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PHILIPPINES JURISDICTION UPDATES 2018

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CONTENT

PHILIPPINES

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Revised guidelines for continuous trial of criminal cases: Recent measure to address judicial delays

It is trite, but bears repeating: justice too long delayed is justice denied.

Our government has enacted several measures to somehow address the issue of judicial delays, the recent one of which is the Revised Guidelines for Continuous Trial of Criminal Cases, which took effect on September 1, 2017. Among its objectives is to protect and advance the constitutional right of persons to a speedy disposition of their criminal cases. To achieve this, the Guidelines set the following salient rules with the aim to reduce trial time/period:

Trial shall be held from Monday to Thursday, and courts shall call the cases at exactly 8.30am and 2.00pm. Hearing on motions, arraignment, pre-trial and promulgation of decisions shall be held in the morning on Fridays.

Upon arrest or voluntary surrender of the accused, the court shall set the arraignment and pre-trial within 10 calendar days from the court's receipt of the case for detained accused, and within 30 days for non-detained accused.

The arraignment and pre-trial conference shall be simultaneously held. The court shall proceed with the pre-trial despite absence of the accused and/or private complainant, provided they were duly notified, and accused's counsel and public prosecutor are present. Stipulations shall be done with the active participation of the court. The pre-trial order shall immediately be served upon parties and counsels on the same day after termination of the pre-trial.

As to the form of testimony, for First Level Courts, the testimonies of the witnesses shall be the duly subscribed written statements given to law enforcers, or affidavits or counter-affidavits submitted to the investigating prosecutor during preliminary investigation. If not available, they shall be in the form of judicial affidavits. The same rule shall apply for Second Level Courts, the Sandiganbayan and Court of Tax Appeals, where the demeanour of the witness is not essential in determining the credibility (such as forensic chemists, medico-legal officers, investigators, auditors, accountants, engineers, custodians, expert witnesses), and who will testify on the authenticity, due execution and contents of public documents and reports, and the criminal cases are transactional in nature (such as falsification, corruption or fraud).

> "Among the government's objectives is to protect and advance the constitutional right of persons to a speedy disposition of their criminal cases"

The court shall strictly adhere to the rule that a witness has to be fully examined in one day only.

Motions for postponement are generally prohibited, except if it is based on acts of God, force majeure or physical inability of the witness to appear and testify. If the motion is granted based on such exceptions, the moving party shall be warned that the presentation of its evidence must still be finished on the dates previously agreed upon.

The offer of evidence (which must be made on the same day after the presentation of the last witness), and the comment/objection thereto, with the court's ruling thereon, shall be made orally and in open court.

The court shall announce in open court and include in its order submitting the case for decision, the date of promulgation of decision, which shall not be more than 90 days from the date the case is submitted for decision. Motions for reconsideration shall be resolved by the court within a non-extendible period of 10 calendar days from submission of the comment thereon.

These Guidelines shall apply (1) to all newly-filed criminal cases (including those governed by the Comprehensive Dangerous Drugs Act of 2002, Cybercrime Prevention Act of 2012, Rules of Procedure for Environmental Cases, Rules of Procedure for Intellectual Property Rights Cases, and Criminal Cases cognizable by Family and Commercial Courts) in the First and Second Level Courts, the Sandiganbayan, and the Court of Tax Appeals, as of effectivity date, and (2) to pending criminal cases with respect to the remainder of the proceedings.

Non-compliance with the Guidelines shall be a ground for disciplinary action.

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PHILIPPINES

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Proposed rules and regulations on crowdfunding

Crowdfunding (CF) platforms have proven to be a popular way to solicit charitable donations and to raise funds for projects or business ventures. With CF platforms, access to funds has expanded for start-up companies and for micro, small and medium enterprises.

In line with this developing financial innovation, the SEC proposes to regulate CF activities in the Philippines and released its proposed rules and regulations governing CF (Rules) for public feedback. The proposal to regulate CF activities in the Philippines is consistent with the direction taken by other countries, such as the US, Canada and Singapore, which have already established regulations on CF transactions.

The Rules attempt to strike a balance between the dual responsibilities of the SEC to encourage capital formation and to protect investor interests.

