DoTr gearing up for arbitration after rejection of LRT-1 fare hike

THE Department of Transportation (DoTr) is gearing up for arbitration after Light Rail Manila Corp. (LRMC), the private operator of Light Rail Transit Line 1 (LRT-1), was not granted a fare hike, an undersecretary said on Wednesday.

"Considering the current environment, with inflation *na tumataas ang lahat ng bilihin ng tao, hindi talaga natin tinitingnan sa ngayon ang pagtataas ng pamasahe* (we're not looking at raising fares given the current level of inflation, with prices of many goods rising), so we really are not able to increase or grant the requested fare increase by our concessionaire for the LRT-1," Transportation (DoTr) Undersecretary for Railways Timothy John R. Batan said during a briefing.

"On the notice of arbitration filed, this is of course being studied by our legal department as well as the DoTr's counsel, the Office of the Solicitor General. We will handle this according to the concession agreement," he added.

The LRMC recently filed a request for arbitration with the International Chamber of Commerce over the company's disputes with the DoTr and the Light Rail Transit Authority (LRTA), which issued the 32-year concession agreement (CA) for the LRT-1.

LRMC hopes to recover around P2.67 billion in compensation claims and costs resulting from delays in the implementation of fare adjustments for 2016, 2018, and 2020, Metro Pacific Investments Corp. (MPIC) said in a disclosure to the stock exchange.

The partners in LRMC are Metro Pacific Light Rail Corp. with a 55% stake, Ayala group's AC Infrastructure Holdings Corp. with 35% stake, and Macquarie Infrastructure Holdings (Philippines), Inc. with 10% stake.

"The request pertains to the adjustment of the approved fare for the years 2016, 2018 and 2020 and LRMC's claims for compensation relating to the grantors' contractual obligations to compensate LRMC for the difference between the stipulated fare and the approved fare based on the schedule provided in the CA, following the grantors' inaction on LRMC's application for fare adjustments based on the CA," MPIC said.

The request also covers "the losses, costs and expenses incurred by LRMC for the grantors' failure to deliver to LRMC the required number of light rail vehicles that meet the stipulated technical requirements under the CA and the structural defects on the existing LRT-1 system, both of which are required to ensure that LRMC is able to provide a safe, efficient and reliable service to the public as required under the CA."

The company also said that "despite compliance with applicable legal requirements and after exerting best efforts to amicably discuss the foregoing claims with the grantors, LRMC has not received any offer from the DoTr and LRTA."

The settlement of such claims is "critical" to enable LRMC to continue to be "viable and provide safe, efficient and reliable services to the public," the MPIC noted.

"Notwithstanding the dispute, LRMC remains committed to providing the best possible services to the public. In fact, despite the non-performance by the grantors of their obligations and the non-payment of LRMC's claims, LRMC has implemented significant operational improvements, rehabilitation projects, and system upgrades to the existing system and continued the construction of the Cavite Extension safely and efficiently," it added.

MPIC's partner in LRMC, Ayala Corp., has expressed an intention to divest. MPIC said it is considering increasing its stake, but that its decision would depend on the next government's plans for LRT-1.

MPIC is one of three Philippine subsidiaries of Hong Kong's First Pacific Co. Ltd., the others being PLDT, Inc. and Philex Mining Corp. Hastings Holdings, Inc., a unit of PLDT Beneficial Trust Fund subsidiary MediaQuest Holdings, Inc., maintains an interest in *BusinessWorld* through the Philippine Star Group, which it controls. — **Arjay L. Balinbin**

Wind power seen as potential pathway for meeting net-zero goals

BusinessWorld VIRTUAL ECONOMIC FORUM REVOLUTIONS 2022 NAVIGATING THE CHANGED WORLD

THE PHILIPPINES has the potential to harness ample wind energy resources en route to meeting its net-zero goals, according Torbjørn Kirkeby-Garstad, general manager for Southeast Asia of Scatec, a renewable power producer.

"The Philippines is blessed with lots of potential for offshore wind. Already now, we are looking at 7 to 8 gigawatts (GW) of concessions that have been granted. There is great potential for the Philippines when it comes to reaching those goals. Offshore wind (power) will be part of that solution," Mr. Garstad said on the first day of the BusinessWorld Virtual Economic Forum on Wednesday.

Ramon F. D. Rufino, chief executive officer of green buildings developer NEO, concurred, saying that opting for renewable energy is one of the avenues currently available to property developers in the absence of an incentive scheme for such sustainable construction.

"We've long been advocating for more incentives for both green buildings and net-zero. Incentives are challenging because especially when it comes from the government (which needs) to raise revenue and taxes," Mr. Rufino said.

"One of the major steps you can take if you are in the real estate industry is source your power (from) renewable energy. Even if significant incentives are not in place, as long as that renewable energy cost is competitive with other forms of non-renewable energy, I think the majority of companies will select renewable energy sources for their requirements," Mr. Rufino said.

Maria Yolanda C. Crisanto, Globe Telecom, Inc. chief sustainability and corporate communications officer, said that if the Philippines is to meet its target, small businesses also have to be enabled to pursue net zero.

