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PHILIPPINE BUSINESS AND THE REGULATORY ENVIRONMENT

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This paper outlines and discusses the regulatory business environment in the Philippines with a focus on heavily regulated industries, the rationale for regulation, and the institutions performing regulatory functions. It examines several issues in regulation that Philippine business firms contend with to remain in operation, such as restrictions on ownership and price control; cost of compliance; ambiguity and varying interpretations of statutes by regulatory agencies; and conflict between national and local regulations. Likewise, it cites regulations that are not detrimental to the business community and are enacted to promote the development of an industry.

The paper takes the position that regulation is not always detrimental to business development. Growth and development may ensue if the interests of the public and of the business community are taken into consideration and are balanced accordingly. It is imperative for regulators to remain neutral and to take into account the benefits and costs of regulation in order to design effective policies. The paper concludes by emphasizing the dynamic character of business regulations – posing both opportunities and threats to the business sector. It is, therefore, necessary that business firms are able to anticipate the impact of regulations, or if not, that they are flexible enough to respond or adjust to the change.

1 Regulation

1.1 Regulation in General

Regulation can be viewed in three different perspectives – "as a specific set of commands where regulation involves the promulgation of a binding set of rules to be applied by a body devoted to a purpose; as deliberate state influence where regulation has a broader sense and covers all state actions designed to influence industrial or social behavior; as all forms of social control or influence where all mechanisms affecting behavior are regulatory" (Baldwin, Cave, & Lodge, 2012, p. 3). Regulation may be perceived in the 'red light concept' or the 'green light concept': The former focuses on the restrictions on behavior to deter undesirable occurrences, while the latter views it as enabling the conduct of certain activities (Baldwin et al., 2012).

Private economic activity is a fundamental area where regulations are imposed. Government intervention in business has expanded through the years and several theories have surfaced to explain such governmental action. Two main theories were proposed – the public interest theory and the capture theory (Posner, 1974).

The original public interest theory espouses the view that government regulation occurs as a response to the demands of the public for the rectification of inefficiencies brought about by a free market. The theory is premised on the idea that economic markets tend to operate inefficiently or inequitably if left alone and that government regulation comes without a cost. This theory has been criticized to be unrealistic as empirical data showed that "regulation is not positively correlated with the presence of external economies or diseconomies or with monopolistic market structure" (Posner, 1974, p. 336).

A reformulation of the theory came about, to wit: Regulatory agencies are created for valid public purposes, which are not attained due to mismanagement of the agencies. Nevertheless, this reformulation remained problematic because of the absence of sufficient data that would directly and conclusively link the mismanagement of the agency to the undesirable results of regulation. Another reformulation of the theory suggested that "regulation is an honest but frequently an unsuccessful attempt to promote public interest" (Posner, 1974, p. 339) because regulatory agencies are assigned tasks that are impossible to do and in the process of doing those tasks, they "distort the efficient functioning of the regulated markets" (Posner, 1974, p. 339); and regulatory agencies are not properly monitored through time (Posner, 1974).

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The capture theory holds that government regulation is a result of the influence exerted by interested groups rather than taking into account public interest. Similar with the public interest theory, the capture theory comes in several versions. The first version, advanced by the Marxists and the muckrakers, states that it is the capitalists or big businesses that control regulation. This version, however, fails to consider that a number of regulations are made to address the interests of small businesses.

Political scientists back another version, which states that "over time regulatory agencies come to be dominated by the industries regulated" (Posner, 1974, p. 341). Several arguments against this version were posited, one of which is its being contrary to evidence. For instance, regulations imposed are frequently unfavorable to the industries being regulated. Moreover, a single agency usually regulates different industries with different interests, hence the question on which industry that agency would promote arises. It also disregards the fact that oftentimes, it is the customers who are benefitted by the regulations.

The third version, called the economic theory of regulation, views economic regulation as a product, the allocation of which is governed by the laws of supply and demand. As such, regulation is expected to serve the interests of those who value it the most. The benefit and cost of regulation under this theory is explained using the theory of cartels. There are two major costs in cartelization – the cost of arriving at an agreement with respect to the price and output of each seller and the cost of enforcing the cartel agreement against free riders. The theory of cartel provides that these costs are reduced if the number of sellers is small and if their interests are identical. Similarly, in economic regulation, the fewer the number of beneficiaries of a regulation, coordination towards obtaining the regulation would be easier. Further, the more identical their interests are, the easier it is to come up with a common position that is advantageous to the group. While economic regulation may be akin to the theory of cartels, there are also differences between the two. One of which is the intervention of the political process in regulation. In addition, unlike in cartelization, large number encourages regulation (Posner, 1974).

1.2 Regulation in the Philippines

In the Philippines, the development of business regulations is in line with the promotion of public interest. From the provisions of the 1987 Philippine Constitution and the policy declarations embodied in the statutes, it can readily be seen that public interest has been the driving force in the regulations being imposed. Government intervention is considered essential because a marketplace left alone to operate often results in market failures, which if left unchecked, are detrimental to the public interest and may wreak havoc to the economy as a whole.

