

1 - Introduction

In recent years, the Philippines has risen to prominence as a host state for multinational corporations (MNCs) to set up offshore operations, thus creating a stream of foreign direct investment (FDI) into the country. In the last two years, it has been noted as a leading emerging economy (Villegas, 2021).¹ But despite its growing economy, the Philippines has not been able to fully maximize FDI inflows due to several issues with its national regulatory controls and overall business environment that act as a deterrent to foreign investment. Among its Southeast Asian neighbors, the Philippines has ranked among the lowest in terms of FDI inflows for the last several decades (OECD, 2016). Even before the COVID-19 pandemic, FDI inflows were already in consecutive decline over three years prior to 2020 (de Guzman & Guido, 2021). The existing downward trend was exacerbated by the pandemic, with FDI inflows slumping to the lowest it has ever been in the last 5 years,² and the economy contracting by 9.5% in 2020 (Noble, 2021; Qian et al., 2021). The downward trend pre-pandemic illustrates that there are deeper implications behind the Philippines' relatively lackluster performance in attracting FDI.

Currently, FDI regulatory reform is being debated by the government to address the FDI inflow levels. In this context, a comprehensive assessment of the

¹ In 2020, the Philippines ranked 6th out of 66 emerging economies in terms of financial strength (Oxford Economics, 2019, as cited in Villegas, 2021). Similarly, in 2019, it ranked second in leading emerging markets predicted to dominate the global economy in the next decade (The Economist, 2020, as cited in Villegas, 2021).

² FDI inflows dropped from \$7647.5 billion USD in 2019 to \$1976.0 billion USD by the third quarter of 2020

objectives, failures, and successes of Filipino FDI regulations is of particular interest to me as a Filipino citizen. With the economy ravaged by the COVID-19 pandemic, the Philippines needs to do everything it can to stage an economic recovery. Ensuring that the country maximizes its FDI inflows by effectively reforming national regulations and improving its FDI framework/infrastructure will be essential to economic recovery. This paper will begin by discussing the colonial roots of FDI in the Philippines, and how national FDI regulation objectives have liberalized since the 1980s. On this foundation, the successes and shortcomings of current regulations is analyzed. Finally, ongoing regulatory reform is contextualized within current, national political complications. Ultimately, this paper argues that regulatory reform is needed in order to maximize the economic benefits of FDI inflows, but current reform efforts are unfortunately fraught with political tension.

2 - An Overview of the Filipino Economy and Business Environment:

Despite its storied history, the Philippines only emerged as an independent state in 1946, at the end of the Second World War (WWII); having suffered under Spanish and then American colonization, as well as Japanese occupation during WWII. It is a country that has had to fight a long and hard battle for its sovereignty. From a postcolonial perspective, it is still economically weighed down by its colonial

past in that it remains rather low on the global value chain (Roy, 2017).³ Poor infrastructure, poverty, and economic disparity plague the country – so much so that the Philippines was once known as the “Sick Man of Asia”. Filipinos worry that the economic downturn of the COVID-19 pandemic has revived the epithet (Punongbayan, 2021).

Moreover, the Filipino business environment remains afflicted by widespread and chronic corruption issues that penetrate the highest levels of government (Magtulis & Park, 2017). Progress towards a liberal political economy suffered a grave setback under the dictatorship of Ferdinand Marcos in the 1970s and 1980s. Political instability has also worsened under the current President, Rodrigo Duterte, which negatively impacts investor confidence (Agbola, 2014).⁴ Together, all these factors form barriers to attracting additional FDI (and thereby economic growth) and are salient contextual facts to remember when analyzing Filipino FDI policies and regulatory reform.

³ Global value chain (GVC) is defined as “the full range of activities that firms and workers do to bring a product/good or service from its conception to its end use and beyond. This includes activities such as design, production, marketing, distribution and support to the final consumer... divided among multiple firms and geographic spaces” (Duke University, 2021).

⁴ Domestically, Duterte’s controversial “War on Drugs” campaign and terrorism in the Mindanao region has contributed to political instability, especially since the International Criminal Court issued a report concluding that human rights violations had occurred under the Duterte administration’s “War on Drugs” (Aspinwall, 2021; Gutierrez, 2020; Punzalan, 2021). Internationally, the Philippines has been caught up in geopolitical tensions between China and the USA on issues ranging from territory to 5G Huawei projects in the Philippines (Brands, 2021; Oxford Analytica, 2021). A commercial political risk assessment conducted by Oxford Analytica rated the Philippines as a “BR” country, the middle out of three rankings in the “medium risk” category which is defined as: “Investors in countries with a BR rating are typically exposed to frequent but medium impact (sometimes material) business risk. Mitigation occurs through broad-based exposure and active management” (Oxford Analytica, 2021).