"Only the Securities and Exchange Commission (SEC) has actually required that publicly listed companies do sustainability reporting. What we need to do is for the government to enable SMEs (small- and medium-sized enterprises) to do this as well. It is all of us together," Ms. Crisanto said.

The Philippines has committed to reduce its greenhouse gas emissions 75% by 2030 under the Paris Agreement on Climate Change.

Ms. Crisanto said the Philippines is not close to achieving the 75% target, adding that the incoming administration should help attract more investment in sustainability ventures.

"There has to be more investment. There has to be more enabling laws that will help kickstart more investment and perhaps look at opening up more industries like electric vehicles and agriculture," Ms. Crisanto said. — **Revin Mikhael D. Ochave**

NEDA's Chua says pending reforms to help next government

REFORM measures that remain pending in Congress during its remaining two weeks of session deserve a second look by the incoming administration, after the pandemic delayed their passage, Socioeconomic Planning Secretary Karl Kendrick T. Chua said.

"We did not finish the reforms that we wanted to (carry out) primarily because the pandemic hit us and we have to prioritize our time, money, and effort. I would say *na 'yung mga naka*-pending *bilisan* (the approval of pending measures be accelerated). *Kung hindi kaya ipasa nitong* Congress (If this Congress cannot pass it) in their last two weeks, the next Congress can take a look at it with urgency," Mr. Chua said during an appearance at the Kapihan sa Manila Bay.

He said the pending tax reform programs include package three, which deals with property valuation reform and package four, which seeks to restructure the taxation of passive income. Mr. Chua said the Regional Comprehensive Economic Program (RCEP) treaty, currently pending in the Senate, is expected to expand opportunities for the economy.

"We have other pending measures. For instance, NEDA (the National Economic and Development Authority) is pushing for reforms in the water sector to secure our water supply and provide better sanitation for everyone," Mr. Chua said.

Mr. Chua also said a pending livestock, corn, and poultry bill in the Senate will help address increasing commodity prices.

Mr. Chua called attention to the importance of the proposed Natural Land Use Act, which is "mentioned in almost every SONA (State of the Nation Address) but not yet passed."

"Our land area is 300,000 square kilometers and that will not increase. The population is increasing so we better know how to use it best."

Once passed, Mr. Chua said the bill will allow for better urban planning and regulate the use of land, mountains, and watersheds.

The National Land Use Act has been in the works since 1994, during the administration of President Fidel V. Ramos. The legislation was proposed as Senate Bill No. 1522 during the 17th Congress, when it was billed as a "policy for the rational, holistic, and just allocation, utilization, management and development of our land resources."

In 2017, it made it through the House as House Bill 5240, with five versions of the bill presented in the Senate, where no public hearings were held.

"We hope we will have a chance to explain to legislators what the benefits really are of this law," Mr. Chua said.

He said NEDA supports the resumption of face-to-face schooling.

In the proposed 2023 national budget, Mr. Chua said that "education receives the highest budget in accordance with the constitutional provision."

"The D in NEDA stands for Development. Development includes education. In fact, it's the foundation of development."

Mr. Chua said that in most countries, coronavirus disease 2019 (COVID-19) outbreaks did not happen in schools, but rather, in situations where minimum health and safety standards are not observed.

"I understand from the Department of Education report that the (face-to-face) pilot was a huge success, which means we can replicate it in all schools," he added.

"The median age of the Philippine population is 24 years old. Fifty percent are 24 years old and 40% are below 21. In other words, 40% of the population is in school. That's a big driver of economic activity."

Mr. Chua said dormitories and food businesses that operate near schools rely on students for income.

"That's why our economic growth is still not reaching its original potential," Mr. Chua said.

He said NEDA is proposing an apprenticeship bill to improve opportunities for graduates. — **Keisha B. Ta-asan**

BPO industry association says BIR inspections spooking members

FULL STORY

THE inspections being conducted by the Bureau of Internal Revenue (BIR) to verify compliance with government orders to resume on-site work in economic zones has sown confusion within the information technology and business process management (IT-BPM) firms, the industry's association said.

IT and Business Process Association of the Philippines (IBPAP) President and Chief Executive Officer Jack Madrid said the confusion stems from the letters of authority (LoAs) under which IT-BPM companies, also known as business process outsourcing (BPO) firms, are evaluated. The industry believes the 70% on-site work rule laid down by the Philippine Economic Zone Authority (PEZA) is valid, as against the 90% onsite level required by the Financial Incentives Review Board (FIRB).

"What we are concerned about is the ongoing confusion with some of the inspections," Mr. Madrid said in a television interview on Wednesday.

The industry is required by tax law to conduct all its work within economic zones, a rule which was relaxed for safety reasons during the pandemic. The relaxed rules allowing more work-from-home (WFH) arrangements expired on March 30.

FIRB Chairman and Finance Secretary Carlos G. Dominguez III has said that economic zone locators may choose to operate on an expanded WFH basis, but must surrender their fiscal incentives.

