

## **GUIDELINES ON THE COMPUTATION OF MERGER NOTIFICATION THRESHOLDS**

### **I. Introduction**

1.1 Rule 4, Section 3 of the Rules and Regulations to Implement the Provisions of Republic Act No. 10667 (“IRR” or the “Rules”), as amended, provides the method for calculation of the aggregate value of assets and gross revenues from sales for the purposes of determining whether a proposed merger or acquisition is notifiable to the Philippine Competition Commission (“PCC” or the “Commission”).

1.2 In determining whether a proposed merger or acquisition, including joint ventures (“transactions”) are notifiable, both the size of party and the size of the transaction are considered.<sup>1</sup>

1.3 The size of party pertains to the computation of the aggregate value of the assets in the Philippines and revenues from sales in, into, or from the Philippines of the filing Ultimate Parent Entity (“UPE”), including all entities that it controls, directly or indirectly.<sup>2</sup>

1.4 On the other hand, the size of the transaction pertains to the computation of the value of the assets being acquired or/and gross revenues generated by the assets being acquired, or of the acquired entity and entities it controls, depending on the type of transaction provided under Rule 4, Section 3(b) and (d), as amended.<sup>3</sup> Computation for the size of party and size of the transaction are provided in the following sections of the IRR:

- i. Rule 4, Section 3 (a) – size of party
- ii. Rule 4, Section 3 (b)(1) – size of the transaction for purchase of assets located in the Philippines
- iii. Rule 4, Section 3 (b)(2) – size of the transaction for purchase of assets located outside the Philippines
- iv. Rule 4, Section 3 (b)(3) – size of the transaction for purchase of assets located inside and outside the Philippines
- v. Rule 4, Section 3 (b)(4) – size of the transaction for acquisition of voting shares of a corporation or interest in a non-corporate entity.
- vi. Rule 4, Section 3 (d) – size of transaction for a proposed joint venture

### **II. General Principles**

#### **A. Gross revenues from sales in, into or from the Philippines**

2.1 Gross revenues from sales consist of all inflows of money arising in the course of ordinary activities of a company, which shall be as stated on the (i) most recent

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<sup>1</sup> Implementing Rules and Regulations of the Philippine Competition Act of 2015 (PCA IRR), Rule 4, Section 3, as amended by PCC Memorandum Circular No. 18-001.

<sup>2</sup> *Ibid.*, Rule 4, Section 3 (a).

<sup>3</sup> *Id.*, Rule 4, Section 3 (b).

audited financial statement, or if the entity is not required to prepare audited financial statements, (ii) the last regularly prepared annual statement of income and expense. *Provided*, that such statements have been prepared in accordance with the generally or internationally accepted accounting principles adopted by the entity.

2.2 For purposes of these Guidelines, “regularly prepared” means that the document should have been prepared at a normal time, according to the entity’s normal accounting procedures and for the purpose of submitting to other government agencies, self-regulatory organizations, and other market operators.

2.3 Only sales that have a Philippine nexus will be included in calculating the value of the gross revenues for purposes of determining the size of party and of the transaction. Parties to a proposed transaction should therefore consider whether the annual statement of income and expenses or the most recent audited financial statements, provide a reasonable estimate of the amount of revenues from sales “in”, “into” and “from” the Philippines before relying on them.

2.4 In determining whether the gross revenues from sales are considered to be “in”, “into” and “from” the Philippines depends on the location where competition with alternative suppliers occur. Usually, the said sales takes place where the characteristic or representative action under the contract in question is to be performed or executed.

2.5 Thus, in most cases, gross revenues from sales are considered “in”, “into” or “from” the Philippines if:

- (a) Sales “in” the Philippines – gross revenues from sales in the Philippines are those revenues from sales by a seller located in the Philippines to a purchaser located in the Philippines.
- (b) Sales “into” the Philippines – gross revenues from sales into the Philippines are those revenues generated by a seller located outside the Philippines from a purchaser located in the Philippines (e.g., import).
- (c) Sales “from” the Philippines – gross revenues from sales from the Philippines are those revenues generated by a seller located in the Philippines from a purchaser not located in the Philippines (e.g., export).

*i. Deductions*

2.6 Except for sales discounts, sales returns and allowances, and value added tax or percentage tax, no other deduction shall be made against gross revenues from sales.

*ii. Sale of Goods*

2.7 In situations where the location of the purchaser of goods at the time of

concluding the contract of sale is different from the billing and/or the place of delivery, the latter, as a general rule, determines whether it is sales “in”, “into”, or “from” the Philippines. This is because delivery is usually the predominant characteristic action for the sale of goods; thus, the place of delivery will prevail over the place where the customer was located at the time when the purchase agreement was concluded. *Provided*, that the place of delivery is the place where competition takes place for the sale of goods. Otherwise, the location where the contract of sale was entered into should be considered in determining whether it is sales “in”, “into” or “from” the Philippines.

