foreign nationals are prohibited from owning more than 50% of the capital of such entities, unless the country of such foreign national accords reciprocity to Philippine nationals.[2] This reciprocity requirement can be satisfied if the foreign national's home country grants Philippine nationals rights of similar value, potentially in other economic sectors.[2]

The establishment of the "critical infrastructure" category represents a modern approach to national security, extending beyond traditional military considerations to encompass economic and cyber vulnerabilities. This framework acknowledges that certain public services, even if not "public utilities" in the traditional sense, are so fundamental to the nation's functioning and security that their foreign ownership necessitates special scrutiny and conditions. The reciprocity clause is a novel feature in Philippine foreign investment law for these sectors, allowing for greater foreign participation but linking it to mutual economic access and potentially broader strategic considerations. The default classification of telecommunications as critical infrastructure, for instance, directly reflects contemporary concerns over data security, control of information networks, and the potential for foreign influence through these vital channels.[9]

Table 2: National Security Review and Foreign Ownership in Critical Infrastructure

Aspect of Regulation	Provision under RA 11659	Key Implications/Details
Definition of Critical Infrastructure	Any public service whose systems/assets are so vital that their incapacity/destruction would detrimentally impact national security [9]	Broad definition allowing flexibility but requiring careful presidential/NEDA determination.
Designation Process	President may declare upon NEDA recommendation; NEDA conducts review considering national security impact and stakeholder consultations [2]	Process involves economic planning and national security agencies.
Default Critical Infrastructure	Telecommunications services [9]	Highlights importance of communication networks to

		national security.
Foreign Ownership Cap (General)	Foreign nationals shall not own more than 50% of capital of entities in operation/management of critical infrastructure unless reciprocity is accorded [2]	Allows majority foreign ownership (up to 100%) if reciprocity exists; otherwise capped at 50%.
Reciprocity Rule Details	May be satisfied by according rights of similar value in other economic sectors in the foreign national's home country [2]	Provides flexibility in meeting the reciprocity requirement. NEDA to issue rules.[2]
Restrictions on Foreign State-Owned Enterprises (SOEs)	Prohibited from owning capital in any public service classified as public utility or critical infrastructure (for investments made after RA 11659 effectivity). Existing investments may be maintained but no additional capital. Sovereign wealth funds/independent pension funds may collectively own up to 30%.[2]	Aims to prevent direct foreign government control over strategic assets.
Presidential Power to Prohibit/Suspend Investment	President, in the interest of national security, may suspend/prohibit any proposed merger, acquisition, or investment granting control to a foreigner/foreign corporation, upon agency recommendation [2]	Significant discretionary power for the Executive to intervene in transactions deemed a threat.
Information Security (Telecommunications)	Telecom entities must obtain/maintain ISO certification for information security [9]	Specific cybersecurity requirement for a key critical infrastructure sector.

National Security Safeguards and Presidential Powers

RA 11659 incorporates several provisions aimed at safeguarding national security in the context of increased foreign participation in public services. A cornerstone of these safeguards is the President's authority to suspend or prohibit, in the interest of national security, any proposed merger, acquisition, or investment in a public service that effectively results in the grant of control (whether direct or indirect) to a foreigner or a foreign corporation.[2] This power is exercisable upon the review, evaluation, and recommendation of the relevant government department or administrative agency. The Implementing Rules and Regulations (IRR) further elaborate on the factors to be considered during such a national security review, focusing on transactions that could grant foreign control over public services with national security implications.[9]

Furthermore, the Act imposes stringent restrictions on investments by foreign state-owned enterprises (SOEs). Entities controlled by or acting on behalf of a foreign government or foreign SOEs are generally prohibited from owning capital in any public service classified as a "public utility" or "critical infrastructure".[2] This prohibition specifically applies to investments made after the effectivity of RA 11659. For foreign SOEs that held capital in such entities prior to the law's enactment, they are permitted to maintain their existing investments but are barred from making any additional capital infusions.[2] An exception is provided for sovereign wealth funds and independent pension funds of each state, which may collectively own up to 30% of the capital of such public services.[2] These provisions reflect a clear legislative intent to mitigate risks associated with direct foreign governmental influence over strategic national assets.

