CLIENT ALERT

Philippine Competition Commission Issues Transitory Rules on PSE-related Mergers and Acquisitions

On February 16, 2016, the recently constituted Philippine Competition Commission ("*PCC*"), which was created under the Philippine Competition Act (Republic Act 10667 or the "*PCA*"), issued Memorandum Circular No. 16-002, Series of 2016 (the "*PSE Transitory Rules*"), which provides for the transitory rules and guidelines relating to mergers and acquisitions that were, or are to be, executed or otherwise implemented through the Philippine Stock Exchange ("*PSE*") and after the effectivity of the PCA on August 8, 2015 but before the effectivity of its implementing rules and regulations (the "*PCA IRR*").

Under the PSE Transitory Rules, parties to merger or acquisition agreements:

(a) where the value of the transaction exceeds One Billion Pesos (Php1,000,000,000.00);

(b) where one of the parties is listed in the PSE;

(c) which are to be executed or otherwise implemented after the effectivity of the PSE Transitory Rules but before the effectivity of the PCA IRR; and

(d) where the Securities Regulation Code requires disclosure to the PSE prior to consummation,

shall, prior to executing the transaction, notify the PCC through a letter addressed to the PCC containing the information required under the PSE Transitory Rules. Transactions which fall under (a) to (c) above but are not required to be disclosed to the PSE prior to consummation shall be reported to the PCC before close of business of the next working day.

Mergers or acquisitions covered by the paragraphs above shall be deemed approved and the parties that notify the PCC in accordance with the PSE Transitory Rules may proceed to execute or implement their agreements. Such agreements shall benefit from Section 23 of the PCA and, therefore, may not be challenged under the PCA, except when the notification required under paragraph (b) above contains false material information.

Mergers or acquisitions wherein the value of the transaction exceeds One Billion Pesos (Php1,000,000,000.00) and are not notified to the PCC in accordance with the Transitory Rules will be subject to the provisions of Section 17 of the PCA. Under Section 17 of the PCA, an agreement consummated in violation of the notification requirement to notify the PCC shall be considered void and shall subject the parties to an administrative fine of one percent (1%) to five percent (5%) of the value of the transaction.

The PSE Transitory Rules shall take effect fifteen (15) days after its publication in the Official Gazette and a newspaper of general circulation and will remain valid until superseded by the effectivity of the PCA IRR. The PSE Transitory Rules were published on the Official Gazette and in a newspaper of general circulation on February 22, 2016 and shall take effect on March 8, 2016.

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