3 - The Objectives and Initial Success of FDI Regulations

3.1 - Liberal Economic Theory and the Evolution of FDI Policy Objectives

When assessing the objectives of Filipino FDI policies since mid-1980s reform period, it is first necessary to examine the correlation between FDI and economic growth according to economic theory. Liberal economic theory is the basis on which the objectives of FDI regulations in the Philippines have been formulated and then reformed over the years. The theory predicts that FDI inflows brought into the country by MNCs can generate positive spillovers into the domestic economy through technology and knowledge transfers to local corporations, thus enhancing the value-added of domestic firms (Aldaba & Aldaba, 2013). Furthermore, the entry of foreign MNCs into the local market may push domestic firms to innovate due to the growing competition (Aldaba & Aldaba, 2013).

Working under these liberal economic assumptions, the Filipino government enacted a major shift in FDI policy towards liberalization in the 1980s and 1990s (Aldaba & Aldaba, 2013; OECD, 2016). This shift was in response to the volatile economic growth and fluctuating levels of FDI that the country suffered during the early 1980s⁵ (Agbola, 2014). The objective of Filipino FDI regulations from the 1980s onwards was to encourage FDI inflows (Aldaba & Aldaba, 2013). This objective was

⁵ The 1980s FDI regulatory reform shift also coincided with the end of the Martial Law dictatorship under Ferdinand Marcos as well as the general global trend towards liberalization. It was an immensely complicated time period for Filipino political economy that should be acknowledged, but an in-depth discussion is beyond the scope of this paper

pursued through the establishment of special economic zones (SEZs) in the 1990s, which enjoyed tax breaks and other incentives (Aldaba & Aldaba, 2013). Several state-owned corporations were also privatized, and the formation of several free trade agreements (FTAs) created regional and global networks facilitating FDI (Agbola, 2014; Aldaba & Aldaba, 2010). Legislatively, a milestone was the *Foreign Investment Act of 1991*, which loosened controls on FDI and entitled foreign investors to basic rights under the constitution (Austria, 1998).

In particular, strong liberalization efforts through legal reform and infrastructure overhaul were enacted in the financial, transportation, and telecommunication industries (Agbola, 2014). Liberalization was accompanied by political stability under the Ramos administration (Austria, 1998). These reforms were an important *first* step in helping the country maximize the economic benefits of FDI and by 2007, the private sector accounted for over 90% of national GDP and employment (Agbola, 2014). The regulatory reformation of the 1990s coincided with wage increases in Singapore, Malaysia and Thailand. Therefore, the liberalization of FDI policies during this time period enabled the Philippines to take advantage of MNCs shifting their labor-intensive operations to the Philippines alongside other countries like China and Bangladesh, where labor was cheaper (Austria, 1998).

3.2 A Case Study of Initial Policy Success: The Rise of Special Economic Zones (SEZs)

The creation of SEZs was an integral factor in the early success of Filipino FDI regulatory reform. This is because SEZs can enact special policies that encourage FDI by creating both financial and non-financial incentives for MNCs. One of the most prominent success stories of SEZs is the BPO-IT (business process outsourcing and information technology) industry. In 2021, this industry dominated the national service sector, which represents 61% of GDP and forms 57.6% of the country's employment (PS Engage Global Government Relations PTE LTD, 2021). With a strategic trade position, a growing population, rich natural resources, and a relatively well-educated and English-speaking population, the Philippines is a favorite destination for MNCs to offshore a range of services from call centers to technology and other back-office support (Agbola, 2014; Magtulis & Park, 2017; Piad, 2021). In 2011, it surpassed India as the biggest call-center hub globally (Shead, 2017; The Economist, 2012). Notable western MNCs like Canadian telecommunications giant TELUS have a sizeable presence in the Philippines IT-BPO sector and are expanding even amid the pandemic (Yap, 2021).

However, success in niche industries like BPO-IT and within the fixed environment of an SEZ cannot be taken as the sole signifier for how FDI has impacted the entire national economy. The increase in employment tends to be limited to these SEZs and thereby does not largely impact other sectors of the national economy (Narula & Zhan, 2019). Moreover, the investor-friendly policies found in SEZs are not as easy to institute nationally, so "the SEZ [only] represents a *microcosm* of the host

country operating at its *most efficient*" (Narula & Zhan, 2019). Therefore, despite the effectiveness of SEZs in triggering economic growth by encouraging FDI inflows, they are not a *long-term* solution for the socioeconomic issues troubling the *national* economy (Narula & Zhan, 2019).