*iii. Special Circumstances for Sellers to or Suppliers of Multinational Corporation*

2.8 A specific situation arises in cases where a multinational corporation has a central purchasing unit<sup>4</sup>, which procures the corporation’s requirements for a good from one location. As a central purchasing unit can take different forms, it is necessary to consider its concrete form since this may determine how to allocate the revenue. Where goods are purchased by and delivered to the central purchasing unit located in the Philippines and are subsequently re-distributed to other plants located outside the Philippines, the revenue generated from the sales is considered either to be “in” or “into” the Philippines. In this case, competition takes place at the location of the central purchasing unit and this is also the place where the characteristic action under the sales contract is performed.

2.9 On the other hand, if a central purchasing unit of a multinational corporation is located outside the Philippines and redistributes goods to its subsidiaries located in the Philippines, the gross revenues generated therefrom do not have any Philippine nexus.

2.10 The situation is different in case of direct links between the seller and the different subsidiaries. This comprises the case where the central purchasing unit located outside the Philippines concludes a mere framework agreement, but the goods are delivered directly to the multinational corporation’s subsidiary/s located in the Philippines as well as the case where the orders are placed via the central purchasing unit, but the goods are directly delivered to the subsidiary/s located in the Philippines. In both cases, the revenues by the seller are considered generated either “in” or “into” the Philippines, irrespective of whether the central purchasing unit receive the bills and effect the payment. The reason is that in both cases competition with alternative suppliers takes place for the delivery of products to the different subsidiaries even though the contract is concluded centrally.

2.11 The above outlined principles apply in an analogous way for central purchasing units for services by multinational corporations.

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<sup>4</sup> A Central Purchasing Unit, for purposes of these Guidelines, is assumed to be a separate juridical entity.

iv. Online Transactions

2.12 Similar to the discussions in section 2.8 above, online transactions for sale of goods have a Philippine nexus if the goods are to be delivered within the Philippines or the contract of sale is perfected in the Philippines but delivery will take place outside the Philippines. Again, in situations like these, competition takes place at the location of the buyer and this is also the place where the characteristic action under the contract of sale is performed.

2.13 A contract of sale in an online transaction is deemed perfected in the Philippines if the buyer is located in the Philippines.

v. Sale of Services

2.14 For sale of services, what is determinative is the location where the service is rendered. Services containing cross-border elements can be considered to fall into the following general categories:

- (a) the service provider (or the seller) travels to the Philippines;
- (b) the customer (or the purchaser) travels to the Philippines; and
- (c) neither the service provider (or the seller) or the customer (or the purchaser) travels.

2.15 In the first two categories, the revenues generated is to be allocated to the place of destination of the traveler, *i.e.* the place where the service is actually provided to the customer. Thus, when a foreign service provider travels to render service in the Philippines, the revenues generated from such sale is considered sales “into” the Philippines. *Provided*, that: the service provider is present in the Philippines during a period or periods exceeding in the aggregate 183 days in any 12-month period. Similarly, when the customer travels to the Philippines to avail of the services of the seller in the Philippines, the transaction have a Philippines nexus and considered to be sales “in” the Philippines.

2.16 In the third category, the revenue is generally to be allocated to the location of the customer. Thus, when a service provider located in the Philippines render service without leaving the Philippines to a customer located outside the Philippines, the revenues generated from such sale is considered sales “from” the Philippines.

vi. Currency conversion

2.17 The entity’s annual gross revenues from sales “in”, “into”, or “from” the Philippines shall be expressed in Philippine Peso. If the financial statements were presented in a foreign currency, the annual gross revenues shall be converted to

Philippine Peso according to the average, over the twelve (12) months of that financial year, of the foreign exchange rate quoted by the Bangko Sentral ng Pilipinas (“BSP”).

*vii. Determination of Control*

2.18 Consolidated Financial Statements and the principles established by International Financial Reporting Standard 10 (“IFRS 10”) in determining whether an entity (or investor) controls another entity (or investee) is not conclusive to the PCC. The Commission, in determining control, is guided by Section 25 of Republic Act No. 10667 (otherwise known as the Philippine Competition Act of 2015 or “PCA”) and Rule 6 of the PCA IRR. In case of conflict between the determination of control under the IFRS 10 and the PCA, the latter shall prevail. In such situation, the Notifying UPE must include the relevant revenues of the said entity.

**B. Assets in the Philippines**

2.19 Similar to the determination of revenues, the aggregate value of assets in the Philippines shall be that as stated on the (i) most recent audited financial statements or if the entity is not required to prepare audited financial statements, (ii) the last regularly prepared balance sheet in which those assets are accounted for.<sup>5</sup> *Provided*, that such statements have been prepared in accordance with generally or internationally accepted accounting principles adopted by the filing entities. Thus, it is expected that the said amount is readily available, accurately reflecting the value of the assets.

