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EXPEDITED MERGER REVIEW

PCC Commission Resolution No. 008-2019

Legal Update

Ocampo & Suralvo Law Offices

1 July 2019



What is expedited review?

- Will only take 15 working days instead of 30 calendar days under the regular phase 1 merger assessment
- Merging parties may apply for the expedited review within 30 days after signing the definitive agreement on the deal, but prior to any acts of consummation
- The new rules shall take effect on 2 July 2019

What mergers are qualified for expedited review?

- No actual or potential horizontal or vertical relationship in the Philippines between the acquiring entity and the acquired entity
- The merger is a global transaction where the acquiring and acquired entities are foreign entities and their subsidiaries in the Philippines are manufacturers or assemblers of products with at least 95% exported

What mergers are qualified for expedited review?

- The merger is global and the acquiring and acquired entities have negligible or limited presence in the Philippines
- Joint ventures, incorporated or otherwise, formed purely for the construction and development of a residential and/or commercial real estate development project

Prior to notification under expedited review

- ❑ Parties are encouraged to request and have a pre-notification consultation with the Mergers and Acquisitions Office (“MAO”)
- ❑ Note that even if the merging parties are qualified for expedited review, they may still opt to file notification forms under the regular rules

Notification under expedited review

- ❑ All acquiring and acquired pre-acquisition Ultimate Parent Entities (“UPEs”) or Notifying Party must each submit an accomplished Expedited Review Notification Form
- ❑ Expedited Review Notification Forms must be submitted within 30 days after signing of definitive agreements relating to the merger but prior to acts of consummation
- ❑ Prior to submission of the Expedited Review Notification Forms, the MAO must be notified of the intention to submit at least two (2) days prior to the target submission date

Compliance with notification requirements

- Expedited Review Notification Form filled out and with complete annexes, signed by an officer or director
- Secretary's Certificate re: authorized signatories and representatives
- Original affidavit attesting that a definitive agreement has been signed and the parties intend to complete the transaction in good faith

Compliance with notification requirements

- Documents executed abroad must be notarized and apostilled/authenticated
- The documents are bound and the annexes are tabbed
- Electronic version saved in a secure USB
- Electronic version saved in searchable PDF, MS Word, or spreadsheet format in two (2) versions: protected and editable

Upon determination of compliance with notification requirements

- ❑ The acquiring entity must pay a non-refundable filing fee of P150,000.00
- ❑ Within one (1) working day from acceptance, the Philippine Competition Commission (“PCC”) will publish the abstract of the transaction in its website and call for comments
- ❑ The review will take 15 working days from acceptance

Upon determination of compliance with notification requirements

- ❑ During the review, the PCC may conduct:
 - Site visits or inspections
 - Contact third parties
 - Conduct interviews
- ❑ Upon completion of the review, the PCC may issue a short-form clearance decision approving the merger
- ❑ If denied, the documents will be returned and treatment will be that no notification was made



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Questions?

This material is for general information purposes only. It is not meant to substitute for direct advice of legal counsel and not designed to be an exhaustive exposition of the law.



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