The enhanced powers granted to the President to intervene in investments on national security grounds, coupled with NEDA's central role in the classification of services, signals a shift towards a more centralized and strategically-minded approach to managing foreign participation in key economic sectors. This framework allows the executive branch to directly vet foreign capital beyond mere compliance with standard regulatory requirements, integrating broader national security and economic development objectives into the decision-making process.

The Role of NEDA and Other Administrative Agencies in the New Framework

The National Economic and Development Authority (NEDA) assumes a pivotal role under the amended PSA. It is tasked with conducting reviews and making recommendations to the President regarding the classification of a public service as a "public utility" or as "critical infrastructure".[2] This function ensures that decisions on which sectors require stricter ownership controls are informed by comprehensive economic planning and national security assessments.

The regulatory functions previously exercised by the Public Service Commission have been, and continue to be, vested in various administrative agencies specific to different sectors.[9] For instance, the Civil Aeronautics Board (CAB) regulates air transportation, the Department of Energy (DOE) oversees aspects of the energy sector, and the National Telecommunications Commission (NTC) is responsible for telecommunications. These agencies are responsible for issuing certificates of public convenience and necessity, approving franchises (where applicable), setting or approving rates, and ensuring compliance with service standards within their respective jurisdictions.[9]

A new mandate under RA 11659 requires these administrative agencies to ensure the annual conduct of a performance audit by an independent evaluation team for public utilities and public services classified as critical infrastructure.[9] This audit is intended to monitor costs, the quality of services provided to the public, and the ability of the service provider to respond to emergencies, thereby enhancing accountability and consumer protection.

4. Implications of the Amendments on Ownership and Investment

Stimulating Foreign Direct Investment (FDI): Rationale and Expectations

The enactment of RA 11659 is a cornerstone of a broader governmental strategy to liberalize the Philippine economy and attract significantly more foreign direct investment (FDI).[3] This legislative reform, alongside amendments to the Foreign Investments Act (RA 11647) and the Retail Trade Liberalization Act (RA 11595), aims to dismantle long-standing barriers to foreign capital and technology. The overarching goals are to enhance competition, improve the quality and affordability of public services, generate employment, and accelerate overall economic growth.[3]

Officials, such as NEDA Secretary Arsenio Balisacan, have expressed optimism that RA 11659 and its Implementing Rules and Regulations (IRR) will significantly improve the Philippines' attractiveness as an investment destination, leading to enhanced employment opportunities and tangible benefits for Filipino consumers through better and more varied goods and services.[6] The reforms directly address the perception that the Philippines maintained an overly restrictive FDI regime compared to its ASEAN counterparts, a factor believed to have hampered its economic potential.[4]

Initial FDI Trends in Liberalized Sectors (Post-RA 11659)

Analyzing the direct impact of RA 11659 on FDI inflows in the immediate period following its enactment requires caution. Investment decisions are influenced by a multitude of global and domestic economic variables, and there is often a considerable time lag between policy changes and observable shifts in investment flows. Nevertheless, available data from the Philippine Statistics Authority (PSA) on approved foreign investments and from the Bangko Sentral ng Pilipinas (BSP) on actual FDI net inflows provide preliminary indications.

PSA data, which reflects investment *commitments* lodged with Investment Promotion Agencies (IPAs), has shown volatility. For instance, total approved FI in Q1 2025 was PhP 27.99 billion, a significant 82% decline compared to PhP 155.26 billion in Q1 2024. The leading sectors for these Q1 2025 commitments were Real Estate (38.5%), Manufacturing (21.9%), and Administrative and Support Service activities (19.1%).[46] Conversely, Q3 2024 saw a surge in approved FI to PhP 146.75 billion, a 434.4% increase from Q3 2023, and Q2 2024 recorded PhP 189.50 billion, up 220.7% from Q2 2023.[46] Total approved FI for 2024 reached PhP 1.95 trillion.[46] It is important to note that PSA figures represent pledges and may not fully materialize as actual investments; they also do not strictly adhere to the balance of payments definition of FDI (e.g., 10% ownership criterion) and do not net out withdrawals.[48]

