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## **INTERIM GUIDELINES ON THE OPERATIONS OF THE MERGERS AND ACQUISITIONS OFFICE DURING THE MODIFIED ENHANCED COMMUNITY QUARANTINE**

1. These Interim Guidelines on the Operations of the Mergers and Acquisitions Office during the Modified Enhanced Community Quarantine (“MAO Interim Guidelines”) are issued pursuant to Administrative Order No. 30 (“A.O. 30”) and Sections 12(b) and (e) of Republic Act No. 10667, or the Philippine Competition Act, to provide guidance on the procedures and processes that the Mergers and Acquisitions Office (“MAO”) shall observe in the exercise of its functions during the Modified Enhanced Community Quarantine (“MECQ”).
2. The MAO Interim Guidelines shall be in effect only for the entire duration of the imposition of the MECQ over the area where the office of the Philippine Competition Commission (“PCC” or the “Commission”) is located, until the same is lifted in accordance with the rules of the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (“IATF”) or the Office of the President.
3. Entities coming from areas placed in an ECQ or MECQ may request the application of the MAO Interim Guidelines even after the lifting of the MECQ over the area where the office of the PCC is located. If only one (1) party to a notified transaction comes from an area placed in an ECQ or MECQ, these MAO Interim Guidelines shall be applied to all notifying parties.
4. The Implementing Rules and Regulations of Republic Act No. 10667 (“PCA-IRR”) and the Rules on Merger Procedure shall continue to apply unless otherwise provided for in these MAO Interim Guidelines.
5. The suspension of the following merger processes shall be lifted effective 18 May 2020:
  - a. Evaluation of sufficiency of Notification Forms already submitted to the PCC;
  - b. Acceptance of new Notification Forms, except Expedited Review Notification Forms;
  - c. Evaluation of Letters of Non-Coverage already submitted to the PCC; and
  - d. Acceptance of new Letters of Non-Coverage in relation to transactions that, though not covered by compulsory notification, are required by other government agencies to be notified to the PCC

However, in view of the MECQ and the alternative work arrangement adopted by the PCC, and in compliance with the Stringent Social Distancing Measures in the NCR, the conduct of the foregoing shall be in accordance with these MAO Interim Guidelines.

6. Other government services handled by the MAO, particularly, Pre-Notification Consultations and answering queries which were not previously suspended shall remain available, subject to these MAO Interim Guidelines.
7. Meetings, where necessary, shall be conducted remotely via video conferencing using Microsoft Teams, and recorded only by the PCC when the parties consent thereto.

#### **I. Acceptance and Pre-Evaluation of Documents**

8. During the MECQ, submission of Notification Forms, Letters of Non-Coverage, and other documents to be requested by the MAO for the evaluation thereof shall be done electronically in accordance with the procedure in Annex A.
  - a. Parties may request access to the online filing facility on the PCC website from Monday to Friday between the hours of 8:00 a.m. to 5:00 p.m.
  - b. Pre-evaluation of Notification Forms and Letters of Non-Coverage to check completeness shall likewise be conducted from Monday to Friday between the hours of 8:00 a.m. to 5:00 p.m. Documents uploaded beyond 5 p.m. shall be deemed submitted the next business day.
  - c. The MAO shall confirm acceptance of submitted documents after having determined that the same are complete and in accordance with requirements under relevant rules, regulations, and issuances of the Commission. Otherwise, the MAO shall inform the parties of the deficiencies.
9. Parties submitting documents to the PCC must submit a written consent signed by their authorized signatory<sup>1</sup> granting the Commission staff permission to access the submitted documents and information outside the office premises of the PCC. Parties who have already submitted Notification Forms and Letters of Non-Coverage to the PCC are likewise required to submit by email to [mergers@phcc.gov.ph](mailto:mergers@phcc.gov.ph) the written consent duly signed by their authorized signatories granting the Commission staff permission to access the documents and information they have submitted outside the office premises of the PCC.
10. Signatories to documents required to be submitted to the PCC may affix their electronic signatures in lieu of their wet signature.
11. Individuals whose names and signatures appear on documents electronically submitted to the PCC shall be accountable for the veracity and completeness of the submission and shall be liable for any misrepresentation or falsehood therein.
12. Documents that must be executed and certified under oath which are submitted electronically need not be notarized; provided, that parties shall submit a certification

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<sup>1</sup> For purposes of compliance with the MAO Interim Guidelines, an external counsel or consultant shall not be considered an authorized signatory.

setting forth the reason for their failure to have the documents notarized, together with an undertaking to submit notarized copies thereof upon their compliance with Section 14 hereof.