2.20 The determination of whether a tangible asset is an asset “in” the Philippines depends on its actual physical location. Thus, tangible movable and immovable assets located in the Philippines that are booked or reflected in the balance sheet or audited financial statements of both Philippine and foreign entity are assets “in” the Philippines.

2.21 However, the location of intangible assets is typically determined by the statute conferring the legal rights and privileges associated with it. Thus, intangible assets with rights and privileges conferred by Philippine statute such as patents and copyrights are assets in the Philippines.

*i. Deductions*

2.22 Except for allowance for depreciation and amortization, allowance for impairment losses and other allowances used to derive the carrying values of the assets, no other deduction shall be made against the value of the assets.

*ii. Currency conversion*

2.23 The value of the assets in the Philippines of an entity shall be expressed in Philippine Peso. If the financial statements were presented in a foreign currency, the

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<sup>5</sup> Implementing Rules and Regulations of the Philippine Competition Act of 2015, Rule 4, Section 3 (f)(1).

value of the assets shall be converted to Philippine Peso according to the average, over the twelve (12) months of that financial year, of the foreign exchange rate quoted by the BSP.

*iii. Determination of Control*

2.24 Consolidated Financial Statements and the principles established by International Financial Reporting Standard 10 (“IFRS 10”) in determining whether an entity (or investor) controls another entity (or investee) is not conclusive to the PCC. The Commission, in determining control, is guided by Section 25 of the PCA. In case of conflict between the determination of control under the IFRS 10 and the PCA, the latter shall prevail. In such situation, the Notifying UPE must include the relevant assets of the said entity.

**III. Specific Circumstances**

**A. Size of party test (Rule 4, Section 3 (a))**

3.1 Proposed mergers, acquisitions and joint ventures should satisfy the size of party test and the size of the transaction test for the merger or acquisition to be subject to compulsory notification.

3.2 To satisfy the size of party test under Rule 4, Section 3 (a) of the IRR, as amended, at least one of the Notifying UPEs, including all entities it controls, directly or indirectly (the UPE and all entities it controls, directly or indirectly, collectively comprise the “Notifying Group”) must have either aggregate annual gross revenues “in”, “into” or “from” the Philippines or have assets “in” the Philippines exceeding Five Billion Pesos (PhP5,000,000,000.00).

*i. Gross revenues*

3.3 The annual gross revenues from sales “in”, “into” or “from” the Philippines of the Notifying Group shall be that as stated in the UPE’s consolidated financial statements, in accordance with the general principles discussed above.

3.4 If based on the accounting principles adopted by the UPE, it does not prepare consolidated financial statements, the annual gross revenues shall be determined by aggregating the gross revenues from sales “in”, “into” or “from” the Philippines of the entities within the Notifying Group, as booked or reflected in their separate statements of income and expenses. Note that the gross revenues from sales “in”, “into”, or “from” the Philippines of an entity within the Notifying Group that is jointly controlled with a different entity shall be proportionate to its ownership interest.

3.5 In contrast with consolidated financial statements where sales and purchases between related entities are cancelled out, separate statements of income and expenses of each entity within the Notifying Group still include amounts arising from intra-



corporate sales or sales pertaining to transactions between related entities, *i.e.*, either sales and purchases between two subsidiaries of the same parent company or sales and purchases between the parent company and its subsidiary. For purposes of the size of party test, intra-corporate sales mean sales transactions between two entities controlled, directly or indirectly, by the same UPE or sales transactions between the UPE and an entity it controls, directly or indirectly. Thus, in aggregating the gross revenues as booked or reflected in separate statements of income and expenses, any amount derived from intra-corporate sales must be deducted.

*ii. Value of assets*

3.6 For purposes of Rule 4, Section 3 (a) of the IRR, as amended, the aggregate value of assets in the Philippines of the Notifying Group shall be that as stated in its consolidated financial statements, in accordance with the general principles discussed above.

3.7 If based on the accounting principles adopted by the UPE, it does not prepare consolidated financial statements, the value of assets shall be determined by aggregating the assets in the Philippines of the entities within the Notifying Group, as booked or reflected in their separate balance sheets or audited financial statements. Note that the value of assets in the Philippines of an entity within the Notifying Group that is jointly controlled with a different entity shall be proportionate to its ownership interest.

3.8 In contrast with consolidated financial statements, the separate balance sheets or audited financial statements of each entities within the Notifying Group still includes assets, such as shares of stocks of a subsidiary owned by the UPE or shares of stocks of a subsidiary owned by another subsidiary of the same UPE, representing duplication arising from ownership interest between entities within the said Notifying Group. Thus, in aggregating the assets of the UPE, the assets representing duplication arising from ownership of the UPE and each entity it controls, directly or indirectly, must be deducted.

*EXAMPLES*

3.9 The examples below are hypothetical and are intended only to illustrate the guidelines outlined above.

Example One

3.10 Holding Co. One is the UPE of Corporation One, a Philippine corporation engaged in logistics business. Corporation One plans to acquire 50% of the voting shares of Corporation A, a corporation incorporated in China engaged in leasing sea vessels and airplanes. For purposes of determining whether the size of the party test has been met, the audited financial statements of both UPE should be examined to determine the respective value of the assets in the Philippines and gross revenues from sales in, into, and from the Philippines.