BSP data, which tracks *actual* FDI net inflows based on balance of payments methodology, presents a different perspective. FDI net inflows in February 2025 reached US$529 million, a 61.9% decrease from US$1.4 billion in February 2024, with the BSP attributing this primarily to base effects. Equity capital placements during this month originated mainly from Japan, the United States, Ireland, and Malaysia, targeting sectors such as manufacturing, financial and insurance, real estate, and information and communication.[48] For the first two months of 2025, cumulative FDI net inflows amounted to US$1.3 billion, down 45.2% from the US$2.3 billion recorded in January-February 2024.[48] For the full year 2024, FDI net inflows were reported by the BSP at US$8.9 billion, described as broadly stable compared to 2023.[49] (A U.S. State Department report indicated that FDI inflows in 2023 were $8.9 billion, a 6.6% decrease from $9.5 billion in 2022 [42]). Approved FDI by industry for December 2024, according to one source citing CEIC data, included Manufacturing (PHP 30.55B), Transportation & Storage (PHP 11.87B), Real Estate (PHP 2.52B), and Information & Communication (PHP 0.27B).[51]

The Department of Trade and Industry's Board of Investments (DTI-BOI) reported PhP 1.15 trillion in approved investments as of July 2024, marking a 65% year-on-year increase, which was attributed to policy reforms including RA 11659.[45] Key sectors highlighted for growth include renewable energy, manufacturing, data centers, telecommunications, and cybersecurity.[45]

The divergence between approved investment commitments (PSA) and actual net FDI inflows (BSP) underscores that while liberalization measures like RA 11659 can generate initial investor interest, the translation of these commitments into tangible, sustained investments is contingent upon a wider array of factors. These include prevailing global economic conditions, the domestic economy's absorptive capacity, the predictability and efficiency of the regulatory environment beyond mere ownership rules, and overall investor perception of country risk.[48]

Sector-Specific Impacts on Ownership Structures

- **Telecommunications:** This sector undergoes a nuanced change. It is reclassified as a "public service," potentially allowing 100% foreign ownership. However, it is simultaneously designated as "critical infrastructure".[9] This dual classification means that while the 60-40 rule no longer applies directly, foreign ownership exceeding 50% is permissible only if the foreign investor's home country accords reciprocity to Philippine nationals.[2] All investments in this sector are subject to national security reviews. Additionally, telecommunications entities are mandated to obtain and maintain ISO certifications for information security.[9] The Philippine Institute for Development Studies (PIDS) has noted that RA 11659 is anticipated to be a catalyst for improving telecommunications services.[55]
- **Transportation (Airlines, Railways, Shipping, Expressways):** These sectors have generally been reclassified as "public services" and are now open to 100% foreign ownership.[1]
    - *Airlines:* The Civil Aeronautics Board (CAB) issued guidelines (Board Resolution No. 35, May 20, 2024) confirming that 100% foreign ownership is now permissible for air carriers.[33] However, these entities are still considered "businesses affected with public interest" under the Constitution. Passage rates for routes with multiple operators have been deregulated, while those serviced by a single operator remain regulated.[33]
    - *Shipping (Domestic):* This sector is now open to 100% foreign ownership.[8] The Maritime Industry Authority (MARINA) has issued implementing guidelines, specifically MC DS-2023-02 and MC DS-2023-03.[35] Despite these changes, as of early 2024, reports indicated that no foreign entities had yet applied to operate in the domestic shipping trade. Industry observers suggest that challenges such as lack of economies of scale due to relatively small trade volumes, inadequate port infrastructure, and persistent regulatory hurdles may be tempering foreign interest.[35] Some domestic shipping firms have also expressed concerns about potential negative impacts from increased foreign

