

Abstract

The Philippines has long been considered the sick man of Asia. With repeated moves to open up its economy and liberalize industries in the name of development and foreign investments, the Public Service Act has finally been amended. This is the breakthrough that supposedly a lot of industries have been waiting for, the shipping industry included. This article aims to give a glimpse into what may lie ahead for shipping and its related businesses.

Progressions in Philippine Maritime Law – Opening the Gates Via the Amended Public Service Act

For so long, domestic or inter-island shipping in the Philippines had been limited to Filipino ship owners or operators. This was embodied in the Domestic Shipping Act of 2004 and the old Public Service Act. Later, the policy on cabotage was loosened with the enactment of Republic Act 10668 or the Co-Loading Act. This allowed foreign vessels to transport and co-load foreign cargoes for domestic transshipment. While still restrictive, this was seen as a positive step forward for the local maritime industry.

In a most welcome move, the old Public Service Act was amended in March 21, 2022 by the administration of then Pres. Rodrigo R. Duterte. Republic Act 11659, otherwise known as **AN ACT AMENDING COMMONWEALTH ACT NO. 146, OTHERWISE KNOWN AS THE PUBLIC SERVICE ACT, AS AMENDED**, defined a public utility which has long been a gray area of sorts in Philippine law. As per the law, a public utility refers to a public service that operates, manages, or controls for public use any of the followingⁱ:

1. Distribution of Electricity;
2. Transmission of Electricity;
3. Petroleum and Petroleum Products Pipeline Transmission Systems;
4. Water Pipeline Distribution Systems and Wastewater Pipeline Systems, including Sewerage Pipeline Systems;
5. Seaports; and
6. Public Utility Vehicles (PUV).

Public utilities are required to be owned by Filipino citizens and corporations by mandate of the Philippine Constitution. With a definition of public utility, public services with a foreign investment limitation have been clarified. Based on the definition, domestic shipping is a public service but not a public utility. As such, there is no foreign investment restriction for domestic shipping.

With this development, stakeholders and of course, the legal community waited for the implementing rules and regulations (IRR) of the said Amended Public Service Act. These IRR in local parlance would serve to guide in executing the mandate of the said act. These were finally released in March of 2023. These are now in full force and effect. The Philippine Maritime Industry Authority

(MARINA) will be the primary agency to regulate and oversee the potential entry of foreign participation in the shipping industry.

What do these developments mean for maritime law in the Philippines?

First, these signal that the Philippine domestic or interisland shipping market is now open to foreign ship owners, operators, and their investors. They may carry on a business of carrying persons and goods from one point to another in the Philippines. It gives the Philippines much needed investments in the maritime transport industry. At present, the vessels owned or operated by local Filipino companies are aging and may pose various safety issues to persons and cargo being transported. With the possible entry of foreign participation, the vessels and equipment used can be improved and modernized. The increased competition between local and foreign operators or their joint ventures can only serve to benefit the public relying on their services. These investments will bring with them job creation for work related to the vessels and equipment such as maintenance and crewing/manning.

Second, for the foreign shipping companies currently doing business in the Philippines, they can take advantage of the industry gates opening. Since they already have their operations in the Philippines, they can easily set up and diversify or extend their business activities to interisland shipping and transport. This will naturally mean a bigger operational footprint in the Philippines to accompany a wider revenue base.

Third, with domestic shipping activities, other ancillary services are expected to bloom as well. Closely related to the transport of goods are the businesses of warehousing, cold storage, packing centers, and freight forwarding (among others). Per the amended Public Service Act, it is submitted that these are business activities that may be open to foreign ownership as well. With the effects of the COVID 19 pandemic, these activities continue to be crucial in delivering goods especially to local businesses.

Other developments that may relate and support to the opening of the shipping industry are the recent opinion of the Department of Justice that renewable energy interests can be opened to foreign ownershipⁱⁱ. Previously, energy interests had limitations for the participation of foreign ownership. Now there has been a growing number of German companies looking at investing in renewable energy interests in the countryⁱⁱⁱ.

Another leg to support the local shipping industry is the implementation of the special rules of procedure for admiralty cases^{iv} adapted by the Philippine Supreme Court. These rules were enacted to expedite the resolution of maritime disputes and to develop expertise of the judiciary in handling industry cases to fulfill their supporting role in uplifting the country as a premier place to do business. While far from perfect, these rules appear to have been well received.

With the amended Public Service Act opening up the shipping industry, shipping business opportunities are very much alive and deserve a second look from foreign investors looking to have a foothold in the archipelago. While the Philippine MARINA will have its hands full, it will be a good

problem to have. Even better, it is opportunity for MARINA to improve its policy and processes much like flag of convenience states such as Panama. Hopefully, it is all progress from this point on.

Note:

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ⁱ Amended Public Service Act, Sec. 4. Note further that this enumeration can be expanded as provided by a subsequent law.

ⁱⁱ See DOJ Opinion No. 21 series of 2022

ⁱⁱⁱ [German firms explore energy efficiency opportunities in PH | Philippine News Agency \(pna.gov.ph\)](#) last visited 17 April 2023

^{iv} Administrative Matter No. 19-08-14-SC – The Rule of Procedure for Admiralty Cases