3.11 For the purposes of determining whether the size of the party test has been met, Holding Co. One has PhP550,000,000 of assets in the Philippines

and gross revenues of PhP3,561,000,000 from sales “in” the Philippines. From the above, the size of the party test was not satisfied because Holding Co. One does not have gross revenues from sales in, into or from the Philippines or assets in the Philippines exceeding PhP5,000,000,000.

HOLDING CO. ONE PARENT COMPANY STATEMENTS OF COMPREHENSIVE INCOME		
	Years Ended 31 December	
	2017	2016
<b>REVENUE</b>		
Service revenue (Note 4)	PhP3,000,000,000	PhP3,500,000,000
Commission income (Note 8 and 17)	60,000,000	70,000,000
Interest income from banks (Note 3, 17, and 18)	1,000,000	2,000,000
Dividend income (Note 17)	500,000,000	500,000,000
	<b>3,561,000,000</b>	<b>4,072,000,000</b>
<b>COSTS AND EXPENSES</b>		
Cost of service (Note 9)	1,900,000,000	2,000,000,000
Cost of rental services (Notes 9 and 22)	30,000,000	50,000,000
General and administrative expenses (Note 14)	700,000,000	650,000,000
Interest expense (Note 20)	100,000,000	200,000,000
	<b>2,730,000,000</b>	<b>2,900,000,000</b>
<b>INCOME BEFORE INCOME TAX</b>	<b>831,000,000</b>	<b>1,172,000,000</b>
<b>PROVISION FOR INCOME TAX</b>	<b>100,000,000</b>	<b>200,000,000</b>
<b>NET INCOME</b>	<b>PhP731,000,000</b>	<b>PhP972,000,000</b>
See accompanying Notes to Parent Company Financial Statements.		

  

PARENT COMPANY STATEMENTS OF FINANCIAL POSITION		
	31-Dec	
	2017	2016
<b>ASSETS</b>		
<b>Current Assets</b>		
Cash and cash equivalents (Notes 2, 14 and 16)	PhP100,000,000	PhP90,000,000
Accounts and other receivable (Notes 3 and 8)	50,000,000	40,000,000
Subscription receivable (Notes 4, 9 and 10)	50,000,000	70,000,000
Other current assets	10,000,000	20,000,000
<b>Total Current Assets</b>	<b>210,000,000</b>	<b>220,000,000</b>
<b>Noncurrent Assets</b>		
Available-for-sale financial assets (Notes 6 and 15)	100,000,000	150,000,000
Security deposit	90,000,000	100,000,000
Property and equipment (Note 7)	150,000,000	300,000,000
<b>Total Noncurrent Assets</b>	<b>PhP550,000,000</b>	<b>PhP770,000,000</b>
<b>LIABILITIES AND EQUITY</b>		
<b>Current Liabilities</b>		
Accrued expenses and other payables (Notes 11, 13 and 18)	PhP100,000,000	PhP130,000,000
Loans payable (Note 8)	-	-
Due to related party (Notes 8, 11 and 18)	-	70,000,000
<b>Total Current Liabilities</b>	<b>PhP100,000,000</b>	<b>PhP200,000,000</b>
<b>Equity</b>		
Capital stock (Note 11)	300,000,000	400,000,000

  

The gross revenues from sales in the Philippines of Holding Co. One is PhP3,000,000,000.

The value of the assets in the Philippines of Holding Co. One is PhP550,000,000.

### Example Two

3.12 Holding Co. Two is the UPE of Corporation Two and Company Two, all three entities are incorporated in the Philippines. Corporation Two has a factory in the Philippines valued at PhP4,500,000,000 and gross revenues from sales to customers in China amounting to PhP300,000,000; these amounts are booked in Holding Co. Two’s consolidated audited financial statements. Company Two, on the other hand, has assets in China comprised of a warehouse, land, and building valued at PhP500,000,000 and an office building in the Philippines valued at PhP1,000,000,000. Company Two’s gross revenues amounts to PhP500,000,000 from sales to customers in China and Japan; these amounts are booked in Holding Co. Two’s audited financial statements. Corporation Two plans to acquire 100% of Corporation B, a Philippine Corporation, which has assets in the Philippines valued at PhP2,800,000,000 booked in its audited financial statements and gross revenues of PhP3,500,000,000 from sales to customers in the United States also booked in its audited financial statements. The UPE of Corporation B is Holding Co. B, which own several entities including Company B, a corporation incorporated in the United States. Company B has no assets in the Philippines but has gross revenues amounting to PhP3,000,000,000 from sales to Philippine distributors booked in its audited financial statements.