competition.[56] This illustrates that legal liberalization of ownership is but one factor; underlying industry-specific conditions and broader infrastructure limitations heavily influence investment decisions.
    - *Railways:* Also reclassified as a public service and open to 100% foreign ownership.[3] The railway industry is often characterized by natural monopoly conditions, high capital costs, and frequent reliance on government subsidies.[57] Foreign investment is actively sought for the expansion and modernization of the country's railway network.[57]
- **Energy Sector (Distribution and Transmission):** These segments remain classified as "public utilities" and are therefore still subject to the 60% Filipino ownership requirement under the Constitution.[2] It is important to distinguish this from the renewable energy (RE) generation sector, where foreign ownership rules have been liberalized through separate administrative issuances. Amendments to the IRR of the Renewable Energy Act of 2008 now permit 100% foreign ownership in the exploration, development, and utilization of solar, wind, hydro, and ocean/tidal energy resources.[7]

A crucial legal nuance in RA 11659 and its IRR is the stipulation that even public services reclassified and opened to 100% foreign ownership (such as air carriers) remain "businesses affected with public interest" for the purposes of Sections 17 and 18 of Article XII of the Constitution.[26] These constitutional provisions grant the State certain powers, including the temporary takeover of operations during a national emergency or the transfer to public ownership in the national interest. This qualification ensures that, despite potential foreign control of operations and ownership, these entities are not entirely removed from this ultimate constitutional oversight by the State, serving as an additional layer of safeguarding the national interest.

Economic Considerations and Consumer Welfare

A primary objective of the amendments to the PSA is to enhance consumer welfare. By opening previously restricted sectors to greater foreign participation, the law aims to stimulate competition.[3] Increased competition is expected to drive innovation, lead to lower prices, improve the quality of services, and provide consumers with a wider array of choices.[3] Furthermore, RA 11659 significantly increases the penalties for violations of the terms and conditions of certificates or of orders, decisions, or regulations of the administrative agencies.[2] Fines can now range from PhP 5,000 up to PhP 2,000,000 per day for violations.[2] These enhanced penalties are intended to serve as a more effective deterrent and strengthen consumer protection mechanisms.

5. Legal Challenges, Debates, and Implementation

Constitutionality of RA 11659

Shortly after its enactment in March 2022, RA 11659 faced legal challenges regarding its constitutionality. At least two petitions were filed with the Supreme Court.[30] One prominent petition was lodged by the United Filipino Consumers and Commuters (UFCC), represented by its president Rodolfo Javellana Jr. [36], and another by Louis "Barok" Biraogo.[53]

The core argument of the petitioners revolves around the assertion that RA 11659's legislative redefinition of "public utility" – which excludes key sectors like telecommunications and various forms of transportation – effectively circumvents Article XII, Section 11 of the 1987 Constitution.[30] This constitutional provision reserves the ownership and operation of public utilities to Filipino citizens or to corporations with at least 60% Filipino ownership. Petitioners contend that Congress, through an ordinary statute, cannot alter the scope of a constitutional provision or overturn established Supreme Court jurisprudence that had previously interpreted "public utility" more broadly.[30] They also raised concerns that the amendments could pose threats to the national economy and security, and potentially violate the equal protection clause of the Constitution.[19]

In response, the Office of the Solicitor General (OSG), representing the government, filed a Comment in G.R. No. 263639 (the UFCC petition) defending the constitutionality of RA 11659.[60] The OSG's primary arguments include:

1. **Plenary Legislative Power:** Congress possesses plenary law-making power, which includes the authority to define "public utility," as the Constitution itself does not provide an exhaustive definition and does not prohibit Congress from legislating on the matter.[60]
2. **Not a Constitutional Amendment:** Defining "public utility" through statute is not tantamount to amending or revising the Constitution. The OSG pointed out that the definition and classification of public utilities have historically evolved through legislative enactments.[60]
3. **Political Question:** The act of defining "public utility" is a matter of legislative wisdom and policy, falling under the ambit of a political question, which is generally beyond the scope of judicial review, unless there is a clear showing of grave abuse of discretion, which the OSG argued the petitioners failed to demonstrate.[60]
4. **Procedural Deficiencies:** The OSG also raised procedural issues, arguing that the petitioners lacked legal standing (locus standi) and that the petition did not

present an actual justiciable controversy ripe for judicial adjudication.[60]

