

# Marcos seen having free hand to pursue Constitutional reforms

LEADING presidential vote-getter Ferdinand R. Marcos, Jr. has no political debts that would tie his hands in pursuing Constitutional reforms, with a reversal of the current government's policy direction seen as only the "worst-case scenario," the Foundation for Economic Freedom (FEF) said.

"A BBM presidency is not invested in the 1987 Constitution and the CARP (Comprehensive Agrarian Reform Program) Law, and it has no leftists in its alliance," FEF President Calixto V. Chikiamco said, referring to Mr. Marcos by the initials formed by his nickname "Bongbong."

"It may be more open to amending them and continue the next stage of reforms. I am not saying it is inevitable, but based on politics and alliances, it may be possible for the BBM presidency to initiate (such) reforms," he added.

Mr. Chikiamco was making a presentation at the Financial Executives Institute of the Philippines (FINEX) 5<sup>th</sup> General Membership Meeting.

"Of course, the worst-case scenario is that he will reverse all the reforms, or most of the reforms, that President Duterte did," he added.

He said such a course of action would lead to "very low" growth, higher inflation and poverty levels, and more corruption.

Another "pessimistic" scenario is that Mr. Marcos Jr. neither rolls back nor introduces substantial reforms, with the current policies sufficient to keep growth momentum at 5% to 6% annually.

His optimistic scenario was robust growth of 8 to 10%, on the back of possible reforms to agriculture, labor markets, and the Constitution.

Mr. Calixto said in his presentation that Mr. Marcos inherits a "strong" economic foundation built around key economic reforms such as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) law, the Rice Tariffication law, and the Build, Build, Build program.

He said the fundamentals remain solid due to the young workforce relative to the region's ageing populations, as well as the potentially strong position held by the mining industry due to the growing importance of industrial metals which the Philippines has in abundance.

Overall, Mr. Calixto said he had a positive outlook for the next administration.

"Unlike most other economists, I am quite optimistic about the business environment for the next six years," he said. "Especially with all these liberalization measures, and therefore would encourage you to invest in the Philippines."

"An economy under a BBM presidency won't be a disaster as some have predicted. The Philippines will become a good investment destination. Respond by investing, innovating, and competing," Mr. Chikiamco said.

Rizal Commercial Banking Corp. Chief Economist Michael L. Ricalfort in a Viber message said

he concurs with the optimism over the economy being left to Mr. Marcos.

However, he cautioned that "there are challenges now such as the increased debt incurred by the government, especially during the pandemic, that needs to be tackled by the incoming administration."

Ruben Carlo O. Asuncion, UnionBank of the Philippines, Inc. chief economist, was more cautious in his outlook.

"It is true that important reforms are already in place, but there are still the pandemic effects that we have to deal with. Moreover, the Ukraine-Russia conflict impact has yet to be fully felt as inflation is still unfolding."

Mr. Asuncion said he does not expect Mr. Marcos to reverse or alter the current policy direction and sees a 5-6% growth to be likely.

"Nevertheless, I think that the [Philippine] economy can do so much more and can work more efficiently," he added. — **Tobias Jared Tomas**

# BIR to inspect ecozone BPOs' compliance with on-site work rules

THE Bureau of Internal Revenue (BIR) said it formed a task force to inspect compliance with the government's order to resume on-site work for economic zone locators in the Information Technology-Business Process Management (IT-BPM) industry.

In a statement on Wednesday, BIR Deputy Commissioner Arnel SD. Guballa said that mission orders have been issued authorizing inspections at the places of business of economic zone locators, known as Registered Business Enterprises (RBEs).

The IT-BPM sector, which is also known as the business process outsourcing (BPO) industry, is granted tax breaks on the condition that it performs all its work in economic zones. The on-site work rule was suspended during the pandemic, allowing most of the industry's employees to work from home, but the government allowed this suspension to lapse at the end of March with the decline in the coronavirus case count.

"IT-BPM firms were temporarily allowed by the Fiscal Incentives Review Board (FIRB) to resort to 'work-from-home' (WFH) arrangements without losing incentives granted to them as economic zone (ecozone) locators so they could continue doing business offsite at the height of the pandemic. The WFH arrangements for RBEs were allowed up to March 31, 2022," the BIR said.

"Under Section 309 of the National Internal Revenue Code (NIRC) of 1997, as amended by CREATE, RBEs and/or registered activities must be conducted within the geographical boundaries of the ecozone or freeport where

they are located to be entitled to fiscal incentives," it added.