While public interest may be a good rationale in imposing regulations, undesirable results ensue and those likely to bear such burden are the industries being regulated. Sometimes, regulations determine the survival of an entity or an industry. At times, it is the development of the industry which is affected.

This paper will show the regulatory environment in the Philippines, with a discussion on the regulation of select industries and the issues that come about from such government intervention.

1.3 Sectors Regulated

In general, business partnerships and corporations, being juridical entities, are subject to regulation. However, there are certain industries which are specially governed by a more stringent set of rules. Industries such as mining, power, telecommunications, and banking face greater government intervention and are burdened with tighter rules because they are imbued with public interest. The government has more reason to regulate these industries because of the nature of their businesses that directly affect the public which, if unrestrained, may lead to abuses and market failures detrimental to the society as a whole. Government regulation is legitimate in these cases because it is in the exercise of the state's police power that is considered as inherent among sovereign nations. Furthermore, it is mandated by the Constitution that the government perform certain regulatory acts in the public interest.

This section discusses the following heavily regulated industries: (1) public utilities, (2) mining and logging, (3) banking, and (4) insurance. These industries were selected because they provide good illustrations of issues in regulation that are currently still subjects of debate.

Public utilities. Under section 13(b) of the Public Service Act (Commonwealth Act 146), the gas, electric, and power industry; petroleum; telecommunications industry; wire or wireless broadcasting stations; water and sewerage systems; and transportation industry are considered as public utilities (*Albano v. Reyes,* 1989), by virtue of which they are mandated by Section 11, Article XII of the 1987 Philippine Constitution to be subjected to state regulation.

These industries require a government franchise or authorization for their operation. Entry to these industries is restricted to Filipino citizens or to domestic corporations or associations with at least 60% Filipino ownership of capital. Furthermore, the franchise can only be for a maximum of 50 years, and shall be subject to amendment or repeal by Congress (Phil. Const. art. XII, § 11, 1987).

The constitutional mandate to subject the aforementioned industries to restrictions on ownership and market entry is attributable to the policy of the Constitution to develop a self-reliant and independent economy effectively controlled by Filipinos (Phil. Const. art. II, § 19, 1987). This is also in line with the stated goal of the national economy to provide a sustained increase in the amount of goods and services produced by the nation (Phil. Const. art. XII, § 1, 1987). It is likewise a means of promoting the optimum development of these industries and protecting them from unfair foreign competition and trade practices (Phil. Const. art. XII, § 1, 1987). The law deems these industries as essential to the public, hence the regulations imposed by the state are meant to ensure continuity and availability of service (Baldwin et al., 2012).

Mining and logging. Mining and logging are regulated by the government pursuant to the Regalian doctrine embodied in Section 2, Article XII of the 1987 Constitution which declare that: "… 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 …".Hence, the exploration, development and utilization of these are under the full control and supervision of the state.

The Constitution likewise imposes the 60% Filipino ownership requirement when it comes to these industries and with a shorter franchise period of 25 years (maximum). Dealings of the President with foreign-owned corporations in these industries are limited to technical or financial assistance for large-scale exploration, development and utilization of minerals, petroleum and other mineral oils (Phil. Const. art. XII, § 2, 1987).

The regulations imposed on mining and logging industries are intended to transfer some or most of the benefits of the exploitation of natural resources from the firms to the public in general, who must benefit from the government's income generated from these activities (Baldwin et al., 2012). Besides, the various requirements imposed on mining and logging ventures protect the interests of the public and of future generations in terms of environmental impact and sustainability (Baldwin et al., 2012). They likewise temper and address the adverse effects brought about by the exploitation of these natural resources.

With the aim of ensuring environmental protection and responsible mining in the utilization of resources, on July 6, 2012, President Benigno Simeon C. Aquino III issued Executive Order 79 (2012), which sought to introduce reforms in the Philippine mining industry.

Banking. Under The General Banking Law of 2000, the banking sector is regulated because of the vital role of banks in the economy and the need to maintain high standards of integrity and performance due to the fiduciary nature of the enterprise (The General Banking Law Section 2, 2000).

The tight regulatory requirements imposed on the organization and operation of banks, as well as the continuous supervision by the Bangko Sentral ng Pilipinas (BSP) to ensure stability and sustainability of banks is intended to "promote and maintain a stable and efficient banking and financial system that is globally competitive, dynamic and responsive to the demands of a developing economy" (The General Banking Law Section 2, 2000).

In regulating the organization of banks, Section 8 of The General Banking Law (2000) provides that the Monetary Board may authorize the organization of a bank subject to the following conditions: (1) that the entity is a stock corporation; (2) that its funds are obtained from 20 or more persons; and (3) that the minimum capital requirements prescribed by the Monetary Board (MB) for each category of banks are satisfied. The bank's ownership structure, directors and senior management, its operating plan, internal controls, projected financial condition and capital base are assessed during the licensing process.