To encourage capital formation and in view of the limited character of the public offering through CF, the Rules grant exemption for securities sold or offered through CF from the registration requirement under Section 12 of the Securities Regulation Code (SRC).

On the other hand, to protect investor interests, the SEC incorporated disclosure requirements, registration requirements for intermediaries and funding portals, regulatory framework for intermediaries and post-registration requirements for issuers and intermediaries in the Rules, among others.

Disclosure requirements

Those looking to raise funds (Issuer) will be required to disclose, among others, the nature of their business, financial condition, historical reports of operations, the business plan with respect to the CF offering, the risk factors of investing in its projects, the procedure on how to return funds if the target offering is not met and the procedure to complete or cancel investment commitments.

Registration requirements

Entities that facilitate transactions involving the offer or sale of CF securities through online electronic platforms will be required to register as a Funding Portal.

An applicant Funding Portal, which should be registered with the SEC as a corporation and must have at least Ps50,000 equity, must submit: (i) Registration Statement with information on the principal place of business, legal status and disciplinary history, business activities and types of compensation received by the funding portal, and website address/es; (ii) account opening and disclosure rules; and (iii) business conduct rules.

Entities that mediate in the offer or sale of CF securities will be required to file an application with the SEC and to register as Intermediary.

Only securities brokers registered in accordance with Section 28 of the SRC, investment houses as defined under the Investment Houses Law, and funding portals registered in accordance with Section 30 of the Rules, are eligible to file an application with the SEC and engage as Intermediary in CF transactions.

To register as Intermediary, eligible entities must signify their intention to conduct activities of CF Intermediary and must be able satisfy the criteria set under the Rules.

Regulatory framework for intermediaries

Under the Rules, Intermediaries will be required to: (i) provide investors educational materials; (ii) take measures to reduce the risk of fraud; (iii) provide communication channels to permit discussions about offerings on the platform; (iv) comply with maintenance and transmission of funds requirements; and (v) comply with completion, cancellation and reconfirmation of offerings requirements.

Continuing reporting requirements

Issuers will be required to periodically file with the Commission an annual report on all its CF transactions, the relevant CF Forms within five business days: (i) after the Issuer reaches 50 percent and 100 percent of the target offering amount; (ii) after the Issuer accepts proceeds in excess of the target offering amount; and (iii) after the offering deadline, a disclosure on the total amount of securities sold in the offering.

Intermediaries will be required to keep and maintain records related to CF transactions, which include information related to investors and issuers, records of all communications that occur on or through its platforms, and all daily, monthly and quarterly summaries of transactions effected through the funding portal.

Burdensome and high-cost of compliance

As opposed to traditional, exempt, private placement transactions, which require one-time submission of Form 10.1 (Notice/Confirmation of Exemption) with the SEC, Issuers in CF offerings would have to continuously comply with the Continuing Reporting Requirement and incur costs for the same.

Considering the heavier regulatory burdens and higher compliance costs, in conjunction with the Ps10 million cap on the amount that can be raised through CF, the Rules may create an unintended consequence of disincentivising companies from using CF.

Understandably, the SEC has placed the foregoing requirements to protect the interest of ordinary investors. However, the Rules may have to be revisited to achieve the original intention of providing simple and alternative financing access to start-up companies, without sacrificing the interest of the investing public.

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The TRAIN in the eyes of the DOF and BIR

The law cannot just be gauged on the basis of its provision. One should consider how its administrator views it. It should be recalled Congress recently passed the Tax Reform for Acceleration and Inclusion (TRAIN) Act, with the veto of its certain provisions. It would thus be interesting to see how the government, through the Department of Finance specifically the Bureau of Internal Revenue, implements the most recent revisions to the Philippine Tax Code.

Recent issuances

Under the law, the DOF is mandated to issue its implementing regulations up to January 30. Within this timeframe, the DOF was able to issue the implementing regulations on petroleum products, tobacco products, stamp duties, and automobiles. The DOF subsequently issued the regulations on income tax, stock transaction tax, updated withholding tax, transfer tax, and VAT. It has not yet released the regulations on sweetened beverages and cosmetic procedures. The delay is understandable given the limited period given to DOF.