13. Parties who must submit documents that are executed abroad may submit the same electronically without an Apostille or without having it otherwise consularized; provided, that parties shall submit a certification setting forth the reason for their failure to have the document consularized or Apostilled, together with an undertaking to submit the consularized or Apostilled copies thereof upon resumption of the operations of the consulate or embassy in the country where consularization or Apostillization is to be done.
14. Hard copies of all documents submitted electronically and a Universal Serial Bus (USB) containing digital copies of the documents must be submitted to the PCC within seven (7) working days from the lifting of the MECQ over the area where the PCC office is located.
  - a. USBs containing digital copies of documents submitted must be secured by a password which must be communicated to the MAO by email.
  - b. If a submitter comes from an area that is placed in an ECQ and MECQ upon the lifting of the MECQ over the area where the PCC office is located, or is otherwise unable to submit the hard copies and the USB within the period for submission, he/she must inform the MAO of such circumstance and request for extension of time to submit, which request must be filed before the lapse of the 7-day period for submission.

## **II. Evaluation of Sufficiency of Notification Forms**

15. The 30-day Notification Period under Section 3.1 of the Rules on Merger Procedure is waived during the MECQ. Parties may file Notification Forms at any time after the signing of definitive agreements relating to their transaction but prior to any acts of consummation; provided, that the 30<sup>th</sup> day of the Notification Period under Section 3.1 of the Rules on Merger Procedure falls within the community quarantine period commencing on 13 March 2020.<sup>2</sup> Transactions that should have been notified prior to 13 March 2020 in accordance with Section 3.1 of the Rules on Merger Procedure shall not be covered by this waiver.
16. During its evaluation of the sufficiency of Notification Forms already filed and those to be filed with the PCC, the MAO shall inform the parties of the information and documents that they must submit, which information and documents may not be limited to those required by the Notification Form.

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<sup>2</sup> The Inter-Agency Task Force for the Management of Emerging Infectious Disease (IATF), in view of the raising Code Red Sublevel Two (2) for the COVID-19 public health event, issued Resolution No. 11, on 12 March 2020 recommending the suspension of work in the Executive Branch during the imposition of Stringent Social Distancing Measures in the National Capital Region (NCR). As clarified in IATF Resolution No. 12 issued on 13 March 2020, Stringent Social Distancing Measures in NCR included the imposition of community quarantine in NCR.

17. Requests by the MAO during the sufficiency determination stage for information and documents shall be without prejudice to requests for additional information and documents during the review of the transaction.
18. A party who is unable to submit all information and documents required under a Notice of Deficiency (NOD) may submit by email a request for an extension of the period to comply duly signed by their authorized signatory prior to the lapse of the deadline for submission. Parties may then submit documents and information in compliance with the NOD on a rolling basis, or as soon as such documents are made available or prepared. In line with this, the 15-day Sufficiency Period under Section 5.7 of the Rules on Merger Procedure shall be extended until all notifying parties have fully complied with their respective NODs.
19. During the evaluation of the sufficiency of Notification Forms, the MAO may interview the parties remotely, and contact third parties by means of market calls or inquiry letters to obtain relevant information regarding the market, their views on the notified transaction, any competition concerns it may raise, and how they will be affected. In this regard, parties must submit together with their Notification Forms a written consent signed by their authorized signatory allowing the MAO to contact third parties about their transaction during the Sufficiency Period.
20. The MAO shall inform notifying parties by email of its determination that the documents and information submitted in compliance with a NOD are complete.
21. Orders of Payment shall be issued by the MAO (i) after the lifting of the MECQ, (ii) after the submission of hard copies of all documents submitted to the PCC electronically in accordance with Section 14 hereof, and (iii) after the parties have fully complied with undertakings submitted by them pursuant to Sections 12 and 13 hereof.

### **III. Evaluation of Letters of Non-Coverage**

22. Except for Letters of Non-Coverage (“Letters”) already submitted to the PCC, the MAO shall only accept and process Letters pertaining to non-notifiable transactions that are required by other government agencies to be notified to the PCC. In this regard, Letters to be submitted to the Commission shall be accompanied by certification from the concerned government agency, attesting that the Acknowledgment from the Commission is required by said agency.
23. Notwithstanding Section 14 hereof, the MAO shall act on Letters pending before it and those to be submitted, during the MECQ.
  - a. However, should the parties fail to comply with Section 14 or with any undertaking submitted by them pursuant to Sections 12 and 13 of these MAO Interim Guidelines, the Acknowledgment shall be considered void, in which case the parties shall resubmit a Letter of Non-Coverage.

### **IV. Pre-notification Consultations**

24. Parties may submit a written request for a Pre-Notification Consultation (“PNC”) by electronic mail (“email”) to [mergers@phcc.gov.ph](mailto:mergers@phcc.gov.ph) containing all the information

required under Rule 4, Section 4 of the PCA-IRR together with a list of questions or issues they wish to discuss or seek consultation, and accompanied by electronic copies of relevant documents.

25. In addition, parties must submit together with their request a written consent duly signed by their authorized signatory authorizing the MAO staff to access their documents and information outside the office premises of the PCC.
26. The MAO shall endeavor to address the concerns of the requesting parties via email. Should a live consultation still be required, the PNC shall be conducted remotely in accordance with Section 7 hereof.

#### **V. Queries**

27. Phone and walk-in queries shall be suspended. Parties may email their queries to the MAO thru [mergers@phcc.gov.ph](mailto:mergers@phcc.gov.ph).
28. The MAO shall respond to email queries also by email.

18 May 2020