As of early 2024, these Supreme Court petitions were reportedly still pending.[59] The OSG had submitted its comment in the UFCC case around late 2022 or early 2023.[60] Specific Supreme Court rulings or resolutions definitively deciding the merits of these RA 11659 constitutionality challenges were not prominently found in the available information covering late 2024 to mid-2025.[39] The ongoing discourse surrounding potential Charter Change to "institutionalize" the reforms introduced by RA 11659 further suggests an acknowledgment of the legal questions surrounding the current legislative approach.[59]

The eventual decision by the Supreme Court on these petitions will be a landmark one. A ruling upholding RA 11659 would affirm Congress's significant leeway in defining economic terms that carry constitutional weight, potentially smoothing the path for further legislative liberalization in other areas. Conversely, if the Court strikes down key provisions of the law, it could necessitate a reversion to the previous, more restrictive regime for the affected sectors, or compel proponents of liberalization to pursue constitutional amendments, a far more arduous process. This highlights the delicate balance between legislative prerogative, constitutional interpretation, and economic policy-making.

Implementation: The Role of IRR and Regulatory Agencies

The Implementing Rules and Regulations (IRR) for RA 11659 were formulated by an inter-agency committee led by NEDA, involving 18 to 21 government agencies, and were issued on March 20, 2023. The IRR took effect on April 4, 2023.[6] These rules are crucial for the practical application of the law, providing detailed clarifications on definitions, procedures for the classification of public services (as public utilities or critical infrastructure), mechanisms for national security reviews, and the specific roles and responsibilities of various administrative agencies.[9]

Individual regulatory bodies have also begun to align their own rules with the amended PSA. For example, the Civil Aeronautics Board (CAB) adopted Board Resolution No. 35 on May 20, 2024, providing guidelines for the implementation of RA 11659 within the air transportation sector, particularly concerning nationality requirements for air carriers and fare regulations.[33] The initial delay in the issuance of the IRR, partly attributed to the pending Supreme Court cases [36], may have contributed to a degree of uncertainty among potential investors. With the IRR now in place, a clearer operational framework exists, though the shadow of the constitutional challenge remains. This situation might lead some foreign investors, particularly those considering large, long-term commitments in newly liberalized sectors, to adopt a "wait-and-see" posture until greater legal and regulatory certainty is established.

Perspectives and Criticisms

The amendments to the Public Service Act have generated considerable debate, reflecting diverse perspectives on economic development, national security, and consumer welfare.

Proponents, including the Foundation for Economic Freedom (FEF) and key legislative sponsors like Senator Grace Poe, have lauded RA 11659 as a landmark reform essential for attracting much-needed FDI, stimulating competition, improving the quality and affordability of public services, creating jobs, and bolstering the country's economic recovery and development.[6] They emphasize that the law incorporates adequate safeguards to protect national security and consumer interests.[38]

However, various groups and individuals have raised significant concerns:

- **National Security Risks:** A primary apprehension is that allowing increased, or even full, foreign ownership in critical sectors such as telecommunications, energy, transportation, and shipping could expose the country to vulnerabilities. These include potential espionage, sabotage, or undue influence by foreign entities, particularly those that are state-owned or hail from countries with potentially conflicting geopolitical interests.[3]
- **Impact on Local Industries:** Critics fear that the entry of large, well-capitalized foreign corporations could overwhelm and dominate liberalized sectors, potentially leading to the decline or closure of smaller Filipino-owned enterprises and an unhealthy market concentration.[28] For instance, then Energy Secretary Raphael Lotilla voiced concerns about potential harm to Filipino investors in the renewable energy sector if foreign entry was not managed judiciously, suggesting a preference for foreign investment only where local capacity is absent.[52]
- **Exclusion of Transport Network Vehicle Services (TNVS):** A specific point of criticism has been the exclusion of TNVS (such as ride-hailing services) from the definition of Public Utility Vehicles (PUVs) under RA 11659.[36] PUVs remain classified as public utilities subject to stricter regulations. Critics argue that this exclusion is dangerous as it could exempt TNVS operators from the higher standards of care, safety accountability, and regulatory oversight applicable to common carriers, potentially leading to unfair competition with traditional PUVs and complicating existing transportation laws.[36] This particular issue was reportedly not among the arguments raised in the main Supreme Court petitions challenging RA 11659.[36] The exclusion of TNVS from the PUV classification, while