But how do the DOF and BIR view the TRAIN? Do they share the view of the legislators? There seems to be some divergence, and in certain cases, a muscle flexing interpretation of an existing provision not touched by the TRAIN.

A case of muscle flexing

An example of muscle flexing is RMC 12-2018. The BIR has adopted a stance that it may access information shared by clients with their lawyers and accountants. Under the Rules of Court, information shared with lawyers are not only confidential but also privileged communication. In contrast, those shared with accountants are only regarded as confidential. The Accountancy law permits an administrative tribunal like the BIR to subpoena them.

The BIR cites as basis the lawyers' ethical canon. It mandates a lawyer to reveal clients' secrets "when required by law". According to BIR, it refers to the Tax Code provision authorising the Commissioner to obtain third party information. The crux of the controversy: which is more important, the right of the BIR to gather information or the rule permitting a client to freely disclose information to his lawyer? It should be the latter.

"The crux of the controversy: which is more important, the right of the BIR to gather information or the rule permitting a client to freely disclose information to his lawyer?"

Congress should have made its intention clearer

The TRAIN eased compliance with reporting requirements. It has removed the DOF's authority to prescribe the filing of monthly returns. Taxpayers are only mandated to file quarterly returns. The DOF has recognised this, but insisted taxpayers should still file monthly remittance forms. They hold the amount withheld in trust for the government. It remains to be seen whether this will ease taxpayers' reporting. In any case, the delay in filing these forms should not have the same consequences that attach with the delay in filing tax returns.

Employers must still file monthly compensation withholding tax (CWT) returns. Congress likely failed to note the special chapter on CWT when it removed the DOF's authority to prescribe monthly returns. Per DOF, this requirement stays since the TRAIN did not remove it.

The case is different with regard to the fringe benefit tax (FBT). Even though the TRAIN (and the presidential veto) did not specifically remove the special FBT for certain personnel of foreign branches (like Regional Headquarters), the DOF's position is that it has been removed. It is implied from the president's veto on their preferential income tax. This is now subject of a court case.

Finally, the DOF is silent when the transfer is "made in the ordinary course of business (a transaction which is a bona fide, at arm's length, and free from any donative intent)," which under the TRAIN should not give rise to an implied donation. This has been a source of dispute with BIR when securing a clearance for share transfers. The DOF is also silent when the "tax-free exchange" (like corporate restructuring) is VAT-free. Hopefully, the BIR would act on taxpayers' requests involving these transactions without the issues they raised in the past.

It is the turn of the courts in proper cases to determine whether the DOF has acted beyond its mandate in making these issuances, or the BIR in implementing them. Taxpayers must remain vigilant, and if necessary request Congress for corrective legislation.

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Much EndO about nothing

German-American socialist editor and author, Oscar Ameringer, once said: "Politics is the gentle art of getting votes from the poor and campaign funds from the rich, by promising to protect each from the other." This is, indeed, a tough balancing act if at all possible. President Rodrigo Duterte found this to be so, at least with respect to the issue of "contractualisation".

During the 2016 elections campaign, he promised, as did the other candidates to be fair, to put an end to the "Endo" or the practice of engaging employees on a contractual basis, thus, avoiding the onset of regularisation. To this end, his administration has issued DOLE Department Order No. 174. Just recently on May 1, 2018 (Labour Day) and in a dramatic fashion, he signed the much-anticipated Executive Order No. 51 (EO 51) and, the tough guy that he is, warned firms involved in labour-only contracting that "their days were numbered". Malacañan immediately claimed that this was the fulfilment of the president's campaign promise to end the Endo. But is this really the case? Or, as Shakespeare said, is it just a case of much ado about nothing?

Let me count the ways.

The EO expressly prohibits "illegal contracting". It says: "Contracting or subcontracting when undertaken to circumvent the worker's right to security of tenure, self-organisation and collective bargaining, and peaceful concerted activities … is hereby strictly prohibited." Pro-labour? Not so fast. Illegal contracting has always been illegal since Adam. That is why it is illegal in the first place. The Labor Code says labour-only contracting is illegal. Certainly, the EO did not make it so. So nothing much here. Fuss over nothing.