The BSP issued Memorandum No. M-2012-002 (2012), which provided implementation plans of BASEL III standards being incorporated into the risk-based capital adequacy framework of universal and commercial banks and their subsidiary banks and quasi-banks. Table 1 compares BASEL III standards and the BSP guidelines. The BSP proposed the full adoption of these minimum ratios beginning 01 January 2014.

As reported on 15 May 2014 by The Philippine Star, the BSP reported that "universal and commercial banks remained well-capitalized as of the end of 2013 despite a slight drop in their capital adequacy ratios (CAR) due to a rise in loans extended to firms" (Martin, 2014, para. 1). Their CAR stood at 16.50 percent on solo basis (head office plus branches) and 17.65 percent on consolidated basis (parent bank plus subsidiary financial allied undertakings, excluding insurance companies) as of end of December 2013, compared to the 17.51 percent on solo basis and 18.62 percent on consolidated basis as of end of September 2013. These ratios show that, despite the decline, the banks remain compliant with and even well-above the BSP's mandated 10-percent requirement and the international benchmark of eight percent.

On 20 October 2014, the BSP decided to increase the minimum capital requirement for all banks–universal, commercial, thrift, rural, and cooperative banks–"to ensure that banks stand on a strong capital base to support a threshold scale of operations to operate viably and service effectively the needs of their clients" (Bangko Sentral ng Pilipinas, 2014, para. 2). This increase is a separate requirement from the risk-based capital adequacy ratios in accordance with BASEL III requirements. The minimum capital requirement of universal and commercial banks was tiered based on network size (number of branches). Higher minimum capital is required as the branch network gets bigger. With respect to thrift, rural and cooperative banks, both the location of the head office and size of the physical network were considered in the tiering scheme. The BSP further provides for a five-year transition period for those who cannot immediately comply with the new capital requirement. It should be noted that the minimum capital requirement for universal and commercial banks remained fixed since 1999. For thrift and rural bank, it was not changed since 2010 and 2011, respectively. BSP believes that a system of well-capitalized domestic banks will lead to financial stability and effective delivery of financial services, and said infusion of additional capital will be advantageous to the Philippines when the ASEAN Banking Integration Framework is implemented in 2020. Table 2 shows the amended minimum capital requirements of banks.

Table 1. BASEL III Recommendations and BSP Guidelines

	Under Basel III		**BSP Guidelines**		
Capital Requirements	**Minimum ratios**	**With conservation buffer**	**Existing minimum ratios**	**Proposed minimum ratios**	**Proposed minimum with conservation buffer**
a. CET1 ratio	4.5%	7.0%	None	6.0%	8.5%
b. Tier 1 ratio	6.0%	8.5%	5.0%(6.0% as trigger for PCA)	7.5%	10.0%
c. CAR	8.0%	10.5%	10.0%	10.0%	12.5%

Table 2. Amended Minimum Capital Requirements for Banks

Bank Category/Network Size	Existing Minimum Capitalization	Revised Minimum Capitalization
Universal Banks	P 4.95 billion**	
Head Office only		P 3.00 billion
Up to 10 branches*		6.00 billion
11 to 100 branches*		15.00 billion
More than 100 branches*		20.00 billion
Commercial Banks	2.40 billion**	
Head Office only		2.00 billion
Up to 10 branches*		4.00 billion
11 to 100 branches*		10.00 billion
More than 100 branches*		15.00 billion
Thrift Banks		
Head Office in:		
Metro Manila	1.00 billion**	
Cebu and Davao cities	500 million**	
Other Areas	250 million**	
Head Office in the National Capital Region (NCR)		
Head Office only		500 million
Up to 10 branches*		750 million
11 to 50 branches*		1.00 billion
More than 50 branches*		2.00 billion
Head Office in All Other Areas Outside NCR		
Head Office only		200 million
Up to 10 branches*		300 million
11 to 50 branches*		400 million
More than 50 branches*		800 million
Rural and Cooperative Banks		
Head Office in:		
Metro Manila	100 million**	
Cebu and Davao cities	50 million**	
Other cities	25 million**	
1st to 4th class municipalities	10 million**	
5th to 6th class municipalities	5 million**	
Head Office in NCR		
Head Office only		50 million
Up to 10 branches*		75 million
11 to 50 branches*		100 million
More than 50 branches*		200 million

Bank Category/Network Size	Existing Minimum Capitalization	Revised Minimum Capitalization
Head Office in All Other Areas Outside NCR (All Cities up to 3rd Class Municipalities)		
Head Office only		20 million
Up to 10 branches*		30 million
11 to 50 branches*		40 million
More than 50 branches*		80 million
Head Office in All Other Areas Outside NCR (4th to 6th Class Municipalities)		
Head Office only		10 million
Up to 10 branches*		15 million
11 to 50 branches*		20 million
More than 50 branches*		40 million

* Inclusive of Head Office
** With no distinction for network size

Insurance. The Insurance Code Republic Act No. 10607 (2013), which amended the Insurance Code of the Philippines (Presidential Decree 612), is the governing law for the insurance industry. They are subjected to regulation because of the fiduciary nature of the transaction that requires the highest degree of good faith between the parties involved. The regulations imposed, which include restrictions on the operations of these industries as well as supervision by the Insurance Commission, are intended to ensure their ability to meet their obligations and mitigate the risks taken.