While SEZs provide increased employment opportunities for the growing population of the Philippines, technological and knowledge transfers from MNCs to local firms are not a forgone conclusion, and it is these transfers that are crucial to long-term national economic development (Narula & Zhan, 2019; The Economist, 2012). It must be also noted that the economic effectivity of the positive spillovers created by FDI is dependent on the quality and quantity of the linkage, as well as the ability of local firms to internalize these spillovers efficiently (Aldaba & Aldaba, 2010; Narula & Zhan, 2019). Ultimately, it is apparent that while *initially* successful, the initial stages of FDI regulatory reform in the Philippines between the mid-1980s to early 2000s still have room for further improvement. While it is true that SEZs can catalyze wide economic benefits to the national economy, this relies on careful management on the part of the home government (Narula & Zhan, 2019).

4 - The Long-Term Failures of Current FDI Regulations: A Need for Reform

4.1 - Lack of Regulatory Support for Local Firms' Internalization of FDI Spillovers

Building on the limited long-term economic benefits of SEZs as discussed above, a key regulatory shortcoming that is related to the shortcoming of SEZs (again

using the BPO-IT industry as a case study) is how government policies fail to facilitate the ability of domestic firms to completely maximize positive spillovers caused by FDI through efficient integration and upskilling⁶ of local firms. This lack of regulatory support in assisting with domestic firms' internalization of FDI spillovers applies both to SEZs and to other sectors of the national economy where FDI inflows occur. Recent technological developments are threatening the success of the BPO-IT industry. As far back as 2012, when the Philippines overtook India as the call-center capital of the world, it was already pointed out that in terms of longstanding success, the industry's challenge would be to move up the global value chain (The Economist, 2012). The priority is to gain a bigger market share of more high-value back-office jobs, called "knowledge-process and legal-process outsourcing" – jobs in which India still beats the Philippines (The Economist, 2012).

Since 2012, the Philippines has made an effort to "upskill" their workforce to capture these higher-value jobs,⁷ but the gap between technical skills needed and technical skills taught in schools is still substantial enough that many Information Communication Technology (ICT) MNCs in the Philippines are still pushed to hire ICT experts for these higher-value jobs from outside the country rather than recruiting from local human capital (OECD, 2021). The looming threat of the Filipino's workforce

⁶ Upskilling is defined as increasing the capabilities (skills) of the labor force to perform higher value-added jobs, which then moves the national labor force up on the global value chain.

⁷ Notably, the IT and Business Process Association of the Philippines (IBPAP)'s *Roadmap 2022* project aims to upskill 75% of the BPO-IT sector to mid-skilled or high-skilled positions by 2022 (Oxford Business Group, 2021; IBPAP, 2019). However, the success of this program has yet to be seen and COVID-19 has hampered the effort.

upskilling struggles has only been intensified with two effects of the COVID-19 pandemic. Firstly, the necessity to work from home during the pandemic has revealed gaping holes in the country's infrastructure, particularly in terms of internet connectivity (Einhorn et al., 2021; Venzon, 2020a). Secondly, the pandemic has accelerated the rise of AI (artificial intelligence) and automation, thereby threatening the lower-skilled BPO-IT jobs in the Philippines (Einhorn et al., 2021).

This issue of an under-skilled labor force stems from the lack of government regulatory support available to local firms in helping internalize the positive spillovers associated with FDI. As noted earlier, the ability of local firms to effectively assimilate the technological and knowledge transfers provided by MNCs is crucial in maximizing FDI spillovers (Aldaba & Aldaba, 2010; Narula & Zhan, 2019). Therefore, unless the Philippines can effectively upskill its labor force, take full advantage of FDI technology/knowledge transfers, and thereby move higher up the global value chain, it may lose its attractiveness as an outsourcing hub for MNCs and FDI (Austria, 1998; Oxford Business Group, 2021a). This upskilling effort will require concerted support on the part of the government. Unfortunately, there is still a deficiency of regulatory support and a need for improvement.

4.2 - Corruption and Crony Capitalism

A second failure of current FDI regulations is how the Philippines is hampered by chronic corruption and crony capitalism (OECD, 2016). Under the Ninoy Aquino presidency, the OECD noted a substantial improvement in resolving corruption within

the government (Magtulis & Park, 2017). Unfortunately, under the current Duterte administration, there has been a regression to unethical business practices.⁸ As of January 2015, a total of 197 cases of tax evasion and smuggling valued at \$2.2 billion USD have been filed (Magtulis & Park, 2017). A stable political environment is essential to investor attractiveness, therefore regulatory reform to strengthen antitrust legislation and combat monopolistic business practices is essential in maximizing the potential of FDI (Agbola, 2014; Heydarian, 2020).