The BIR was referring to Republic Act No. 11534, or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act.

Finance Secretary Carlos G. Dominguez III has taken the position that such businesses are free to extend WFH arrangements, but must do so without benefit of incentives.

"No one is prohibiting them or imposing on their management prerogative to continue implementing their WFH setups. However, they must give up the tax incentives they currently enjoy because the law is clear on this," Mr. Dominguez said.

Finance Assistant Secretary Juvy C. Danofrata said that ecozones and freeports were designed to promote export activity and permit the free flow of goods and services within these areas.

As a result, Ms. Danofrata said tax incentives are given to priority projects or activities carried out in these zones.

"The government has exercised significant caution in balancing the economy's needs and the health requirements to address concerns the pandemic caused. However, we believe that the current situation already allows us to direct our policies towards fully reopening the economy," Ms. Danofrata said.

"Given the increasing vaccination rate of Filipinos nationwide, we can now undertake safety measures for the physical reporting of employees. In fact, the President has ordered all government agencies and instrumentalities to adhere to the 100% on-site workforce under Alert Level 1," she added. — **Revin Mikhael D. Ochave**



## Coordinating panel proposed in draft IRR for Foreign Investment Act

THE National Economic and Development Authority (NEDA) said its latest draft implementing rules and regulations (IRR) for amendments to the Foreign Investments Act of 1991 calls for the creation of a committee to coordinate efforts to attract foreign investment.

NEDA released the new draft at a public consultation on Wednesday.

The revised draft IRR, dated May 11, contains a new Section II dealing with the creation of an "Inter-agency Investment Promotion Coordination Committee" (IIPCC).

The committee is tasked, according to Rule III — Powers and Functions, with "establish(ing) both a medium-and-long-term foreign investment promotion and marketing plan (FIPMP)," which will coordinate all existing investment development plans under the Board of Investments, the Philippine Economic Zone Authority (PEZA), and other Investment Promotion Agencies (IPAs), for a common framework.

Sitting on the committee will be nine National Government officials and four private sector representatives.

Chairing the committee is the Trade Secretary, with the vice chair held by either the Finance Secretary or an undersecretary. Other members from government are the Director-General of PEZA, a foreign affairs undersecretary, the Economic Planning Secretary, the Secretary of Information and Communications Technology, the Technical Education Skills Development Authority chairperson, and the chairperson or commissioner of the Commission of Higher Education.

The four private sector members will each represent the National Capital Region, Luzon, the Visayas, and Mindanao.

The investment promotion and marketing plans are expected to guide foreign investors considering investment opportunities in the Philippines. — **Tobias Jared Tomas**

## DENR to watch Tampakan closely after province lifts open-pit ban

THE Department of Environment and Natural Resources (DENR) said it will closely monitor the Tampakan open-pit copper-gold project in South Cotabato to ensure its compliance with rules protecting the environment.

"The environment will not be sacrificed. We will see to it that the soon-to-commence Tampakan copper-gold project will be strictly monitored in compliance with applicable mining and environmental laws, rules, and regulations," DENR Acting Secretary Jim O. Sampulna said in a statement.

On Monday, the South Cotabato provincial government lifted its ban on open-pit mining, following the amendment of the province's Environment Code.

The lifting of the ban clears the way for Tampakan, a project of Sagittarius Mines, Inc. (SMI), to proceed with operations.

Mr. Sampulna said the department "will also require SMI to invest in equipment and manpower to ensure mitigation in case of any adverse impacts from the mining operation."

Mines and Geosciences Bureau Director Wilfredo G. Moncano said technology can

address the potential environmental impact of open-pit mining.

"We also have the DENR policy that requires mining companies to (set aside) funds in all stages of the mining operation necessary for environmental protection and enhancement," he said.

The bureau is set to convene the Mine Rehabilitation Fund Committee to oversee the use of the funds set aside for SMI's environmental protection and enhancement program, progressive rehabilitation, and social development activities.

Mr. Moncano said SMI is compliant with all other major requirements to legally operate.

On Tuesday, Mr. Sampulna signed an administrative order setting guidelines for responsible practices to preserve terrestrial and marine biodiversity near mine sites.