Like banking, certain provisions must be complied with before starting operations. Chapter III of The Insurance Code provides that before a domestic insurance company may transact any insurance business in the Philippines, it must possess the required amount of capital and assets, it shall have obtained a certificate of authority for that purpose from the Insurance Commissioner upon application therefor and payment of the fees prescribed, and it shall have filed all the required documents with the Commissioner. Additional requirements are needed for foreign insurance companies.

Based on Section 194 of The Insurance Code (2013), no new domestic life or non-life insurance company shall engage in insurance business in the Philippines unless possessed of a paid-up capital equal to at least one billion pesos (P1,000,000,000.00). For domestic insurance company already doing business in the Philippines, they are required to have a net worth by June 30, 2013 of two hundred fifty million pesos (P250,000,000.00), and must have by December 31, 2016, an additional three hundred million pesos (P300,000,000.00) in net worth; by December 31, 2019, an additional three hundred fifty million pesos (P350,000,000.00) in net worth; and by December 31, 2022, an additional four hundred million pesos (P400,000,000.00) in net worth.

The increase in capitalization led to the closure or merger of insurance companies. A number of non-life insurance companies have closed shop and more mergers and acquisitions are expected among industry players within 2014 and in the next few years due to this increase in capital requirements (Remo, 2014). "Emmanuel Que, president of the Philippine Insurers and Reinsurers Association, said that smaller industry players may not meet the capital requirements stated in The Insurance Code" (Remo, 2014, para. 2). Entering into a merger transaction is one option for them, but some may opt to surrender their licenses (Remo, 2014). Insurance Commissioner Emmanuel Dooc is of the view that the public will be better served with only financially strong players remaining in the industry (Remo, 2014).

1.4 Reportorial Requirements

Regulation also extends to reporting practices of companies. Reportorial requirements covering a regulated entity's financial position and results of operations are necessary because they promote transparency, thereby protecting the interests of investors and of the public in general.

Banks and other financial institutions, for instance, are required to file a plethora of reports to the BSP. It is obligatory for them to publish a statement of their financial condition, including those of their subsidiaries and affiliates, in such terms understandable to the layman, in English or Filipino (The General Banking Law Section 61, 2000). In addition, banks shall make available to the public their complete set of audited financial statements and other relevant information to inform the public of their true financial condition (The General Banking Law Section 61, 2000). According to Morales (2007), the disclosure requirement is intended to complement Bangko Sentral supervision.

Insurance companies are also mandated, through Section 229 of The Insurance Code, to submit to the Insurance Commissioner annual statements showing the exact condition of their affairs on or before April 30 of each year. "The requirement to file annual statements is the primary means of alerting the Insurance Commission to any danger of threatened insolvency (with the resulting inability to honor obligations to insureds) on the part of any insurance company" (as cited in De Leon, 2010, p. 519).

Regardless of the nature of a business, it is compulsory for companies registered with the Securities and Exchange Commission (SEC) to comply with the reportorial requirements set by the agency. Securities Regulation Code Rule 68 (2000) lays down the specific requirements applicable to the form and content of financial statements required to be filed with the SEC. It prescribes, among others, the financial reporting framework for a particular class or group of entities, the wording of the Statement of Management's Responsibility (SMR) that shall be attached to the financial statements, and the supplementary documents to be filed with the annual financial statements.

1.5 Regulatory Authorities

A number of institutions performing regulatory functions exist. The source of government regulation is generally the legislature that has the power to enact laws, subject only to the limitations imposed by the 1987 Philippine Constitution. It possesses the power to make the law, which includes the determination of its subject, scope, and operation.

The SEC, a quasi-judicial body tasked to enforce all laws affecting corporations, exercises administrative supervision over corporations (J. Campos, Jr., & M. Campos, 1990). It also has "jurisdiction and supervision over partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government" (The Securities Regulation Code Section 5, Republic Act 8799, 2000).

Local government units are given the authority to regulate by virtue of the 1987 Constitution and Republic Act No. 7160, otherwise known as the Local Government Code of 1991. A study conducted by the International Bank for Reconstruction and Development/The World Bank (2010) on local regulation that enhance and constrain business activity, particularly in the area of starting a business, dealing with construction permits, and property registration, revealed that the extent of business regulations varies per city. The World Bank's study showed that "starting a business is easiest in General Santos, where it takes 22 days and costs 15.3% of income per capita to comply with the 17 requirements. It is more difficult in San Juan, where it requires 21 procedures that take 39 days and cost 26.3%. Dealing with construction permits is easiest in Davao City, where it takes 57 days, but more cumbersome in Manila, where it takes 169 days. Local requirements remain responsible for the variation in the number of steps required to build a warehouse. It is easiest to register property in Valenzuela and Navotas and more difficult in Cagayan de Oro and General Santos—differences are mainly driven by the performance of national government agencies" (International Bank for Reconstruction and Development/The World Bank, 2010, para. 2-4).