possibly intended to treat app-based platforms differently, does raise legitimate questions about ensuring consistent passenger safety standards and liability across similar public transport services, potentially creating regulatory inconsistencies.

- **Critique from IBON Foundation:** The research and advocacy group IBON Foundation has been a vocal critic, arguing that RA 11659 embodies an "obsolete thinking that foreign investment is a magic bullet for development." They contend that such liberalization could make the Philippines overly reliant on foreign capital, hinder the development of domestic enterprises, and that the previous constitutional restrictions were effective and economical means to protect critical national sectors.[38]

6. Conclusion: The Evolving Paradigm of Public Service Ownership in the Philippines

Republic Act No. 11659 represents a fundamental and transformative shift in the Philippine legal and economic landscape concerning the ownership and operation of public services. The law has decisively moved the country away from a regime where broad categories of public services were subject to stringent constitutional foreign ownership limitations. In its place, a new paradigm has been established: only a narrowly defined and exclusive list of "public utilities" remains bound by the 60% Filipino ownership requirement. This reclassification has effectively liberalized a significant number of sectors, including telecommunications, airlines, railways, and shipping, opening them to the possibility of 100% foreign ownership.

This liberalization is, however, intricately balanced with mechanisms designed to safeguard national interests. The introduction of the "critical infrastructure" designation, subject to specific ownership caps (waivable with reciprocity) and national security reviews, alongside enhanced presidential powers to intervene in investments deemed threatening, and explicit restrictions on foreign state-owned enterprises, demonstrates a concerted effort to manage the potential risks associated with increased foreign participation in vital sectors. The effectiveness of this balancing act will heavily depend on the robust, consistent, and transparent implementation of these safeguards by the relevant regulatory agencies.

The full impact of RA 11659 will continue to unfold over the coming years. Its success in attracting the desired levels of foreign investment and fostering tangible improvements in service quality and affordability will be shaped by a confluence of factors: prevailing global and domestic economic conditions, the capacity and efficiency of regulatory bodies in implementing the new framework, and, most critically, the definitive pronouncements of the Supreme Court on the law's constitutionality. The ongoing legal challenges and public debates underscore that RA 11659 is not merely a technical adjustment to an old law; it is a reflection of the Philippines' continuing endeavor to navigate the complex interplay between economic openness, national sovereignty, and public welfare in an increasingly globalized world.

Beyond the direct changes to ownership rules, RA 11659 may serve as a catalyst for broader regulatory modernization. The new responsibilities vested in NEDA and other administrative agencies—such as conducting sophisticated national security reviews and annual performance audits—necessitate an upgrading of their institutional capacities. This could, in the long term, foster improvements in the overall governance and oversight of public services, benefiting the nation irrespective of specific FDI inflows.

Nevertheless, the fact that discussions about potential Charter Change are being linked to the idea of "institutionalizing" the reforms of RA 11659 [59] highlights a lingering quest for ultimate legal certainty. While RA 11659 represents a bold legislative initiative to reshape the foreign investment landscape, the fundamental constitutional questions surrounding the definition of "public utility" and the extent of permissible foreign ownership in strategic sectors may continue to be debated until they are definitively settled, either by the Supreme Court or through the more arduous path of constitutional amendment itself. Thus, RA 11659 marks a significant, yet potentially still evolving, phase in the regulation of public service ownership in the Philippines.

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