

FOREIGN INVESTMENTS WATCH PHILIPPINES

BDB Law
DU-BALADAD AND ASSOCIATES

MEMBER FIRM OF

wts global

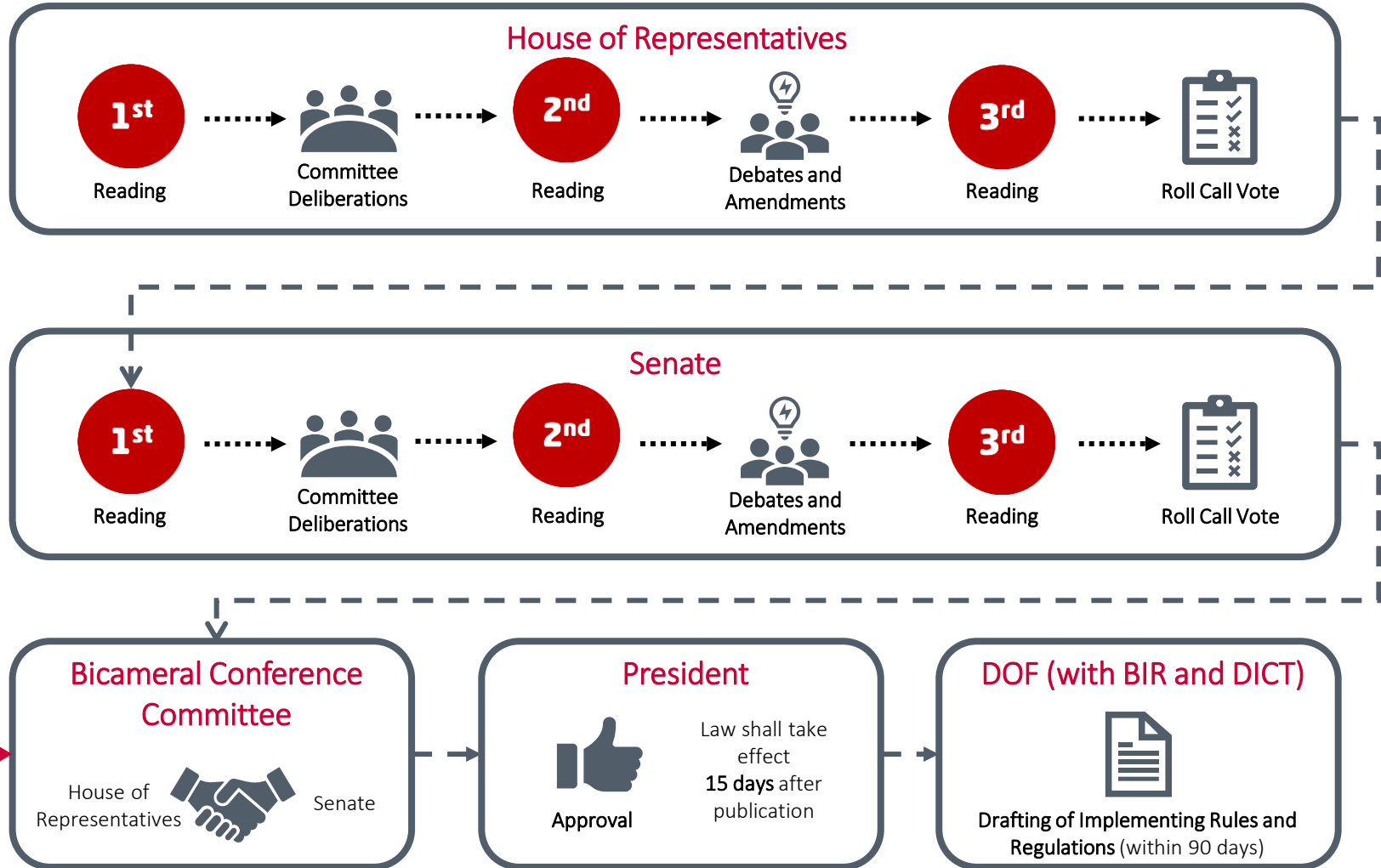
Locally rooted- Globally connected

**VOL.2 PROPOSED AMENDMENTS
TO THE PUBLIC SERVICE ACT**

Legislative Process: Where are we and what is next?

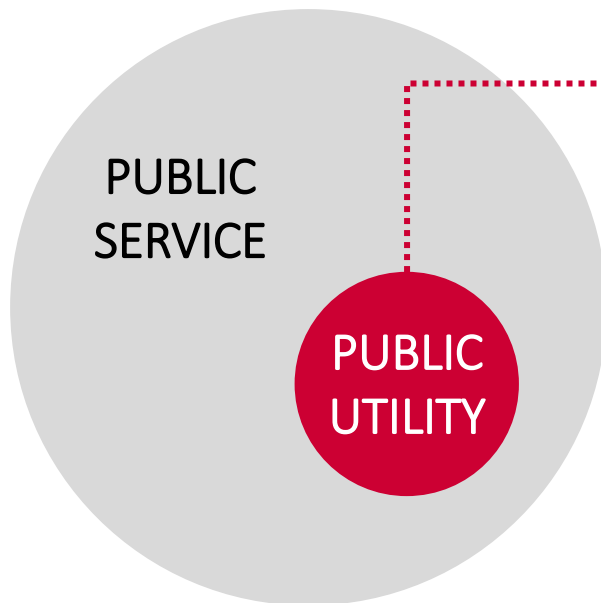
WE
ARE
HERE!

