FEF PRESS STATEMENT: THE CHANGE THE CONSTITUTION NEEDS IS LIFTING THE FOREIGN OWNERSHIP RESTRICTIONS AND REMOVING THE PROTECTIONIST PROVISIONS

We, the Foundation for Economic Freedom, are seriously concerned with the proposed Constitution drafted by the Puno Consultative Committee.

The draft Constitution retains all the restrictive and protectionist provisions of the current 1987 Constitution and the past Constitutions. These provisions have been responsible for the country’s historically inferior growth relative to the economic aspirations of the broader Filipino population and relative to the country’s neighbors. These have sent strong signals to foreign investors that they are not welcome to invest in the Philippines to create jobs, transfer technology, provide healthy competition, and improve the lives of Filipinos.

We refer to the following sections:

**Article II Section 21.** The Federal Republic shall develop an independent and competitive national economy actually and effectively controlled by Filipinos.

**Article XV Section 3.** (b) Private corporations or associations whose share of stocks are owned or controlled at least sixty percent (60%) by Filipino citizens, may lease not more than one thousand hectares of alienable lands of the public domain for a period not exceeding twenty-five (25) years, renewable for another twenty-five (25) years.

(d) Congress may, by law, change the requirements for lease of alienable lands under this section, considering the general welfare of the people and the necessities of conservation, ecology, development, and agrarian reform.

**Section 4.** (a) The exploration, development, and utilization of natural resources shall be a shared power of the Federal and Regional Governments. Within their respective competencies, they may determine the manner and extent of their exploration, development, and utilization. They may directly undertake such activities, or they may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or entities at least sixty percent (60%) of whose voting capital is owned by Filipino citizens. Such agreements may be for a period not exceeding twenty-five (25) years, renewable for another twenty-five (25) years.

(d) Congress may, by law, change the voting capital requirement under this section considering the federal and regional interest of the people.
Section 12. (a) The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

(b) Only Filipino citizens or corporations or associations at least seventy percent (70%) of whose voting capital is owned by such citizens, shall be allowed to engage in the advertising industry.

(c) Congress may, by law, change the voting capital requirement under this section considering the public welfare and national security, and for this purpose, such entities shall be managed by citizens of the Philippines.

Section 13. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty percent (60%) of whose voting capital stocks are owned by such citizens; nor shall franchise, certificate, or authorization be exclusive in character for a period longer than twenty-five (25) years, renewable for another twenty-five (25) years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited and proportionate to their voting capital.

Congress may, by law, change the voting capital requirement and period of the franchise under this section considering public welfare and national security, and for this purpose, such entities shall be managed by citizens of the Philippines.

Section 15. (a) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty percent (60%) of the capital of which is owned by such citizens.

(b) Congress may, by law, change the voting capital requirement under this section considering public welfare and national security, and for this purpose, such entities shall be managed by citizens of the Philippines.

(c) No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third (1/3) of the enrollment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

Section 17. The Federal Republic shall regulate and exercise authority over foreign investments in accordance with its national goals and priorities and the general welfare of the people.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, preference shall be given to qualified Filipinos.

While we acknowledge that the draft Constitution allows Congress to change the voting capital requirement and other requirements under certain conditions, the draft Constitution does not fulfill the change that President Duterte promised. Instead, it retains the present restrictive provisions in the current
Constitution and signals that change will only happen if and when Congress sees fit. In the case of the exploration and development of natural resources, the draft is even more restrictive in casting in doubt the possibility of 100% ownership under a Financial or Technical Assistance Agreement (FTAA).

We propose that the default provisions not be restrictions but allow Congress to regulate the entry of foreign investments as conditions, including public welfare and national interest, warrant. Through this suggestion, we are following the practice of other countries which do not put such restrictions in their Constitutions but legislate them, allowing for flexible responses to changing conditions. Moreover, by removing these restrictions in the fundamental law of the land, we are signaling that change has happened and we are open to investment, foreign or local.

We find these restrictions out of step and out of sync with reality. For example, the limitation on ownership of mass media entirely to Filipino citizens seems irrelevant in the age of the Internet when Filipinos consume their mass media from foreign companies, such as Facebook, Netflix, CNN, Twitter, and Youtube.

We also contend that provisions mandating preference to Filipinos in the “grant of rights, privileges, and concessions covering the national economy and patrimony” may be interpreted as keeping out foreigners to promote insularity, protectionism and worse, mediocrity and monopoly. The draft Constitution does not project the Philippines as a modernizing country embracing the future but rather projects it as backward-looking, anti-modernist, and protectionist.

Decisive economic liberalization to promote domestic and foreign investments and to create jobs is a pressing and paramount concern for the country at this juncture of its economic development. Thus, the restrictive and protectionist constitutional provisions which the draft proposes to perpetuate should be lifted immediately, even as the other impacts of the federal form of government are subjected to deeper and full study.

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