"Some of the inspections have caught our locators a little bit off-guard because they hold letters of authority which allow 70% (on-site work). Some of the questions posed in some of the reports requested by the inspectors are not consistent with what the LoAs have stated as to (30%) WFH. This has caused some confusion" when locators examine the inspectors' mission orders, he added. — **Revin Mikhael D. Ochave**

Read the full story by scanning the QR code with your smartphone or by typing the link <bit.ly/BPO052622>

OPINION

A tighter rein on BIR mission orders

TAXWISE OR OTHERWISE
JAFFY Y. AZARRAGA

The polls have concluded, reflecting what is thought to be the majority's desire to return to a disputed version of the past. Whatever their politics, taxpayers are still hoping that our courts and democratic institutions continue to fulfill their roles as bastions of taxpayer's rights, in the face of the overwhelming power of the state and its tax authorities.

Arguably, *Oplan Kandado* is one of the most potent weapons in the tax authorities' arsenal, most easily implemented, and thereby, feared by most taxpayers, large or small. *Oplan Kandado* is an enforcement program of the Bureau of Internal Revenue (BIR), under which the BIR may impose administrative sanctions such as suspension and temporary business closure for non-compliance of requirements.

A business closure and suspension of operations can be financially devastating for the taxpayer. A recent incident involved one of the country's largest real estate conglomerates, in which a mere press release from the BIR announcing a closure order was enough to send the shares of the company, which is publicly traded, on a wild roller-coaster ride. In fact, due to the impact the incident had in the capital markets, the Department of Finance (DoF) found it necessary to step in and suspend all the special audits being conducted by the Bureau, on the grounds that these orders duplicate the actions being undertaken by the appropriate BIR office.

While taxpayers may be able to heave a collective sigh of relief for now, there is always the possibility that the suspension could be lifted, or similar measures introduced at another time, under some other guise or name.

Therefore, it is still imperative to review whether the exercise of this power by the tax authorities is justified. Keep in mind that the constitutional rights of a taxpayer require that "no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the law." As duly held by the Supreme Court, the scales must tilt in favor of the individual, weighing the power of the state to tax and its inherent right to prosecute perceived transgressors of the law on one side and the constitutional rights of a citizen to due process of law and equal protection of the law.

Oplan Kandado is arguably based on Section 115 of the Tax Code. It empowers the Commissioner or his authorized representative to suspend the business operations and temporarily close the business of any person for the following violations: failure to issue receipts or invoices; failure to file a value-added tax return; understatement of sales or receipts by at least 30%; and failure to register the business.

However, before *Oplan Kandado* can be implemented, the Revenue Officers (or BIR examiner) must first secure a Mission Order. Revenue Officers are not authorized to visit the taxpayer unless sanctioned by a Mission Order issued and signed by the Regional Director pursuant to the BIR's Tax Compliance Verification Drive (TCVD) or Tax Mapping.

Tax Mapping, in turn, was introduced to further expand the tax base and enhance tax compliance. The program allows the BIR to assign authorized examiners to visit companies and verify their compliance with current tax laws.

Under BIR regulations and the Mission Order itself, Section 6 (C) of the Tax Code is cited as the basis for the verification drive. The provision states that the Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities. The business operations of any person, natural or juridical, may also be placed under *observation or surveillance* if there is *reason to believe* that such person is not declaring his correct income, sales, or receipts for internal revenue tax purposes.

Therefore, a Mission Order is strictly limited to inventory-taking of goods or observation/surveillance, where there is basis to suspect tax evasion. Over and beyond such stated purposes and circumstances, the Mission Order is unauthorized and violative of the taxpayer's constitutional rights. Any subsequent action or consequence stemming from its issuance is void and could be struck down.

As held by the courts, when the application of an administrative issuance modifies existing laws or exceeds the intended scope, the issuance becomes void not only for being ultra vires, but also for being unreasonable.

Indeed, in a recent decision of the Court of Tax Appeals, a BIR closure order against a taxpayer was nullified for non-compliance with the appropriate procedure in implementing the *Oplan Kandado* program. The court held that the taxpayer's constitutional right to due process was violated with the service of a 48-hour notice and a five-day value-added tax (VAT) notice to padlock the premises. However, neither notices detailed how the alleged VAT deficiency was incurred nor computed, as required under the Tax Code, and no preliminary and final assessment notices were ever issued.

In another case, the court held that the taxpayer was not liable for deficiency excise tax and VAT as the assessment was based only on a mission order and not a letter of authority as required under the law. A mission order covers only surveillance or observation operations and not outright authority to examine the taxpayer's financial statements. Therefore, the assessment was deemed void.

Indeed, the courts will continue to play a vital role in restraining any excessive exercise of the taxing power by the government itself. And in the performance of its duties, only a steadfast and nonpartisan judiciary can properly declare, as it has many times in the past, "For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed" (G.R. No. L-28896, Feb. 17, 1988).

The views or opinions presented in this article are solely those of the author and do not necessarily represent those of Isla Lipana & Co. The content is for general information purposes only, and should not be used as a substitute for specific advice.

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