4.3 - Protectionism, Legislative Red Tape, and Bureaucracy

Finally, despite considerable progress towards liberalization and efficiency since the 1980s, FDI regulations remain relatively protectionist and fragmented according to international and regional standards (OECD, 2016). Some critics argue that it is this fragmentation that contributes to the previously stated issue of corruption, since an overly bureaucratic and decentralized FDI regulatory system breeds incentive for businesses to engage in bribery in order to overcome red tape (Aldaba & Aldaba, 2010). Moreover, protectionism and red tape create confusion and inefficiency which detract investors.

Filipino FDI regulations are still strongly rooted in nationalism and the protection of domestic businesses despite attempts to liberalize policies. This

⁸ Critics point out that amid the socioeconomic uncertainty caused by President Duterte baselessly attacking and accusing long-standing Filipino institutional businesses of corruption (e.g., media giant ABS-CBN, owned by the liberal Lopez family), Duterte allies (called “Dutertegarchs”) are exploiting the situation and enriching their own private interests (Heydarian, 2020). The actions of the “Dutertegarchs” particularly during the COVID-19 pandemic has been deeply controversial in domestic politics. It is a complex issue that is beyond the scope of this paper but is nonetheless worth noting.

protectionist attitude is arguably attributable to its history as a country that has had a difficult fight for its independence (OECD, 2016). These protectionist regulations have been an enduring barrier in attracting FDI. According to the World Bank's "Ease of Doing Business" rankings, the Philippines scored a mediocre 62.8 out of 100 in 2020, placing 95th out of 190 countries globally and 11th out of 25 countries in the East Asia and Pacific Region (World Bank, 2020a, 2020b). A key example of lingering protectionism is the *Foreign Investment Negative List*, which illustrates economic activities where foreign ownership is either completely banned or limited (OECD, 2016). Additionally, 40% is the maximum portion of equity allowed under Filipino law for foreign investors (The Economist, 2012; OECD, 2016). Foreign investors also face an extremely high minimum capital requirement of \$200,000 USD (OECD, 2016).

Furthermore, multiple legislative bills govern FDI inflows, including, but not limited to: the *Foreign Investments Act of 1991*, the *Retail Trade Liberalisation Act of 2000*, the *Omnibus Investment Code*, the *Special Economic Zone Act*, and the *Philippine Constitution* (OECD, 2016; Philippine Economic Zone Authority - PEZA, n.d.). All these different regulations contribute to confusion which detracts investment. In particular, it is the Constitution that is proving to be the prime roadblock in liberalizing FDI regulations, since outdated protectionist policies that discourage FDI is protected by the Constitution, which is difficult to amend (OECD, 2016).

Moreover, the investment incentives system is governed by many conflicting organizations, adding to the bureaucracy confusing investors (OECD, 2016). Even when it comes to the governance of SEZs, there is not a single governing institution. Instead, the approval of foreign investment is approved by several agencies, such as PEZA (Philippine Economic Zone Authority), BOI (Board of Investments), and CDC (Clark Development Corporation) (OECD, 2016; PS Engage Global Government Relations PTE LTD, 2021). This protectionist and fragmented system of FDI regulations and governance is an added negative factor to potential investors. Therefore, reform in FDI legislation to promote consistency and liberalization is vital (Magtulis & Park, 2017).

5 - FDI Regulatory Reform Today: A Political Dilemma

Regulatory reform is clearly necessary to improve FDI inflows and maximization of FDI spillovers, however such reform are entrenched in domestic and international political complexities. In recent months, there have been increased attempts to change legislation with the hope of maximizing FDI to help with economic recovery from the COVID-19 pandemic. The government has been pushing for more complete reform of FDI regulations to build on the liberalization progress that started in the 1980s. The new reform initiative began in 2018 when the *Ease of Doing Business Act* was passed and the *Anti-Red Tape Act of 2007* was amended (Oxford Business Group, 2021b).

Such reformation efforts have been rather inconsistent, with Duterte proposing a tax plan that would curb corporate income for MNCs in 2019, and then cutting corporate tax in 2020 through the *Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act* to stimulate economic growth (PS Engage Global Government Relations PTE LTD, 2021; Venzon, 2019, 2020b, 2021). With the economic repercussions of the pandemic looming, the Duterte administration has made clear its commitment to further liberalize FDI regulations, proposing the *Retail Trade Liberalization Act*, and amendments to the *Foreign Investments Act* and *Public Service Act* (Endo, 2021; Valencia, 2021).⁹ However, none of these proposed legislative forms properly address the issues of corruption and crony capitalism, which are vital issues poisoning the Filipino business environment.