The presence of regulatory agencies also heightens regulation on business industries. These agencies are "government bodies formed or mandated under the terms of a legislative actor statute to ensure compliance with the provisions of the act, and in carrying out its purpose" (The Business Dictionary, 2014, para. 1).Table 3 shows some examples of regulatory agencies and the industries they regulate.

Table 3. Regulatory Agencies for Selected Industries

Regulatory Agency	Industry
Mines and Geosciences Bureau	Mining
Energy Regulatory Commission	Power
National Telecommunications Commission	Telecommunications
Bangko Sentral ng Pilipinas	Banking
Insurance Commission	Insurance
Land Transportation Franchising & Regulatory Board	Land Transportation
Civil Aviation Authority of the Philippines	Air Transportation
Maritime Industry Authority	Water Transport Utilities and Other Maritime Enterprises

The President, who has control over the entire executive branch of government, also exercises regulatory powers through the issuance of executive orders considered to be general in application. The Office of the President, for instance, issued Executive Order 79 (2012), which provides for reforms in the mining industry.

2 ISSUES ON REGULATION

2.1 Over-Regulation

Business firms deal with regulation in the different stages of their operation. Permits and licenses are prerequisites for the conduct of business. Likewise, there are standards that must be met and reportorial requirements submitted regularly for monitoring purposes for continuous operation. The intricacy of compliance varies per industry. Industries imbued with public interest face stricter regulations as compared to industries whose business nature does not seriously affect the welfare of the general public. As discussed in the preceding section, tighter regulation is justified for a number of reasons but its ultimate purpose is to protect the public. The government may have good intentions of enacting and implementing such rules, but heavy regulation may also bring adverse effects to the industry upon which the regulations are imposed. Excessive regulation affects business in different aspects including but not limited to the market, pricing, or product quality.

Entry into a certain industry may be difficult or entirely impossible due to ownership restrictions. Take for example Section 11, Article XII of the 1987 Constitution which provides that the operation of public utility companies is limited to Filipino citizens or to corporations or associations organized under the laws of the Philippines at least sixty percent of whose capital is owned by Filipino citizens. This constitutional provision intends to prevent foreign control of public utilities. Well-meaning as the law is, it hampers industrial growth and development. Public utilities are capital-intensive industries, and in order to sustain or improve them, a huge amount of funding is necessary that usually entails the infusion of foreign capital.

For some industries such as mass media, 100% equity participation of Filipinos is required by the law (Phil. Const. art. XVI, § 11, 1987). Aside from impeding growth and development in terms of infrastructure due to the lack of investible capital, this regulation curbs foreign competition, which may be a boon or bane for the economy: boon because the profits are retained within the Philippines and control of the industry is completely held by Filipinos; bane because absence of competition may mean inefficiency and/or low quality of products or services.

Certain groups have been lobbying for the removal of foreign ownership restrictions in some industries from the Constitution. In fact, some lawmakers are pushing for a change in the economic provisions of the 1987 Philippine Constitution. However, President Benigno S.C. Aquino III has been openly opposed to such idea. He expressed his positive stance on foreign ownership restrictions because majority control of Filipinos would ensure that the economy will, in the event of unfavorable circumstances, remain in good hands ("Aquino backs ownership cap", 2012). He continues being adamant in removing the foreign ownership restrictions up to this day. In a report by the Manila

Bulletin, the World Bank stated that "the Philippines remains one of the world's most restricted nations for foreign investors and this will become a hindrance for the Asia's second fasting growing economy come the ASEAN 2015 integration" (as cited in "Foreign restriction hindrance to ASEAN," 2014, para. 1).

In terms of pricing, the law of supply and demand determines the equilibrium price of a commodity. If the market is left on its own, the price set by the market will identify which goods are "most highly valued by consumers" (Petkantchin, 2006, p. 1) and "which management methods, materials or technologies produce the greatest economic benefit" (Petkantchin, 2006, p. 1), thus, "leading to the most efficient possible use of scarce resources" (Petkantchin, 2006, p. 1). However, the government, in the pursuit of certain objectives, imposes price controls which may be in the form of either price floor or price ceiling. The former is the minimum price that a purchaser needs to pay to acquire a product, while the latter is the maximum price for which a supplier can sell a good. When a price floor is imposed, the price of a product goes up. On one hand, the increase in price triggers two things – decrease in demand and increase in supply. Demand goes down because consumers, who cannot afford to buy the product, will tend to look for product substitutes. On the other hand, the increase in price will encourage suppliers to raise production. If no further regulation is put in place, this situation will lead to overproduction. When a price ceiling is enforced, the opposite happens. When price goes down, consumers are encouraged to buy more of the product, thereby, increasing demand. However, this boost will not be met with an equal amount of quantity supplied because lower prices "make production and investment in regulated goods or services less lucrative" (Petkantchin, 2006, p. 2). Scarcity then follows. Price controls, in effect, cause a market disturbance that is disadvantageous both to the supplier and purchaser (Petkantchin, 2006).