Next, the EO provides that: "In case the compliance order involves a directive to regularise workers, the employment of the latter shall not be terminated pending appeal of such order except for just or authorised cause." Again, this is not new. This is already in a previous DOLE Department Order on the conduct of inspection, ie DO 183. If at all, the EO even made this pro-management. Under DO 183, there is no qualification, at least not explicitly — ie pending appeal, the employees shall not be terminated. Full stop. Under the EO, the employees can be separated if there is just or authorised cause. So the employees can be separated due to redundancy pending appeal? Hell yes, and it's a management prerogative. So much for security of tenure.

The EO further provides that the "Secretary of Labor and Employment may, by appropriate issuances, in consultation with the National Tripartite Industrial Peace Council … declare activities which may be contracted out." Finally, a new provision under the EO. But this could swing either way. The secretary's determination may or may not be in favour of labour. And the question is, can the secretary go against the Labor Code and case law? The Supreme Court has time and again ruled that even core activities can be contracted out. Ditto with the Labor Code. So, playing it safe, the secretary can just say he will act in accordance with the law and jurisprudence and we are back to square one.

At bottom, therefore, the EO is just much EndO about nothing. In trying to balance the interests of labour and management, the EO comes up short. It is neither here nor there. Even the president himself said that the EO has "no teeth". The president, prior to the issuance of the EO, had said that it is not within his power to prohibit absolutely contracting out, let alone legitimate. It is up to the Congress to do that. He should have stuck to such a position. He should not have issued the EO, May 1 or not. Arguably, he has a point because Article 106 of the Labor Code only gives the DOLE secretary the power to regulate contracting out per se. Of course, our friends from the labour sector do not agree. They never agree anyway.

But I agree. Let the Congress do it. The House of Representatives has approved House Bill 6908 and the battle is now in the Senate. Let's see where this Endo saga, with politicians steering, will lead us. The more important question is, will Congress end Endo? I want to give Congress the benefit of the doubt even as I am again and again reminded of Ameringer.

This article first appeared in Business World, a newspaper of general circulation in the Philippines. The author is a partner and monitor at the labour and employment department of the Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW). The views and opinions expressed in this article are those of the author. This article is for general informational and educational purposes only and not offered as and does not constitute legal advice or legal opinion.

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The Ease of Doing Business Act tapers red tape

Bureaucracy teaches us two things: to wait and to execute everything in triplicate. "Red tape" has since evolved from the practice of Charles V, King of Spain and Holy Roman Emperor, of using red ribbon to identify important state documents. Now, it describes a system of regulations and official actions which restrict or deny access to swift and quality government services. The problem of red tape has proven to be perennial unlike the empires from which it began.

Like all modern political regimes, the Philippines is no stranger to red tape. Back in 2007, Republic Act No. 9485, or *The Anti-Red Tape Act* (ARTA), was passed to combat red tape and promote transparency and efficiency in the delivery of government services. Fast-forward to 2018, the Philippines falters nine (9) spots down the IMD World Competitiveness Ranking and ranks 113th out of 190 countries in World Bank's Ease of Doing Business Index.

In a much needed effort to address the problem of red tape, Pres. Rodrigo Duterte signed into law Republic Act No. 11032, or *The Ease of Doing Business and Efficient Government Service Delivery Act of 2018* (RA 11032), amending the ARTA by strengthening it and giving it teeth.

With RA 11032 now in full force and effect, its more prominent features deserve to be highlighted.

The Citizen's Charter

The public still has the benefit of relying on the Citizen's Charter ushered in by the ARTA for the updated service standards of a government agency. RA11032 adds to the ARTA by explicitly requiring government agencies to provide a comprehensive and uniform checklist of requirements for each type of application or request. This removes the uncertainties faced by business establishments when applying for regulatory permits which are, most often than not, at the mercy of government officials who impose new or different requirements. Demands for additional requirements not specified under the Citizen's Charter are now illegal and expose the accountable government official to administrative and criminal liability.

Shortened Lead Time for Processing of Applications

RA 11032 further limits the time for government agencies to act on an application. Simple transactions are required to be acted upon within three (3) working days and complex transactions within seven (7) working days from the date of receipt of the complete application or request. These periods may be extended only once for the same number of days. Government agencies are required to give proper notice in writing of the reason for the extension and the final date of the action on the application or request.

