



ZG LAW

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FREQUENTLY ASKED QUESTIONS

Interim Guidelines on the Operations of the Mergers & Acquisitions Office During the Modified Enhanced Community Quarantine

WPG

/ a regional law network

Q: Will the merger processes continue during the Modified Enhanced Community Quarantine (“MECQ”) period?

A: Yes. On 18 May 2020, the Philippine Competition Commission (“PCC”) issued the *Interim Guidelines on the Operations of the Mergers & Acquisitions Office During the MECQ* (“MAO Interim Guidelines”) which provides that 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 National Capital Region (“NCR”), the conduct of the foregoing shall be in accordance with the MAO Interim Guidelines.

Q: How shall necessary meetings be conducted?

A: Meetings, where necessary, shall be conducted remotely via video conferencing using Microsoft Teams, and recorded only by the PCC when the parties consent thereto.

Q: What will be the process of accepting and pre-evaluation of documents?

A: 1. Submission of Documents Electronically - 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 following procedure indicated in the last portion of this Article.

Parties may request access to the online filing facility on the PCC website from Monday to Friday (8:00 A.M. to 5:00 P.M.)

Pre-evaluation of Notification Forms and Letters of Non-Coverage to check completeness shall likewise be conducted from Monday to Friday (8:00 A.M. to 5:00 P.M.) Documents uploaded beyond 5:00 P.M. shall be deemed submitted the next business day.

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.

2. Written Consent for PCC's Access to the Submitted Documents and Information Outside the PCC's Premises – Parties submitting documents to the PCC must submit a written consent signed by their authorized signatory¹ granting the PCC staff permission to access the submitted documents and information outside the office premises of the PCC.

Similarly, 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.

3. Electronic Signature of Authorized Signatory – Signatories to documents required to be submitted to the PCC may affix their electronic signature in lieu of their wet signature
4. Accountability for Veracity and Completeness of Submission – 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.
5. Notarized Documents – Documents that must be executed and certified under oath which are submitted electronically need **not** be notarized; provided, that parties shall submit a certification setting forth the reason for their failure to have the documents notarized together with an undertaking to submit notarized copies thereof.
6. Documents Executed Abroad – 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.

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

7. Submission of Hard Copies – 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.

Parties may no longer be required to submit USBs containing digital copies of documents previously submitted during the MECQ using the PCC online filing facility; provided, that they submit a certification by the party's authorized signatory stating that the hard copies being submitted to the PCC are complete and accurate copies of the documents submitted electronically using the PCC online facility.

Q: What will be the process of evaluation of sufficiency of Notification Forms?

- A:** 1. Waiver of the 30-day Notification Period – 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 30th 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 2020.²

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.

2. Submission of Other Documents - 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.

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.

3. Request for Extension of Period to Comply - 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.

4. Interview of Parties - 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.
5. Notification of Completion - The MAO shall inform notifying parties by email of its determination that the documents and information submitted in compliance with a NOD are complete.
6. Order of Payment - 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, and (iii) after the parties have fully complied with undertakings submitted by them.

Q: Will PCC accept Letters of Non-Coverage?

A: Yes, the MAO shall accept and process Letters of Non-Coverage 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.

Q: What will happen if the parties fail to submit the USB and hard copies and other documents pursuant to their undertakings submitted to the PCC?

A: The Acknowledgement issued by PCC shall be considered void, in which case, the parties shall resubmit a Letter of Non-Coverage should the parties fail to do the following:

- 1) Submit the hard copies of all documents submitted electronically and a USB containing digital copies of the documents within seven (7) working days from the lifting of the MECQ over the area where the PCC office is located; or
- 2) Submit the documents indicated in their submitted undertakings pursuant to this MAO Interim Guidelines.

Q: Does PCC conduct Pre-notification Consultations during the MECQ?

A: Yes, parties may submit a written request for a Pre-Notification Consultation ("PNC") by electronic mail to 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.

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.

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.

Q: Will Parties need to submit the hard copies of the Notification Forms, Letters of Non-Coverage, and other documents to the MAO?

A: Yes, parties submitting Notification Forms, Letters of Non-Coverage, and other documents to the MAO must present hard copies thereof to the PCC Records Office and submit digital copies thereof using the MAO online filing facility in accordance with Annex A of the MAO Interim Guidelines for MECQ.

Q: What is the process in submitting the hard copies of the documents submitted online?

A: In view of the social distancing measures implemented in the PCC offices, submission of hard copies of documents shall be by appointment. In this regard, parties must secure an appointment by sending an email to mergers@phcc.gov.ph at least three (3) working days before submission indicating the intended date and time of submission as well as the number of submitters which in no case shall be more than two (2).

In case of notifications, all notifying parties must be represented during the submission of their Notification Forms. In compliance with the social distancing measures implemented in the PCC offices, all notifying parties may only be represented by not more than four (4) persons.

The hard and digital copies of the documents must be accompanied by a certification by the party's authorized signatory stating that the hard copies and the digital copies are complete and accurate copies of each other.

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