"With this new order, we believe that mining companies will be more mindful of their practices in utilizing the country's natural and mineral resources," he said. — **Luisa Maria Jacinta C. Jocson**

FULL STORY



Read the full story by scanning the QR code with your smartphone or by typing the link [bit.ly/Tampakan051922](http://bit.ly/Tampakan051922)

### OPINION

## Corporate dissolution: Untangling the confusion over shortening the corporate term

If you're familiar with the saying "The doors that once opened for you and brought light in your life can close anytime and put you in darkness," you might be able to relate to the corporate dissolution process. The process can seem like a dark, one-way tunnel for the company legally settling its affairs, with the end view of being permanently laid to rest, also known as corporate death. The process is not only time-consuming; it is likewise expensive and tedious.

With the issuance by the Securities and Exchange Commission (SEC) of Memorandum Circular No. 5-Series of 2022 (MC 05-2022), a light has appeared at the end of the tunnel. The MC promulgates a new set of guidelines on corporate dissolution effective March 9, 2022. Its main aim is to standardize the dissolution procedure to comply with the amendments introduced by the Revised Corporation Code. A uniform regulation will, it is hoped, eliminate the complexities that come with dissolution.

MC 05-2022 updated the guidelines on the Voluntary Dissolution of Companies in which creditors are not affected and outlined the instances where the SEC can *motu proprio* dissolve a corporation — Involuntary Dissolution. However, these rules are nowhere near as confusing as the rules for shortening the corporate term via the amendment of a corporation's Articles of Incorporation (AoI), which is, by far, the most common closure route taken by companies. The latter contemplates two scenarios in Section 1, Part B of MC 05-2022. First, where the proposed expiration of the corporate term is at least **one year from the SEC's approval of the application for amendment**; second, where the proposed expiration of the corporate term is **less than one year from the approval of the application for amendment**.

Skimming through the documentary requirements for submission to the SEC, one glaring but relevant distinction between the two is the requirement to submit a Tax Clearance, which is applicable only in the second scenario.

In a nutshell, the entire closure process generally consists of a series of steps usually commencing at the local government where the company operates, followed by closure with the concerned Revenue District Office (RDO) and lastly, with the SEC. The filing of applications with the Social Institutions (SSS, Pag-IBIG and PhilHealth) may be processed concurrently with the local government and RDO applications.

Given the sequence of closures per government agency, the usual culprit for delaying the dissolution before the SEC is the requirement for a "Certificate of No Outstanding Tax Liability" (Tax Clearance) issued by the RDO as a supporting document. Based on experience, securing a tax clearance usually takes years, considering the mandatory audit of a company's accounting records for the last three years of operation.

Under the old rules, companies commonly opted to close their business by shortening their corporate term, which required the submission of a tax clearance. But if the proposed date of closure is at least one year from the date of application for closure, the requirement for a tax clearance is waived by the SEC. While this rule is maintained under the new guidelines, a new option was introduced requiring a tax clearance if the proposed date of closure is less than a year from the date of approval of the application.

Notably, Section 2 of Part B of the MC also provides that "the proposed expiration of corporate term for all applications for amendment... shall contemplate a **future date**."

Here lie the inconsistencies. Procedurally, a tax clearance application with the BIR may only be filed once the proposed closure date has lapsed, as supported by a Corporate Board Resolution. Accordingly, a corporation seeking to close under the new option faces two dilemmas. One will be its inability to file its application for tax clearance with the BIR since the actual closure is still a future date. It will have to wait for the proposed date to lapse before applying for a tax clearance. Another dilemma is that by the time the tax clearance is avail-

able, the proposed date of closure will have probably lapsed, and thus the SEC will likely reject its application as it is no longer a future date as required by the new issuance.

Previously, the SEC accepted the application for shortening the period even if the proposed date of closure has lapsed or contemplates a past date. The dissolution merely retroacts to the said date. Thus, the BIR's requirement of a past or lapsed date of closure to commence the tax clearance application appears to run counter to the SEC's rule on a future date to process the amendment application.

As such, it would be close to impossible to comply with the tax clearance requirement of the SEC under the new option.

Furthermore, the new issuance's reckoning date of "from approval of the application for amendment" and the requirement of "future date" may also cause issues in availing of the first option since they require corporations to predict the period of SEC processing. This begs the question, what will happen if the proposed date of closure, while at least one year from the filing of the application, is approved at a date which is already less than a year from proposed date? Does this mean that the application falls under the new option and thus requires a tax clearance?

Clearly, additional issuances clarifying the application of the new set of guidelines, particularly on the new option, may be needed to illuminate the seemingly incompatible and clashing requirements of the BIR and SEC.

After all, the last thing any dissolving corporation needs is a complication that will prolong its agony.

*The views or opinions expressed 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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