Automatic Approval of New Applications and Automatic Extension of Licences

RA 11032 maintains the provision of the ARTA on automatic extension of licences and permits should a government agency fail to act on an application for their renewal within the prescribed processing time. RA 11032 goes further by granting automatic approval status to original applications for the issuance of licence, clearance, permit, certification or authorisation which remain unacted upon by the government agency after the lapse of the prescribed processing time. This closes the lacuna under the ARTA on new permit applications stuck in bureaucratic limbo.

Use of Technology to Further Expedite Procedure

In keeping with the Zero-Contact Policy, the Department of Information and Communications Technology (DICT) is mandated to develop a web-based software for business registration and infrastructure for interconnection between government agencies, among other technological innovations, to ensure access to fast and easy public services. The public should expect the roll-out of these technologies in the coming years.

Creation of Monitoring and Policy Bodies

Recognising the need to be abreast with the dynamic needs of the public, RA 11032 establishes key government agencies to monitor compliance with the law and review policy considerations for future implementation. These agencies are the *Anti-Red Tape Unit in the Civil Service Commission, the Anti-Red Tape Authority, and the Ease of Doing Business and Anti-Red Tape Advisory Council*.

While Congress did not reinvent the wheel with RA 11032, it certainly provided much needed oil and grease to a bureaucracy laden with woes of inefficiency and frustration. Time will tell if RA 11032 lives up to its avowed policies but it is a welcome step towards achieving quality government services that the Filipinos deserve.

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How the Mental Health Act affects employees

Mental health conditions, which include anxiety and panic disorders, depression, eating disorders, substance abuse and addictions, have become a pervasive issue which permeates our present society. Anyone can be affected by these conditions regardless of nationality, age, or gender.

These conditions have been recently brought to fore by celebrities who acknowledged that they suffered problems relating to their mental health, or worse, suffered their early demise when they lost their respective battles with their mental health conditions. If celebrities who appear to have everything they could possibly have in their lives succumb to their mental health conditions, then the ordinary working Filipino is not immune to these problems.

The workplace, and all the expectations of productivity, deadlines, performance evaluations, and the avalanche of information from different sources not only lead to stress but can actually take a toll on one's mental health. Despite this reality, the topic of mental health remains taboo. Some employees are afraid that talking about any mental health condition will lead to their discrimination, or worse, result in the loss of their jobs.

In passing the Mental Health Act (Republic Act No. 11036), the government took a step towards affirming the right of all Filipinos, not only the workers, to good mental health and mental health services.

With the passage of the law, employees no longer need to fear that they will be discriminated against since the Mental Health Act decrees that persons affected by mental health conditions should be allowed to exercise the full range of human rights and participate fully in society and work, free from stigmatisation and discrimination.

Likewise, the Mental Health Act requires the confidentiality of all information, communications and records, in whatever form or medium stored, regarding the person experiencing mental health condition. Generally, the information, communication and records cannot be disclosed to third parties without the written consent of the person experiencing a mental health condition or his legal representatives, subject to certain exceptions.

Violation of the provisions on non-discrimination and non-disclosure may lead to a penalty of imprisonment of not less than six months, but not more than two years; or a fine of not less than P10,000, but not more than P200,000; or both, at the discretion of the court.

Further, employers are now required to develop appropriate policies and programs on mental health in the workplace designed to: 1) Raise awareness on mental health issues; 2) Correct the stigma and discrimination associated with mental health conditions; 3) Identify and provide support for individuals at risk; and 4) Facilitate access of individuals with mental health conditions to treatment and psychosocial support.

In this regard, the Department of Labor and Employment has been directed to: 1) Develop guidelines and standards on appropriate and evidence-based mental health programs for the workplace; and 2) Develop policies that promote mental health in the workplace and address stigma and discrimination suffered by people with mental health conditions.

The determination of the existence of a mental health condition is based on scientifically accepted medical nomenclature and best available scientific and medical evidence. Persons experiencing mental health conditions may avail of mental health services even down to the barangay level. The Mental Health Act also integrates psychiatric, psychosocial, and neurologic services in regional, provincial, and tertiary hospitals, and mandates the improvement of mental healthcare facilities.