Most importantly, the government is discussing a Constitutional amendment which would allegedly allow Congress to more easily pass legislation promoting FDI. However, such amendment debates are saturated with political controversy (Lopez & Calonzo, 2021). With the 2022 presidential elections coming up, Filipinos are suspicious of constitutional amendments, seeing it as a potential power grab (Lopez & Calonzo, 2021). Duterte's proposed constitutional reform includes a transition to federalism, which critics fear provide an opening to either delay the 2022 elections or

⁹ The new or amended legislation mentioned in this section is by no means an exhaustive list of regulatory reforms occurring under the Duterte administration. Only a selection was presented in the interest of brevity. Aside from regulatory reform, the government has also expressed interest in joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), another step forward in liberalizing and improving the FDI national framework (PS Engage Global Government Relations PTE LTD, 2021).

to remove the limit on presidential terms (Castaneda, 2020; Talabong, 2020; Quimpo, 2021).¹⁰

Aside from domestic political controversy, several government projects relating to the development of the FDI national framework have been caught up in Sino-American geopolitical tensions (Brands, 2021). Since the Philippines has historically been a crucial ally of the USA in the Asia Pacific, the Duterte regime has attracted controversy in its seemingly more pro-China stance even in areas related to FDI encouragement like the development of infrastructure. Notably, Duterte's *Build, Build, Build* project, meant to address the country's physical infrastructure problems, has been critiqued for its ties to China's Belt and Road Initiative (de Castro, 2019; Kong, 2019; Lin et al., 2019).¹¹ The launch of 5G networks using Huawei equipment (another infrastructure project meant to address the connectivity issues detracting FDI) has attracted similar controversy.¹² As tensions between the Philippines, China,

¹⁰ Currently, Filipino presidents are only allowed to serve one, six-year term (Republic of the Philippines, 2021). The constitution was amended after the end of Ferdinand Marcos' dictatorship to prevent presidents from serving more than one term, since the Marcos dictatorship emerged from two terms served consecutively which eventually transformed into Martial Law and dictatorship (Republic of the Philippines, 2021). Due to Duterte's controversial policies (e.g., War on Drugs campaign; Chinese appeasement), many Filipinos are wary of a Duterte dictatorship. Additionally, President Duterte's daughter, Sarah Duterte, is noted to be a leading candidate in the 2022 presidential elections, further heightening concern of President Duterte's seeming intentions to set up a political dynasty if not a dictatorship (PS Engage Global Government Relations PTE LTD, 2021; Quimpo, 2021).

¹¹ More specifically, critics have noted how Chinese support for infrastructure projects are influencing Duterte's stance on other areas of Chinese-Filipino bilateral relations such as the territorial conflict in the South China Sea (de Castro, 2019; Kong, 2019; Lin et al., 2019). This is again an extremely complex political situation that is beyond the scope of this paper but is a crucial aspect of Filipino politics to keep in mind.

¹² The national rollout of 5G networks using Huawei equipment has gained public pushback from Filipinos wary of Huawei 5G equipment being used to conduct Chinese espionage, and international pressure from the USA regarding the same issue (Heydarian, 2019b, 2019a; Torrecampo, 2019).

and the USA deepen, international geopolitics are becoming a key concern for local politics, which may potentially impact future regulatory support for FDI infrastructure development.

Truthfully, the Philippines desperately needs both infrastructure/framework developments and legislative reform in order to improve its business environment and attract more FDI. While the political tensions surrounding these issues are valid, they undoubtedly hinder ability of the Philippines to reform its FDI regulations both legislatively and in terms of promoting infrastructure upgrades.

6 - Conclusion

Since the 1980s, the Philippines has made substantial steps in liberalizing FDI regulations nationally and has shown some short-term success in those reformatations, as is seen in the SEZs case study of the BPO-IT industry. However, an in-depth analysis of FDI regulations today arguably proves that further reform is necessary to maximize positive spillovers from FDI in the long term. Resolving corruption and red tape is essential to the regulatory reform needed to improve FDI infrastructure and help local firms “upskill” and efficiently internalize FDI positive spillovers. Domestic and international political tensions permeating these issues further encumber the regulatory reform needed to encourage and maximize FDI inflows. Resolving these political complications in addition to the already complex regulatory issues themselves is the work of generations, and it is difficult at this point to see whether they can be efficiently (if at all) solved.

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