

New PCC rules seen unlocking M&A deal flow

MORE MERGERS and acquisitions (M&As) activity is expected to result from the raising of Philippine Competition Commission (PCC) notification thresholds, freeing up smaller deals from compulsory regulatory review, analysts said.

China Bank Capital Corp. Managing Director Juan Paolo E. Colet said more transactions will be released from the review requirement in response to the changes.

"This will promote more efficient M&A dealmaking by dispensing with the need to notify the PCC for transactions below

the new thresholds," Mr. Colet said in a Viber message.

"The changes may also rationalize the agency's load so that it can review notifiable deals more quickly," he added.

Toby Allan C. Arce, head of sales trading at Globalinks Securities and Stocks, Inc., said he also expects more M&A activity as a result.

"By raising the thresholds, the PCC potentially allows smaller mergers and acquisitions to proceed without mandatory notification, which could facilitate a faster and less complex deal process for com-

panies below the new thresholds," he said.

On Friday, the PCC raised the thresholds for transactions that need to undergo mandatory merger review to P7.8 billion for the size of parties (SoP) and P3.2 billion for the size of transactions (SoT).

Mr. Arce said that the change may help smaller companies to engage in deals with less risk of failing the competition review, saving on resources. It may also help bring about a more in-depth review process for notifiable deals.

"Companies no longer need to go through the additional step

of notifying the PCC for smaller transactions, potentially saving time and resources," he said.

"With a higher bar for mandatory notification, the PCC might dedicate its resources to scrutinizing larger transactions more closely, ensuring they don't stifle competition. This could lead to more in-depth reviews for deals exceeding the thresholds," he added.

However, he said that this could also lead to "missed opportunities," as the reduced number of mandatory filings could result in failure to address potential competition issues in smaller deals.

"The impact might vary across industries. Sectors with a high concentration of players or where even small acquisitions can significantly affect competition might see a continued cautious approach from companies despite the raised thresholds," he said.

"Companies aiming to circumvent review might attempt to structure deals to fall below the thresholds, even if the combined effect on competition is significant. The PCC would need to be vigilant in identifying such attempts," he added.

Under the Philippine Competition Act (PCA), the PCC

is authorized to review M&A deals and block transactions deemed harmful to competition.

The PCC has said that it has so far reviewed a 293 M&A transactions worth more than P5.49 trillion.

Last year, the competition regulator received 24 notifications of M&A transactions, with a combined worth of almost P610 billion.

"The majority of them came from the real estate, electricity and gas, and information and communication sectors," the PCC said. — **Justine Irish D. Tabile**

Mining industry supports easing of foreign ownership restrictions

By **Beatriz Marie D. Cruz**
Reporter

THE proposal to lift foreign ownership limits in the 1987 Constitution will help improve the mining industry's technical capacity and lower costs, industry representatives said.

Chamber of Mines of the Philippines (CoMP) Chairman Michael T. Toledo said easing ownership restrictions will help attract foreign invest in mining.

"Mining and the government's push for mineral processing are capital intensive and there are very few Filipino investors with the financial and technical capability to fund the development of such enterprises," Mr. Toledo said in a Viber message.

Global Ferronickel Holdings, Inc. President Dante R. Bravo said amending the charter to allow more foreign equity could

help unlock the Philippines' mining potential.

"Foreign investors can access funds from overseas and bring them into the country, which the miners here (have little capacity to pull off)," Mr. Bravo said in a Viber chat.

Last week, the Department of Finance (DoF) asked the House of Representatives to ease foreign ownership limits in the Constitution for the mining, public utilities, education, mass media and advertising.

"The DoF is proposing the insertion of the phrase 'unless otherwise provided by law' to the provision on public utilities as well as the nationality requirement for co-production, joint venture or production sharing for the exploration, development, and utilization of natural resources, as in the case of mineral resources," Finance Undersecretary Zeno Ronald R. Abenoja told the House Committee of the Whole.

Constitutional change to ease foreign ownership limits would make the mining industry competitive, according to Mr. Toledo.

"Since investors, both foreign and local, bear huge risks when they venture into mining, the potential return on their investments should be attractive enough (to) convince them to invest in the Philippines. We must always remember that there are also other mineral-rich nations that want investments," he said.

Former Finance Secretary Margarito B. Teves said easing foreign equity restrictions would add entrants to the industry and enhance the mining technology available in the Philippines.

"In the case of Indonesia for example, they have modified their policy (to) moving into mineral processing. They also have, like the Philippines, a lot of reserves," he said via telephone.

"This can be processed into higher grades, (and) we will prob-

ably have more foreign exchange earnings so that (will probably help the industry) move up to a higher level of manufacturing or processing."

The value of the Philippines' metallic mineral reserves increased by 22% in 2022, according to the Philippine Statistics Authority (PSA).