The Mental Health Act does not expressly mandate free psychiatric consultations and medicines for those in need of them. As it stands, the Philippine Health Insurance Corporation (PHIC) only covers hospitalisation brought about by acute attacks of mental and behavioural disorders at a package rate of P7,800. This however, may still be remedied since the Mental Health Act directed the Department of Health, which has been charged with the formulation, development, and implementation of a national mental health program, to coordinate with the PHIC to ensure that insurance packages equivalent to those covering physical disorders of comparable impact are made available to patients affected by mental health conditions.

When employees are happy, they are more likely to perform well at work. When they suffer, their work also declines. This legislation encourages employees to be open and take care of their mental health. However, the war for mental health advocates does not end here, they need to ensure that the implementing rules and regulations of the Mental Health Act provide for the necessary provisions for the proper execution of this new law.

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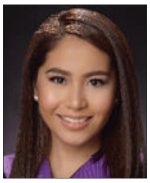
(Note: This article first appeared in Business World, a newspaper of general circulation in the Philippines.)

PHILIPPINES



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The PCC's Joint Venture Guidelines

Last September 9, 2018, the Philippine Competition Commission (PCC) published the Joint Venture Guidelines (JV Guidelines) aimed to help businesses determine when a joint venture shall be subject to compulsory notification pursuant to its power to issue guidelines on competition matters for the effective enforcement of the Philippine Competition Act (PCA).

Under Philippine setting, a joint venture (JV) may be formed through any of the following schemes, among others: a) incorporation of a new company; b) entering into a contractual JV; or c) acquiring shares in an existing JV entity. The JV Guidelines provided the basis for computation of the notification thresholds for JV transactions and declared that a transaction is notifiable when parties to a JV meet both the size of party test and size of transaction test.

Pursuant to the JV Guidelines, the size of party test is met when the aggregate annual gross revenues in, into or from the Philippines, or value of assets in the Philippines of the ultimate parent entity (UPE) of at least one of the acquiring or acquired entities, including that of all entities that the UPE directly or indirectly controls, exceeds P5 billion. On the other hand, under the size of transaction test, the JV is subject to compulsory notification when the aggregate value of the combined assets of the JV Partners in the Philippines or contributed into the proposed JV exceed P2 billion, or the gross revenues generated in the Philippines by assets combined or contributed into the JV exceed P2 billion. In the case of the acquisition of shares in an existing JV entity, the JV Guidelines provide that the assets or gross revenues generated by such assets of the existing JV entity shall be included in determining the threshold. Assets refer to both tangible and intangible assets pursuant to the Guidelines on the Computation of Merger Notification Thresholds of the PCC.

In case the JV Partner intends to defer its contribution to the JV, the deferred contribution forms part in determining the amount of contribution to the JV, provided it is contemplated in the JV agreement. Should the JV Partners agree to transfer assets which constitute successive contributions not included in the JV agreement, the subsequent transfer of assets contained in any subsequent agreement within one (1) year from the JV agreement shall be treated as part of the JV agreement. In case the JV Partners agree to transfer assets subject to conditions that may or may not occur, the JV Partners are required to notify the PCC within thirty (30) days from fulfilment of such condition.

> "The JV Guidelines mandate that if joint control exists after completion of the transaction, the parties need to make a merger notification"

The JV Guidelines mandate that if joint control exists after completion of the transaction, the parties need to make a merger notification. Joint control, which may be established on a de jure or de facto basis, is the ability of the JV partners to substantially influence or direct the actions or decisions of the JV, and exists when an entity has the ability to determine the strategic commercial decisions of the JV (positive joint control), or to veto such strategic decisions (negative joint control), except for ordinary veto rights. Veto rights over specific decisions critical or essential for the JV in the particular market it operates or will operate may be an important element in establishing the existence of joint control. A joint control may manifest in different forms such as equality in voting rights or appointment to decision-making bodies, veto rights, joint exercise of voting rights. However, equity ownership alone does not establish the presence or absence of joint control. The JV Guidelines recognise that although a JV Partner may hold a minority stake in the JV, he may still exercise substantial influence on the JV. In the acquisition of shares in an existing entity, there is no minimum percentage of shares that must be acquired to establish joint control.

