

## **National Economic and Development Authority Issues the Implementing Rules and Regulations of the Act that Amends the Public Service Act**

On 20 March 2023, the National Economic and Development Authority issued the Implementing Rules and Regulations (“IRR”) of Republic Act (“RA”) No. 11659 or An Act Amending Commonwealth Act No. 146, otherwise known as the Public Service Act, as amended. The IRR defines a public utility, distinguishes public utilities and public services, and liberalizes foreign ownership restrictions on public utilities.

Under the Philippine Constitution, only Filipino citizens or corporations organized under Philippine law with 60% of its capital owned by Filipino citizens are allowed to operate a public utility. Prior to the enactment of RA No. 11659 and its IRR, a public utility was not expressly defined under Philippine law. Under the law, the closest definition of a public utility was found in Commonwealth Act No. 146, which provides a long enumeration of public services such as transportation providers, utility providers, communication providers, among others. Consequently, the public services listed under Commonwealth Act No. 146 were subjected to the 40% foreign ownership restriction, which limited foreign investments, innovation and competitiveness in these industries.

With the issuance of IRR of RA No. 11659, a public utility was expressly limited to public service entities that operate, manage or control the following: (a) Distribution of electricity; (b) Transmission of electricity; (c) Petroleum and petroleum products pipeline transmission systems; (d) Water pipeline distribution systems and wastewater pipeline systems, including sewerage pipeline systems; (e) Seaports; and (f) Public utility vehicles. The IRR of RA No. 11659 also provides that foreign nationals are not allowed to own more than 50% of the capital of public service entities engaged in providing telecommunications services unless the country of such foreign nationals accords reciprocity to Philippine nationals.

As a result, public service entities, which do not fall under the definition of a public utility, are no longer subject to the 40% foreign ownership restriction and can be 100% foreign owned, provided that they are not engaged in other nationalized industries. Substandard public services in the Philippines, such as railways and airports, can now be infused with much needed foreign investments to improve the services to the general public. More foreign players can now participate in these sectors to increase the competitiveness in the industry.

The IRR of RA No. 11659 shall take effect on 04 April 2023.

*This article is intended for informational purposes only and should not be construed as legal advice.*