Class A gold, copper, nickel, and chromite resources were valued at P491.19 billion, it said.

The Department of Environment and Natural Resources (DENR) has said that it will support exploration for "critical minerals" such as iron, cobalt, and rare earths.

Environment Secretary Maria Antonia Yulo-Loyzaga has also directed the Mines and Geosciences Bureau (MGB) to seek mineral exploration partnerships with foreign investors.

"Filipino capitalists alone can't fund all possible mining projects, particularly minerals

processing," Calixto V. Chikiamco, Foundation for Economic Freedom (FEF) president, said in a Viber message.

CoMP's Mr. Toledo also urged the government to offer fiscal incentives to ensure growth of foreign investment in the sector.

"Investors, particularly those who have interest in putting up extremely expensive domestic ore processing facilities... would also require investment incentives and the assurance of a steady ore supply so that they can justify such heavy investments," he said.

Mr. Toledo pushed for the approval of the proposed mining fiscal regime, which has yet to be taken up by the Senate.

The bill, which the House of Representatives passed last year, seeks to impose a 4% royalty on the gross output of minerals or mineral products extracted in large-scale metallic mining operations within defined mineral reservations.

It also proposes a margin-based royalty subject to the income of metallic mining operations outside mineral reservations.

Small-scale mining operations would be charged a royalty equivalent to a tenth of 1% of gross output of minerals or mineral products extracted or produced.

A margin-based windfall profits tax on mining operations will also be collected.

He called for the "inclusion of mining in Investment Priority Projects and the granting of fiscal incentives for mining projects, particularly those that will significantly improve employment or economy in the area."

Mr. Toledo also asked Congress to streamline national and local mining and tax laws, as well as expedite ease of doing business initiatives for the industry.

Mr. Toledo also noted the need to destigmatize mining.



Cebu-Negros-Panay grid upgrades to provide relief to Panay island

THE Department of Energy (DoE) said the Panay grid is expected to obtain a measure of relief from the completion of upgrades to the Cebu-Negros-Panay transmission link by the end of the month.

"By the end of March, the Panay grid will be strengthened by the completion of the Cebu-Negros-Panay transmission upgrade. The PCPC (Palm Concepcion Power Corp.) regular maintenance shutdown will also be finished," the DoE said in a statement over the weekend.

The Panay grid reported a partial blackout at 6:59 p.m. on March 1 due to the unplanned shutdown of three units of Panay Energy Development Corp. (PEDC), as well as ongoing maintenance by PCPC, which will run until March 31.

With the gradual return of PEDC units online, the National Grid Corp. of the Philippines said it has fully restored all affected feeders on Panay Island and normalized transmission operations in the area as of midday of March 2.

Panay Island is powered by the four large coal-fired power plants with a total capacity of 451 megawatts (MW) and nine smaller diesel and renewable facilities producing up to 220.3 MW, according to the DoE.

Aside from the Panay-based power generators, about 180 MW can be drawn from the Negros grid through a submarine cable.

The Cebu-Negros-Panay Interconnection Project consists of a 230-kilovolt backbone which can ultimately supply the rest of the Visayas from Cebu.

"In the meantime, the Department of Energy reiterates the need for cooperation among the generators, distribution utility, and the system operator in Panay," it said.

Multiple power plants tripped on the second day of the year on Panay Island, causing a major power outage in the Western Visayas. Power was restored three days later. — **Sheldeen Joy Talavera**

OPINION

Compliance made more convenient: BoC updates and enhanced post-clearance audit

While there was a slowdown in customs post-clearance audits (PCAs) in 2021 and 2022 primarily due to the pandemic, the Bureau of Customs (BoC) Post-Clearance Audit Group (PCAG) ramped up its activities thereafter.

The BoC issued a total of 932 Audit Notification Letters (ANLs) in 2022 and 2023, marking the audit commencement for hundreds of importers. With the BoC's increased target collection of P959 billion this year, the BoC is expected to continue issuing more ANLs and conducting more PCAs.

ONGOING PCAS

A PCA is a post-release evaluation conducted by the BoC and is intended to verify the truthfulness and accuracy of declared customs values, and tariff classifications of imports, among others. It is an exercise performed by the BoC through the PCAG to assess importers' compliance with their obligations to pay correct duties and taxes on importation and keep records in accordance with law. A PCA typically involves an audit of import activities made in the last three years, and a review of all import documents and records relating to such activities.

The current auditees are companies, both multinational and local, from almost all industries with regular import activities. Even companies located in economic zones and enjoying duty and tax incentives are being audited to check on their compliance with the conditions set for exemption. Accredited Super Green Lane importers, who are enjoying faster clearance of goods, are likewise being audited as part of their commitment to submit themselves to periodic review.