It is worth noting that entities intending to form part of a JV are presumed to acquire joint control whether through the formation of the JV or through the acquisition of shares in an existing entity conferring joint control, post-transaction.

In the end, the PCC must strive to strike a balance — it must be encouraging and permissive enough to allow the emergence of pro-competitive JVs, while continuing to be the vanguard against activities and transactions that would stifle competition and harm consumer welfare.

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Investments for the environment

"When the last tree has been cut down, the last fish caught, the last river poisoned, only then will we realise that one cannot eat money." - Native American saying

In a recent report released by the leading international body for assessment of climate change, the UN Intergovernmental Panel on Climate Change (UN IPCC), established a target global warming limit of 1.5°C. To maintain this global warming limit requires rapid and far-reaching transitions in energy, land, urbanisation and infrastructure, and industrial systems around the world. This is described as the largest clarion bell from the science community that hopes to mobilise people and dents the mood of complacency.

What was previously perceived as a political concession to small island states' vulnerability to rising water levels, the 1.5°C global warming limit is now seen as a necessity. Although it lies at the most ambitious end of the Paris agreement pledge to keep temperatures between 1.5°C and 2°C, the UN IPCC says that the target is affordable and feasible.

We are already experiencing the destructive consequences of the unprecedented rise in global climate. Therefore, measures to mitigate climate change should be implemented now more than ever.

Following an increase in global initiative to invest in green projects, the Green Bonds Principle was developed. Based thereon, the Asean promulgated its Asean Green Bonds Standards (GBS). These principles govern issuance of bonds to finance green projects and ensure that the proceeds are really used for that purpose.

In turn, the Philippine Securities and Exchange Commission (SEC) issued SEC Memorandum Circular No. 12, Series of 2018, "Guidelines on the Issuance of Green Bonds Under the ASEAN Green Bonds Standards in the Philippines", which took effect last September 2018.

With the increasing amount of global capital, the primary objective of the Asean GBS is to enhance transparency, consistency and uniformity of Asean Green Bonds, which will contribute to the development of a new asset class, reduce due diligence costs and help investors to make informed investment decisions.

The eligible green projects under the Asean GBS include but are not limited to renewable energy, clean transportation and climate change adaptation.

> The primary objective of the Asean GBS is to enhance transparency, consistency and uniformity of Asean Green Bonds, which will contribute to the development of a new asset class, reduce due diligence costs and help investors to make informed investment decisions

The issuance of the said SEC Memorandum effectively supplements Section 8 and 12 of the Securities Regulations Code, which primarily governs the registration and non-financial disclosure requirements for securities prior to issuance.

The GBS requires that the issuer should disclose in the documentation for issuance the utilisation of the proceeds of the Asean Green Bonds and the project evaluation and selection process. The issuer is also required to make publicly available the same information through an issuer-designated website.

Hopefully with the promulgation of the Asean GBS in our jurisdiction, local and foreign investors seeking green projects will be able to pour in needed capital to start and sustain green projects, at the same time allowing project proponents or issuers of green bonds to tap the capital market.

Apart from creating a market for investors of green projects, this recent development invites businesses to be actively part of the environmental advocacy community to mitigate climate change and its baleful effects.

Provided these Asean Green Bonds acquire high prominence and are used as intended, this could well address the demand for the rapid and far-reaching changes that are needed.

In the UN IPCC report, experts have shown that climate change can be mitigated within the laws of physics and chemistry. The final tick box is political will. The adoption of the GBS is an effort in the right direction.

There is a growing trend of investors interested in green projects. The Philippines is the perfect example of a small island state severely affected by climate change. Connecting both dots should encourage more businesses in the Philippines to take advantage of the Asean Green Bonds in generating green capital.

Will we keep climate change a mere "hot" topic, or is this a start of an arduous process to save a world we have neglected?

The views and opinions expressed in this article are those of the author. This article is for general informational and educational purposes, and not offered as, and does not constitute, legal advice or legal opinion.

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