To illustrate the effects of price control, consider what happened to a number of drugstores in 2010 when then President Gloria Macapagal-Arroyo reduced the prices of several widely used medications offered by pharmaceutical companies. Drug retailers were earning lower revenues, thus, lower profits due to the price cut ("Philippine price controls hamper rise of generics", 2010). This financial performance prevented them from expanding their business. In addressing the price cut, Maura Musciacco—a pharmaceutical industry analyst with Datamonitor Group in London—said that the price regulation may hamper foreign investment in the long run ("Philippine price controls hamper rise of generics", 2010).

2.2 Cost of Regulation

To enter a market and stay in business, an entity has to comply with rules and regulations. Just like in every undertaking where benefits can be derived, costs are incurred.

In a study conducted by the World Bank Group, regulation in starting a business was evaluated in 25 cities across the Philippines. Four parameters were measured:(1) procedures to legally start and operate a company;(2) time required to complete each procedure;(3) cost required to complete each procedure; and (4) the paid-in minimum capital.

Procedures mean "any interaction of the company with external parties" (The International Bank for Reconstruction and Development/The World Bank, 2010, p. 32) such as government agencies, lawyers, auditors or notaries involving pre-registration, registration and post-registration. Cost pertains to "all official fees and fees for legal or professional services if such services are required by law" (The International Bank for Reconstruction and Development/The World Bank, 2010, p. 32). Paid-in minimum capital is the "amount that the entrepreneur needs to deposit in a bank or with a notary before registration and up to 3 months following incorporation" (The International Bank for Reconstruction and Development/The World Bank, 2010, p. 33), which must at least be 6.25% of the corporation's authorized capital stock (25% of the subscribed capital) but not less than Php5000 (The Corporation Code of the Philippines, 1980). Altogether, these are the costs borne by a company to start operations.

The study showed that the number of procedures, time, and cost differ in each of the 25 cities included in the research. It is easiest to start a business in General Santos City but most difficult in San Juan City. In General Santos, a company has to carry out 17 procedures which will take 22 days and cost 15.3% of the country's income per capita, while in San Juan, 21 procedures have to be undertaken for 39 days that costs 26.3% of the country's income per capita. It should be noted that the study only took into account ordinary procedures common to all businesses, excluding those specific to a certain industry (The International Bank for Reconstruction and Development/The World Bank, 2010). In such case, the overall costs would actually shoot up if a business firm applies for registration in a regulated industry such as mining, power, telecommunications, or banking.

In the global arena, the Philippines ranked 170 among 189 economies on the ease of doing business. Based on Doing Business 2014, starting a business in the Philippines requires 15 procedures, which take 35 days and cost 18.7% of income per capita and a paid-in minimum capital of 4.6% of income per capita. While economies around the world have been streamlining procedures, instituting reforms to make things more efficient and easier for business enterprises, no reforms have been recorded in the Philippines by Doing Business since 2012. The last reform was recorded in 2011 when the Philippines eased business start-up by setting up a one-stop shop at the municipal level (The International Bank for Reconstruction and Development/The World Bank, 2013).

Business firms also incur costs in complying with rules set by regulatory bodies for monitoring purposes. For instance, the Bureau of Internal Revenue (BIR) issued Revenue Regulation No. 09-09 on 29 December 2009 which "made it mandatory for large taxpayers classified under RR 1-98 to maintain a Computerized Accounting System (CAS) starting January 1, 2010" (Ganhinhin, n.d., para. 2). Large taxpayers who were still keeping their records manually needed to shift to CAS and register it with the BIR (Ganhinhin, n.d.). Although this regulation promotes efficiency, the shift definitely entailed additional costs for business enterprises classified as large taxpayers.

2.3 Ambiguity of Some Laws and Conflicting Interpretations by Regulatory Agencies

Problems arise when the words used in the law are vague or subject to different interpretations by regulatory agencies, or worse, when the law as applied in business differ from how it is interpreted by the Supreme Court.

The following is a discussion of the case of Gamboa v. Teves (2011), which deals with ambiguity in Section 11, Article XII of the 1987 Constitution. It is taken from the faculty paper, Gamboa v. Teves: An Economic Timebomb (Frias, 2011).

On 28 June 2011, the business world was shaken when the Supreme Court issued its ruling in the case of Gamboa vs. Teves, pronouncing that the term "capital" in Section 11, Article XII of the 1987 Constitution requiring 60% Filipino ownership in public utility companies pertains to voting shares of a corporation. Said ruling was later affirmed by the Supreme Court in Heirs of Gamboa v. Teves (2012).