3.13 For the purposes of determining whether the size of the party test has been met, Holding Co. Two’s aggregate assets in the Philippines include the factory in the Philippines (PhP4,500,000,000) and office building in the Philippines (PhP1,000,000,000). Thus, Holding Co. Two’s aggregate assets in the Philippines is PhP5,500,000,000. Further, the gross revenues generated by Corporation Two and Company Two are considered gross revenues from sales “from” the Philippines of Holding Co. Two. Thus, Holding Co. Two has PhP800,000,000 gross revenues from sales “from” the Philippines. Regarding Holding Co. B, it has PhP2,800,000,000 aggregate assets in the Philippines, which is booked in the audited financial statements of Corporation B. Holding Co. B has



PhP3,500,000,000 gross revenues from sales "from" the Philippine and PhP3,000,000,000 from sales "into" the Philippines, thus; the UPE's relevant gross revenue is PhP6,500,000,000. From the above, the size of the party test was satisfied by both UPEs. Holding Co. Two has aggregate assets in the Philippines exceeding PhP5,000,000,000 while Holding Co. B's aggregate gross revenues from sales in, into or from the Philippines also exceeded the PhP5,000,000,000.

## **B. Size of the transaction test (Rule 4, Section 3 (b))**

3.14 Determining the size of the transaction differs depending on the type of the proposed transaction (Rule 4, Section 3(b) of the IRR).

### **B.1 Merger or acquisition of assets in the Philippines**

3.15 To satisfy the size of the transaction test for a proposed merger or acquisition of assets under Rule 4, Section 3 (b)(1) of the IRR, as amended, either the aggregate value of the assets subject of the proposed merger or acquisition or the gross revenues generated in the Philippines of such assets must exceed Two Billion Pesos (PhP2,000,000,000.00).

#### *i. Value of assets*

3.16 For purposes of calculating the value of the assets to determine the size of the transaction under Rule 4, Section 3 (b)(1)(i) of the IRR, as amended, the aggregate value of the assets subject of the proposed merger or acquisition, shall be that as stated on the most recent audited financial statements or last regularly prepared balance sheet, in which those assets are accounted for, in accordance with the general principles discussed above.

#### *ii. Gross revenues*

3.17 In calculating the gross revenues to determine the size of the transaction under Rule 4, Section 3 (b)(1)(ii) of the IRR, as amended, only the gross revenues from sales generated in the Philippines by the assets subject of the proposed merger or acquisition are relevant.

3.18 The said gross revenues shall be that as stated on the most recent audited financial statements or last regularly prepared statement of income and expenses of the entity that owns the assets subject of the proposed merger or acquisition, in accordance with the general principles discussed above.

### **B.2 Merger or acquisition of assets outside the Philippines**

3.19 To satisfy the size of the transaction test for a proposed merger or acquisition of assets under Rule 4, Section 3 (b)(2) of the IRR, as amended, both the aggregate value of the assets in the Philippines of the acquiring entity and the gross

revenues generated “in” or “into” the Philippines by the assets proposed to be acquired outside the Philippines must exceed Two Billion Pesos (PhP2,000,000,000.00).

*i. Value of assets*

3.20 For purposes of calculating the value of the assets to determine the size of the transaction under Rule 4, Section 3 (b)(2)(i) of the IRR, as amended, the aggregate value of the assets in the Philippines of the acquiring entity shall be that as stated on the most recent audited financial statements or last regularly prepared balance sheet in which those assets are accounted for, in accordance with the general principles discussed above.

*ii. Gross revenues*

3.21 In calculating the gross revenues to determine the size of the transaction under Rule 4, Section 3 (b)(2)(ii) of the IRR, as amended, only the gross revenues from sales “in” or “into” the Philippines generated by the assets subject of the proposed merger or acquisition are relevant.

3.22 The said gross revenues shall be computed from the most recent audited financial statements or last regularly prepared statements of income and expense of the entity which owns the assets subject of the transaction, in accordance with the general principles discussed above.

**B.3. Merger or acquisition of assets inside and outside the Philippines**

3.23 To satisfy the size of the transaction test for a proposed merger or acquisition of assets under Rule 4, Section 3 (b)(3) of the IRR, as amended, both the aggregate value of the assets in the Philippines of the acquiring entity and the aggregate gross revenues generated in or into the Philippines by the assets subject of the proposed merger or acquisition must exceed Two Billion Pesos (PhP2,000,000,000.00).

*i. Value of assets*

3.24 For purposes of calculating the value of the assets to determine the size of the transaction under Rule 4, Section 3 (b)(3)(i) of the IRR, as amended, the aggregate value of the assets in the Philippines of the acquiring entity, shall be that as stated on the most recent audited financial statements or last regularly prepared balance sheet in which those assets are accounted for, in accordance with the general principles discussed above.

*ii. Gross revenues*

3.25 In calculating the gross revenues to determine the size of the transaction under Rule 4, Section 3 (b)(3)(ii) of the IRR, as amended, only the gross revenues from sales in or into the Philippines generated by the assets subject of the proposed merger or acquisition, located in or outside the Philippines, are relevant.

