



**FINANCIAL EXECUTIVES INSTITUTE
OF THE PHILIPPINES (FINEX)**

July 6, 2022

Mr. Bien A. Ganapin

Director IV

Trade, Services, and Industry Staff (TSIS)

National Economic and Development Authority

Dear **Mr. Ganapin**:

We commend National Economic and Development Authority (NEDA) for preparing an extensive and well written Public Service Act (PSA) Implementing Rules and Regulations (IRR).

In general, the IRR should adhere to the over-arching policy of the law to liberalize the investment climate of the country. Likewise, the IRR should not contain provisions that unnecessarily expand the law as that will expose the IRR constitutional challenge.

Subject to the foregoing, hereunder are our preliminary comments:

1. Section 4. GENERAL JURISDICTION: For clarity, it may be better to state "Nothing in this Act shall be interpreted as a requirement for legislative franchise where the law does not require any." Although this phrase does appear elsewhere, this section does talk about franchises.
2. Section 9. POWER TO SUSPEND OR REVOKE ANY CERTIFICATE ISSUED DUE TO FAILED PERFORMANCE AUDIT: This section talks about an annual performance audit to be conducted by an "independent evaluation team." Failing the audit for three consecutive years can cause the certification of operation to be revoked. We suggest that "independent evaluation team" be defined clearly as to composition and independence as this is a critical function.
3. Section 40. FACTORS TO CONSIDER IN THE CONDUCT OF NATIONAL SECURITY REVIEW: This section is a bit vague and open-ended, and should probably be refined further; e.g. What is a "classified contract" and which geographical areas are critical to national security. Otherwise, it opens the door to security review under too many conditions, some probably unwarranted.
4. Section 44. RECIPROCITY REQUIREMENT FOR INVESTMENTS IN CRITICAL INFRASTRUCTURE: Subsection c allows both the administrative agency and/or the SEC to ask for the same requirements, which is a duplication of function. This should probably be under the SEC alone.
5. Section 47. PERFORMANCE AUDIT: Contains this provision: "Provided, that in the case of critical infrastructure and public utilities, the performance audit shall include risk assessment, emergency response, and cybersecurity, among others." However, this does not apply to PUVs, which have remained a public utility under the PSA Law. This should probably be modified to reflect this.

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ROBERTO F. DE OCAMPO CENTER FOR FINANCIAL EXCELLENCE

1901, 19/F, 139 Corporate Center, Valero St., Salcedo Village, Makati City .

Tel. Nos. (632) 811-4184; 811-4188; 811-4187; 811-4189; 811-4052 . Fax No. (632) 811-4185

E-mail: admin@finex.org.ph . Web Site: <http://www.finex.org.ph>

We appreciate this opportunity to provide comments on the draft IRR and we hope that they will be considered in the finalization of the said document. Please be informed that we still intend to submit additional comments from our members in around five (5) days for your consideration.

Thank you and best regards.

Very truly yours,


Michael Arcatomy H. Guarin
President