The case involved the sale of government sequestered PLDT shares to Metro Pacific Assets Holdings, Inc. (MPAH), an affiliate of First Pacific Company Limited (First Pacific). The transaction was questioned before the court because it would ultimately result in the breach of the maximum of 40% foreign ownership in public utilities.

In the 2010 General Information Sheet (GIS) of PLDT, foreigners held 120,046,690 common shares of PLDT while Filipinos held only 66,750,622 common shares. This means foreigners held 64.27% of PLDT common shares as opposed to 35.73% for Filipinos. On the other hand, 99.44% of the preferred shares are owned by Filipinos while foreigners own 0.56%. The scope of "capital" under Section 11, Article XII of the 1987 Constitution was the issue because PLDT's authorized capital stock is composed of 77.85% preferred shares and 22.15% common shares. Hence, if the basis for determining Filipino ownership will be the outstanding shares of PLDT, there would be no violation of the constitution.

In choosing to limit "capital" to voting shares, the Court found that Section 11, Article XII of the 1987 Constitution is an express recognition of the sensitive and vital position of public utilities both in the national economy and national security. The evident purpose of the citizenship requirement is to prevent aliens from assuming control of public utilities, which may be inimical to the national interest.

The Court's restrictive interpretation of capital is incompatible with actual business practice. For 23 years, public utilities have consistently construed capital, in part because of the Securities and Exchange Commission's opinions to the same effect, as involving all equity of a corporation.

PLDT's response to the SC ruling was to create a new class of preferred shares with voting rights that effectively reduced foreign ownership of common shares to 35%. However, the Court's definition of "capital" still has its effects, particularly on the capital markets where foreigners will be more averse at investing in public utilities because of the 40% limit on control. In addition, one must equally consider if Filipino equity can absorb not just the billions worth of PLDT sharesthat will be affected but also shares of other public utilities which have an exposure to foreign investment that became unconstitutional after the ruling of the Supreme Court.

2.4 Conflict Between National and Local Regulations

With several institutions performing regulatory functions, it is not a remote possibility that regulators enact conflicting laws concerning a particular industry. Regulations imposed by local government units may be contradictory to national laws enacted by the legislature. This situation happened in Southern Mindanao, with regard to the Tampakan mine project managed by Sagittarius Mines, Inc. (SMI).

Covering the provinces of South Cotabato, Sarangani, Sultan Kudarat and Davao del Sur, the Tampakan mine project had been hampered by delays because the environmental compliance certificate (ECC), a pre-requisite for obtaining a permit to operate the mine, could not be issued due to a ban on open-pit mining imposed in Southern Cotabato by the local government ("Indophil remains committed to Tampakan mine project", 2012).

The firms behind the project brought the matter to the courts contesting that the local ban is in conflict with the provisions of The Philippine Mining Act of 1995, which allows the open-pit mining method. They aver that national regulations take primacy over local government ordinances ("Indophil remains committed to Tampakan mine project", 2012).

The Department of Environment and Natural Resources (DENR), in a press release dated 19 February 2013, eventually issued an ECC for the $5.9-billion Tampakan copper-gold project subject to certain conditions. SMI was mandated to "make public the feasibility of the project, ensure that the area does not cover those where mining is prohibited, and ensure social acceptability through consultation with stakeholders" ("DENR issues ECC for Tampakan Project", 2013, para. 7). SMI was directed, among others, to conform to the toxic and solid wastes provisions of laws on clean air, water and mining, "set up a Multipartite Monitoring Team (MMT) and submit an Environmental Protection and Enhancement Program (EPEP) that would integrate a final mine rehabilitation and decommissioning plan for when the project is terminated or completed," ("DENR issues ECC for Tampakan Project", 2013, para. 11) and "establish a Mine Environmental Protection and Enhancement Office (MEPEO) that would handle environment-related aspects of the project" ("DENR issues ECC for Tampakan Project", 2013, para. 12).

Prior to the issue involving the Tampakan mine project, the Chamber of Mines of the Philippines previously called on the Aquino administration to harmonize and resolve the conflicting national and local laws appertaining to mining which affect the development of the industry as well as the interest of foreign investors in them. The Chamber of Mines believes that "the open pit mining ban ordinance contains 'onerous' terms – including sweeping new provincial regulatory powers over large mining operations that clearly usurp the authority of the National Government" (Go, 2011, para. 4).

To address said issue, President Aquino issued Executive Order 79 (2012) that directed the Department of Interior and Local Government and the local government units that in the exercise of their powers and functions, they must conform to and be consistent with the regulations, decisions, and policies previously made by the National Government with respect to the conservation, management, development, and proper utilization of the State's mineral resources.