3.26 The said gross revenues shall be computed from the most recent audited financial statements or last regularly prepared statements of income and expense of the entity which owns the assets subject of the transaction, in accordance with the general principles discussed above.

#### **B.4. Acquisition of voting shares or interest**

3.27 To satisfy the size of the transaction test for a proposed acquisition of voting shares of a corporation or of an interest in a non-corporate entity under Rule 4, Section 3 (b)(4) of the IRR, as amended, it is necessary that either the aggregate value of assets “in” the Philippines or the gross revenues from sales “in”, “into”, or “from” the Philippines of the entity subject of the proposed acquisition and the entity/s it controls, exceed Two Billion Pesos (PhP2,000,000,000.00).

3.28 Further, the acquiring Notifying Group, as a result of the proposed acquisition, must own more than thirty-five percent (35%) or fifty percent (50%) of the outstanding votes or interest to the acquired corporation or non-corporate entity, respectively, as qualified under Rule 4, Section 3 (b)(4)(iii) of the IRR.

##### *i. Value of assets*

3.29 For purposes of calculating the value of the assets to determine the size of the transaction under Rule 4, Section 3 (b)(4)(i) of the IRR, as amended, the aggregate value of the assets in the Philippines of the entity subject of the proposed acquisition and by entity/s it controls, shall be that as stated on its most recent consolidated financial statements, in accordance with the general principles discussed above.

3.30 Note that consolidated financial statements already reflect the aggregate value of the assets of the corporation and has cancelled out any amount reflecting duplication arising from ownership interest between the acquired entity and entities it controls, directly or indirectly. The said ownership interest includes the amount or value of shares owned by the acquired entity in another entity that it controls, directly or indirectly, representing its investments therein. Hence, no additional adjustment or deduction should be made in the value of assets reflected therein.

3.31 If based on the accounting principles adopted by the entity, it does not prepare consolidated financial statements, the value of assets in the Philippines shall be determined by aggregating the assets in the Philippines, as booked or reflected in the separate balance sheet or audited financial statements of the entity subject of the proposed acquisition and by entity/s it controls. *Provided*, that any amount representing duplication arising from ownership interest between the acquired corporation and entities it controls should be deducted. This ownership interest pertains to investments (i) by the acquired entity in an entity it controls, directly or indirectly, or (ii) by an entity controlled, directly or indirectly, by the acquired entity in another entity which the acquired entity likewise controls, directly or indirectly. Note that the value of the assets in the Philippines

of an entity jointly controlled by the entity to be acquired shall be proportionate to its ownership interest.

*ii. Gross revenues*

3.32 In calculating the annual gross revenues to determine the size of the transaction under Rule 4, Section 3 (b)(4)(ii) of the IRR, as amended, only the gross revenues from sales “in”, “into” or “from” the Philippines of the entity subject of the proposed acquisition and by entity/s it controls are relevant.

3.33 The aggregate gross revenues shall be that as stated in the consolidated financial statements of the entity subject of the proposed acquisition (which includes gross revenues of entities it controls), in accordance with the general principles of computing gross revenues discussed above.

3.34 If based on the accounting principles adopted by the entity subject of the proposed acquisition, it does not prepare consolidated financial statements, the annual gross revenues shall be determined by aggregating the gross revenues from sales “in”, “into” or “from” the Philippines, as booked or reflected in the separate statements of income and expense of the entity subject of the proposed acquisition and entity/s it controls. *Provided*, that any amount derived from sales “in”, “into” or “from” the Philippines representing duplication arising from transactions between acquired entities and entities it controls should be deducted. Note that the gross revenues from sales “in”, “into” or “from” the Philippines of an entity jointly controlled by the entity to be acquired shall be proportionate to its ownership interest.

*iii. Percentage of voting shares*

3.35 For acquisition of voting shares as a result of the proposed transaction, under Rule 3, Section 3 (b)(4), as amended, the acquiring entity or entities, together with their affiliates, must own, in the aggregate, more than thirty-five percent (35%) of the acquired entity’s outstanding voting shares. If, however, the acquiring entity or entities, together with their affiliates, already own more than thirty-five (35%), they must own, in the aggregate, more than fifty percent (50%) of the acquired entity’s outstanding voting shares.

3.36 The percentage of voting shares to be owned by the acquiring entity or entities shall be that as stated in the most recent draft or the executed legal document that is to be used to implement the proposed transaction, such as a memorandum of agreement, term sheet, or a letter of intent to merge or acquire, together with the current shares owned by the acquiring entity/s and any of its affiliates, if any.

*iv. Percentage of interest*

3.37 As a result of the proposed acquisition, the acquiring entity/s, together with their affiliates, must hold an aggregate interest in the acquired non-corporate entity, which

will entitle the acquiring entity/s to receive more than thirty-five (35%) of the profits of the non-corporate entity or assets of that non-corporate entity upon its dissolution. If, however, the acquiring entity/s, together with their affiliates are already entitled to receive more than thirty-five (35%) of the profits of the acquired non-corporate entity or assets of that non-corporate entity upon its dissolution, they must be entitled to more than fifty percent (50%) of the profits of the acquired non-corporate entity or assets of the acquired non-corporate entity upon its dissolution.