A Conference Committee Report was issued to reconcile HB No. 78 and SB No. 2094



SALIENT PROPOSED AMENDMENTS

I. Public Service and Public Utility



- Operates, manages, or controls for public use any of the ff:
1. Distribution and/or transmission of electricity
 2. Petroleum or petroleum products pipeline transmission system;
 3. Water pipeline distribution systems and wastewater pipeline systems;
 4. Seaports; and
 5. Public utility vehicles.

Concessionaires, JVs, and other similar entities that wholly operate, manage, or control for public use the sectors above are also considered as public utilities

NOTE:

- Nothing in the Act will be interpreted as a requirement for a legislative franchise where the law does not require any.
- No person shall be deemed a public utility unless subsequently provided by law.

SALIENT PROPOSED AMENDMENTS

II. Classification of a Public Service as a Public Utility

Upon recommendation of NEDA, the President may recommend the classification of a public service as a public utility based on the following criteria:

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

*A **natural monopoly** exists when the market demand for a commodity or service can be supplied by a single entity at a lower cost than by two or more entities.

III. Power to Issue Certificates Authorizing the Operation of Public Service

The certificate shall only be issued to corporations, partnerships, associations, or joint stock companies that are **constituted and organized under the laws of the Philippines**.

SALIENT PROPOSED AMENDMENTS

IV. Power to Fix Rates, Tolls, etc.

The relevant administrative agencies shall have the power to fix and determine fair and reasonable individual or joint rates, tolls, charges, classifications, tariffs, or schedules when the public interest so requires provided that:

- Rates proposed by public services may be **provisionally** approved without need of a hearing. However, a hearing shall be held within 15 days to ratify the prior provisional approval.
- The administrative agencies may also establish a **methodology for setting rates** to ensure a reasonable price of the commodity or service and that the rates prescribed shall not be discriminatory.

It should be understood, however, that this power shall not be interpreted as mandating rate regulation nor amending or repealing laws providing deregulation policy and regulations promulgated by the administrative agencies to deregulate rates.

V. Power to Suspend or Revoke Any Issued Certificate

The relevant administrative agencies shall have the power to suspend or revoke any issued certificate when the holder has failed the annual performance audit for **three consecutive years**.

SALIENT PROPOSED AMENDMENTS

VI. Power to Suspend or Prohibit a Transaction or Investment

Within sixty days from receipt of a recommendation from the relevant administrative agency, the President may suspend or prohibit any proposed merger or acquisition transaction, or any investment in a public service that effectively results in the **grant of control, whether direct or indirect, to a foreigner or a foreign corporation.**

VII. Investments by Foreign Governments or State-Owned Enterprises

Entities controlled by or acting on behalf of foreign governments or foreign state-owned enterprises shall be **prohibited from owning capital** in any public service classified as public utility or critical infrastructure provided that:

- The prohibition shall apply only to investments made after effectivity of the Act and that foreign state-owned enterprises owning capital prior to the effectivity of the act are prohibited from investing additional capital;
- Sovereign wealth funds and independent pension funds of each state may collectively own up to thirty percent of the capital of such public services.

SALIENT PROPOSED AMENDMENTS

VIII. Reciprocity Clause

General Rule: Foreign nationals shall not own more than fifty percent of the capital of entities engaged in the operation and management of critical infrastructure

Exception: Unless the country of such foreign national accords reciprocity to Philippine nationals

Reciprocity may be satisfied by according rights of similar value in other economic sectors.

IX. Employment of Foreign Nationals

A public service shall employ a foreign national only after the determination of **nonavailability of a Philippine National** who is competent, able, and willing to perform the services for which the foreign national is desired.

X. Information Security

Persons and companies engaged in telecommunications business, except for those classified as MSMEs, shall obtain and maintain certifications from an accredited certification body attesting to **compliance with relevant ISO standards** on information security. The maintenance of these certifications is a continuing qualification for retention of franchise or other authority to operate.

SALIENT PROPOSED AMENDMENTS

XI. Customer Complaints

In case the services of an entity engaged in the operation and management of critical infrastructure are interrupted, it shall act on customer complaints within ten days, or provide an action plan to be accomplished within a reasonable period from receipt of the complaint, written or otherwise.

XII. Telecommunications as Critical Infrastructure

Notably, telecommunications (and other vital services as declared by the President) is considered as a critical infrastructure a public service so vital to the Philippines that the incapacity or destruction would have detrimental impact on national security.

Consequently, telecommunications is subject to the **ban on investments by foreign governments or state-owned enterprises**. It is also subject to the provisions on **reciprocity** and the requirements on **actions to customer complaints**.

SALIENT PROPOSED AMENDMENTS

XI. Telecommunications as Critical Infrastructure

Notably, telecommunications (and other vital services as declared by the President) is considered as a critical infrastructure a public service so vital to the Philippines that the incapacity or destruction would have detrimental impact on national security.

Consequently, telecommunications is subject to the **ban on investments by foreign governments or state-owned enterprises**. It is also subject to the provisions on **reciprocity** and the requirements on **actions to customer complaints**.

IX. Employment of Foreign Nationals

A public service shall employ a foreign national only after the determination of nonavailability of a Philippine National who is competent, able, and willing to perform the services for which the foreign national is desired.

FOREIGN INVESTMENTS WATCH PHILIPPINES

BDBLaw
DU-BALADAD AND ASSOCIATES

BDBLaw
DU-BALADAD AND ASSOCIATES

MEMBER FIRM OF

wts global

TAX • LEGAL • CONSULTING

Holistic. Professional. Personal.



20th Floor, Chatham House
Rufino corner Valero Street
Makati City 1227, Philippines



+63 2 403 2001 ext. 300



info@bdblaw.com.ph



www.bdblaw.com.ph