In selecting importers for audit, the PCAG uses a risk management system to conduct systematic benchmarking and review of historical trade data, allowing it to determine compliance markers. It also analyzes import data from the BoC's Management Information System and Technology Group and gathers derogatory information from different customs offices. It also seeks to gather information from the proposed exchange of information with various government agencies.

In a PCA, the importer is required to actively participate, discuss with the PCAG officers, and provide the examiners full and free access to records. Importers are expect-

ed to address questions relating to correctness of declarations and submissions made by customs brokers on their behalf.

FILING A PRIOR DISCLOSURE PROGRAM (PDP) APPLICATION

Pursuant to international best customs practices, the PDP authorizes the BoC Commissioner to accept disclosure applications by importers of their errors and omissions in import declarations that resulted in duty and tax liabilities on past imports.

When availed of by importers, the PDP effectively helps to prevent a full customs audit and minimizes the imposition of steep penalties otherwise imposed in a regular audit. The general penalty for negligence, for example, which is 125% of the basic deficiency duties and taxes, may be reduced to 10% in a successful PDP filing.

Importers should take note, however, that the PDP mechanism is only available within a limited time frame, that is, 90 calendar days from the receipt of an ANL, in case there exists an ANL served. In the absence of an ANL, the PDP may generally be filed at any time.

INCREASE IN PDP FILINGS

Remarkably, the PCAG continues to drive compliance of importers, as shown in the availing of the PDP mechanism where importers, whether under audit or not, voluntarily disclose their errors and pay the deficiency duties and/or taxes. In 2023, the BoC collected P1.793 billion from PDP applications, which is 12.6% higher than the PDP collection in 2022 of P1.592 billion. The collection from PDP applications accounts for more than 91% of PCAG's total collections of P1.959 billion in 2023.

This significant increase in PDP payments shows that more importers are voluntarily disclosing their exposures, demonstrating good faith, the commitment to comply with customs laws and regulations, and the desire to contribute to the government revenue collection efforts.

The PCAG continues to encourage importers to avail of the PDP instead of letting PCAs ensue.

COMMON CUSTOMS ISSUES

The filing of a PDP application by an importer presupposes having knowledge of customs issues to be disclosed and quantified duties

and taxes to be paid to customs. Hence, for a PDP application to be successful, it is imperative for the importer to conduct a prior internal customs compliance review.

In the review, importers should make sure that the components of the dutiable value of imports are fully captured in the declarations to customs. These include checking on the proper declaration of price or cost and adjustments such as insurance, freight, royalties or license fees, interest, proceeds of subsequent resale, as well as transfer pricing adjustments. Importers should also be keen on reviewing the proper classification of goods for purposes of determining the applicable duty or tariff rates.

Other common issues noted during a PCA include the improper declaration of the components of the landed cost for VAT purposes, improper calculations of excise tax in cases applicable, disallowed preferential duty rates due to missing certificates of origin, and misuse of tax incentives, if any, to name a few. Specific issues and considerations may apply to certain industries.

Importers can also make use of the review to monitor compliance with administrative requirements, principally record-keeping.

COMPLIANCE MADE MORE CONVENIENT

Overall, it seems more prudent for importers, whether under audit or not, to avail of the PDP in view of reduced penalties and simpler processes. It is certainly less cumbersome than undergoing the full PCA process. If a PDP application is found to be a full disclosure and is well-supported, it will likely be approved to the benefit of the importer.

To prepare for customs audit and manage the filing of PDP applications, if need be, importers may consider establishing robust internal processes for imports, creating a strong and adequately supported supply chain team, ensuring consistent interactions and coordination with customs brokers and other providers, and regularly reviewing its overall customs practices.

This article is for general information only and is not a substitute for professional advice where the facts and circumstances warrant. The views and opinions expressed above are those of the author and do not necessarily represent the views of SGV & Co. or EY.

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NOTICE

Notice is hereby given that **HAUS TALK, INC.** (Formerly: **HAUS TALK PROJECT MANAGERS, INC.**), with office address at Unit 701 Orient Square Bldg., F. Ortigas Jr. Road, Ortigas Center, Pasig City, is applying for registration with the Board of Investments (BOI) as an Expanding Developer of Economic Housing Project (**THE GRANARY PHASE 2**) with a capacity of 454 economic units, under Tier I (Preferred Activities – Mass Housing) of the 2022 Strategic Investment Priority Plan (SIPP) of R.A. 11534 (CREATE Act), with project site from Brgy. San Antonio, Biñan City, Laguna.

Any person with valid objection/s on the above-mentioned project may file his/her objection in writing, under oath, with the BOI within three (3) days from the date of this publication.

MARY ANN E. RAGANIT
 Acting Director
 Infrastructure and Services Industries Service

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