3.38 The percentage of interest to be owned by the acquiring entity/s shall be that as stated in the most recent draft or the executed legal document that is to be used to implement the proposed transaction, such as a memorandum of agreement, term sheet, or a letter of intent to merge or acquire, together with the current interest owned by the acquiring entity and any of its affiliates, if any.

*EXAMPLES*

3.39 The examples below are hypothetical and are intended only to illustrate the guidelines outlined above. Further, it is presumed that the size of the party test was satisfied.

Example Three

3.40 Holding Co. Three, a Philippine corporation, plans to acquire eighty percent (80%) of the outstanding voting shares of Company Three, an American firm doing business in the Philippines by selling surface mount devices and integrated circuits to local distributors. It does not have property in the Philippines. Company Three's total earnings for the previous year for its sale to Philippine distributors amount to fifty-two million dollars (US\$52,000,000).

3.41 For the purposes of determining whether the size of the transaction test has been met, Company Three has gross revenues from sales into the Philippines amounting to fifty-two million dollars (US\$52,000,000). The twelve-month average of the US Dollar to Philippine Peso foreign exchange is forty-four pesos (PhP44.00) to one dollar (US\$1). Thus, Company Three has gross revenues from sales in the Philippines amounting to two billion two hundred eighty-eight million pesos (PhP2,288,000,000). From the above, the size of the party test was satisfied since the acquired entity has gross revenues from sales into the Philippines exceeding two billion pesos (PhP2,000,000,000) and Holding Co. Three, as a result of the acquisition will own more than thirty-five percent (35%) of Company Three.

Example Four

3.42 Corporation A, Inc., an entity incorporated under the laws of the Philippines, plans to acquire all shares of Holding B Ltd. from Parent B Ltd., both entities are private limited liability company incorporated under the laws of the U.S. Virgin Islands.

3.43 Holding B Ltd. owns the following:

3.44 (i) thirty five percent (35%) voting shares in BB Corporation, a Philippine domestic corporation;



3.45 (ii) one hundred percent (100%) voting shares in Corporation B, a Norwegian corporation; and

3.46 (iii) eighty percent (80%) voting shares in Corporation BB, a Chinese corporation.

3.47 Holding B Ltd. has gross revenues of two million dollars (US\$2,000,000) and total assets amounting to one hundred million dollars (US\$100,000,000) as booked or recorded in its most recent audited separate financial statements.

3.48 For the purposes of determining whether the size of the transaction test has been met, the acquired entity has no gross revenues from sales into the Philippines as provided in its financial statements and explained in the accompanying notes to separate financial statements. Further, it has assets in the Philippines, in the form of investment in BB Corporation, amounting to fifty million dollars (US\$50,000,000). The twelve-month average of the US Dollar to Philippine Peso foreign exchange is forty-four pesos (PhP44.00) to one dollar (US\$1). Thus, Holding B Ltd. has gross assets in the Philippines amounting to two billion two hundred million pesos (PhP2,200,000,000). From the above, the size of the transaction test was satisfied since the acquired entity has assets in the Philippines exceeding two billion pesos (PhP2,000,000,000), though it has not derived any revenue that has a Philippine nexus. Further, Corporation A, Inc. as a result of the acquisition will own more than thirty-five percent (35%) of the acquired entity.

HOLDING B LTD. (A Wholly Owned Subsidiary of Parent B Ltd.) SEPARATE STATEMENTS OF COMPREHENSIVE INCOME		
	As of Years Ended 31 December	
	2017	2016
<b>INCOME</b>		
Gain on sale of investments (Note 6)	US\$2,000,000	US\$1,800,000
Dividend Income (Notes 4 and 11)	--	500,000
	<b>2,000,000</b>	<b>2,300,000</b>
<b>EXPENSES</b>		
Professional fees	100,000	50,000
Taxes and licenses	5,000	10,000
Foreign exchange loss	1,000	--
Bank charges	500	--
Insurance	2,000	2,000
Miscellaneous	--	3,000
	<b>108,500</b>	<b>65,000</b>

**6. Investments in Associates and Subsidiaries**

On 10 August 2017, the Parent Company conducted sale of 1,000,000 Corporation BBB shares. This sale with a price amounting to US\$6,000,000 resulted to a gain on sale of investment in a subsidiary amounting to US\$2,000,000.

The gross revenues of Holding B Ltd. is US\$2,000,000.

The said amount reflects the worldwide gross revenues of Holding B Ltd. and not its aggregate gross revenues from sales in, into, or from the Philippines. Note 6 of the Audited Financial Statement indicates that Holding B Ltd. does not generate revenues from sales in, into, or from the Philippines.