3 FAVORABLE REGULATION

Government intervention is not always imposed against the interests of the business community. Simply looking at the policy declarations stated in the law and without delving into practical and moral evaluations of the same, some regulations promote the interests of the business sector. Below are examples of statutes enacted by the legislature, which are favorable and/or provide incentives to the business community.

Republic Act No. 8479, otherwise known as the Downstream Oil Industry Deregulation Act of 1998, was passed to liberalize and deregulate the downstream oil industry in order to ensure a truly competitive market, promote and encourage the entry of new participants, and introduce adequate measures to ensure the attainment of these goals.

Republic Act No. 8293, The Intellectual Property Code of the Philippines (1997), protects patents, copyrights, trademarks, and other intellectual creations as the State recognizes that an effective intellectual and industrial property system is important for the development of creative activity, transfer of technology, inflow of foreign investments, and market access for our products.

Republic Act No. 7042, known as the Foreign Investments Act of 1991, seeks to attract foreign investments, in so far as allowed by the 1987 Philippine Constitution and other statutes, in activities that will significantly contribute to national industrialization and socioeconomic development.

Republic Act No. 9178, Barangay Micro Business Enterprises (BMBE's) Act of 2002, promotes the formation and growth of barangay micro business enterprises by granting them incentives and benefits, with the goal of speeding up the country's economic development.

4 CONCLUSION

It is undeniable that regulations are implemented for varying objectives. In the Philippines, a number of state policies are adhered to in the imposition of rules and regulations. Ultimately the core objective of regulation is the protection of public interest and the promotion of the greater good of the people.

A common notion is that regulations restrict certain business practices for the public weal. Yet, it cannot be said that regulations are also passed to enable business activities to commence and flourish. Hence, regulation per se does not always imply obstruction and restriction of business activity. Only when it is imposed to interfere in the proper interplay of market forces will it become unfavorable to the business community. However, when regulation is put in place to advance and protect the interests of the business sector and the public, and these interests are balanced successfully, then regulation facilitates growth and development.

As a developing nation, regulators should extend due consideration to the interests of business enterprises, in consonance with the aim of protecting the public welfare. The country will not progress from its current state if laws are so restrictive that it hampers industrial growth. Foreign ownership restrictions, embodied either in statutes or the Philippine Constitution, need to be reviewed, considering that the country only has limited investible funds to finance huge capital-intensive business projects. Furthermore, the consequences of any pricing regulation must be evaluated extensively before it is implemented. Reforms that would ease the requirements of starting a business also need to be passed. In the enactment of laws and rules and regulations, the phraseology must be clear enough to avoid conflicting interpretations but broad enough so as not to be too restrictive in their application. National and local regulations should be unified or at the very least remain consistent, in order to prevent business disruptions. The foregoing, among many other issues, have to be addressed to truly benefit and promote economic development in the country.

Taking into account business interests does not mean regulators should be made subject to private interests to the detriment of public welfare. A phenomenon commonly known as regulatory capture should be avoided. Posner (1974) referred to this phenomenon as the political scientists' theory of regulation, wherein regulated firms eventually come to dominate the agencies tasked to regulate them and succeed in influencing legislation to their advantage. An example of regulatory capture involves the National Telecommunications Commission (NTC) with regard to regulating the interconnection rates among industry players (Veloso, 2011). The NTC attempted to lower the interconnection rate in order to level the playing field for smaller telecom operators to enter the market, thereby benefitting the public through efficient and affordable rates. However, the NTC was unsuccessful in regulating the industry because of the continuous delays and opposition resorted to by dominant mobile carriers. In fact, "the NTC failed to enforce Memorandum Order 02-10-2011 it issued on October 24, 2011, directing Smart Communications and Globe Telecom to reduce their interconnection rates from P0.35 to P0.15" (Chavez & Rosario, 2012, para. 2). On 17 May 2012, businessman Jose "Joey'' de Venecia III filed before a Quezon City court a petition for mandamus and injunction compelling the National Telecommunications Commission (NTC) to implement its memorandum (Chavez & Rosario, 2012). After filing the petition, De Venecia told the Manila Times that "the NTC is either allowing itself to be bullied by Smart and Globe, or is colluding with the telecommunications companies to keep rates high" (Villamente, 2012, para. 2), a statement which basically captures the essence of regulatory capture.

On the part of the regulator, the key to successful regulation is the balancing of interests. How can this be practically attained? The regulatory framework should be designed properly, taking into account the benefits and costs of regulation. The framework will depend on a number of factors which include bureaucratic expertise, resource availability, political constraints, and economic impacts (Guasch & Hahn, 1999).

As already shown, the regulatory environment is not stagnant. Changes occur either abruptly or over time. Since changes in the regulatory environment may pose threats as well as opportunities to firms or industries, it is therefore vital for a company to anticipate regulatory trends and assess the potential impact on its business. The ability to reasonably predict the course of regulations made by the State may often define a firm's survival or success in the industry. If prediction may prove to be difficult, as indeed it is, the ability to quickly respond to new regulations or changes thereof, is equally important.

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