HOLDING B LTD. (A Wholly Owned Subsidiary of Parent B Ltd.) SEPARATE STATEMENTS ON FINANCIAL POSITION		
As of years ended 31 December		
	2017	2016
<b>ASSETS</b>		
<b>Current Assets</b>		
Cash in bank (Notes 6 and 12)	US\$2,000,000	US\$4,500,000
Due from related parties (Notes 9 and 11)	--	500,000
<b>Total Current Assets</b>	<b>2,000,000</b>	<b>5,000,000</b>
<b>Noncurrent Assets</b>		
Available-for-sale financial assets (Notes 6 and 12)	--	1,000,000
Investments in associates (Note 7)	50,000,000	100,000,000
Investments in subsidiaries (Note 7)	48,000,000	--
<b>Total Noncurrent Assets</b>	<b>98,000,000</b>	<b>101,000,000</b>
	<b>US\$100,000,000</b>	<b>US\$106,000,000</b>

  

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<b>7. Investments in Associates and Subsidiaries</b>		
The Company's investments in associates and the corresponding direct percentages of ownership as of 31 December 2017 are shown below.		
	Direct Percentage of Ownership	Carrying Amounts
BB Corporation	35%	US\$50,000,000
		US\$50,000,000

On 01 February 2017, BB Corporation, a Philippine corporation, then a wholly-owned subsidiary of BBH Corporation was incorporated. The primary purpose of BB Corporation is to acquire, lease, develop, sell properties of every kind and description including but not limited to real estate and bonds, debentures, promissory notes, shares of capital stock, or otherwise. On 24 April 2017, Holding B Ltd. subscribed in and paid for 350,000 common shares of BB Corporation. |

For purposes of determining the size of the transaction, the value of Holding B Ltd.'s gross assets in the Philippines is US\$50,000,000.

Based on Holding B Ltd.'s latest Audited Financial Statements, its worldwide gross assets amounts to US\$100,000,000. Thus, it is necessary to determine how much of the said amount pertains to its assets in the Philippines. Note 7 of the Audited Financial Statement indicates that the company's assets are all located outside the of the Philippines except for its investment through shares held in BB Corporation amounting to US\$50,000,000.

### Example Five

3.49 Acquiring Co., a corporation existing under the laws of the Philippines, plans to acquire all of the outstanding voting shares of Acquired Co., which in turn owns ninety-five percent (95%) of the shares in Acquired Controlled Co., also a Philippine-registered corporation. The Acquired Co. prepares only annual separate financial statements, as it is not required to prepare consolidated financial statements.

3.50 Based on its latest Audited Financial Statements, Acquired Co.' reported income is two hundred million pesos (PhP200,000,000), which is dividend income from Acquired Controlled Co. Moreover, Acquired Controlled Co.'s income for the same year is three hundred million pesos (PhP300,000,000). The total value of the assets of Acquired Co. is three hundred fifty million pesos (PhP350,000,000). Acquired Controlled Co., on the other hand, has assets amounting to nine hundred million pesos (PhP900,000,000).

3.51 For purposes of determining the size of the transaction, it is necessary to aggregate the gross revenues from sales in, into, or from the Philippines as well as the value of the assets in the Philippines of Acquired Co. and Acquired Controlled Co.

3.52 Acquired Co., which owns ninety-five percent (95%) of shares in Acquired Controlled Co. and has control over the said entity, is entitled to exclude the value of its investment in Acquired Controlled Co. In other words, the amounts representing duplication arising from ownership interest between Acquired Co. and Acquired Controlled Co. must be deducted from the aggregate amount of the value of the assets in the Philippines of Acquired Co. Similarly, any amount derived from sales in, into, or from the Philippines representing duplication arising from transactions between Acquired Co. and Acquired Controlled Co. must be deducted from the aggregated amount of gross revenues from sales in, into, or from the Philippines.

ACQUIRED CONTROLLED CO. STATEMENTS OF COMPREHENSIVE INCOME (In Philippine Peso)			ACQUIRED CO. SEPARATE STATEMENT OF COMPREHENSIVE INCOME (In Philippine Peso)		
As of Years Ended 31 December			As of Years Ended 31 December		
2017			2017		
2016			2016		
<b>REVENUE (Note 5)</b>			<b>REVENUE (Note 23)</b>		
Manufacturing activities	PhP200,000,000	PhP400,000,000	Dividend Income (Notes 4 and 11)	PhP200,000,000	--
Trading and services	80,000,000	150,000,000	Gain on sale of investment (Note 7)	--	90,000,000
Other income	20,000,000	50,000,000	Interest income (Notes 4 and 7)	--	--
	<b>300,000,000</b>	<b>600,000,000</b>	Other income (Note 14)	<b>200,000,000</b>	100,000,000
<b>COST OF GOODS SOLD (NOTE 17)</b>			<b>EXPENSES</b>		
Manufacturing activities	50,000,000	100,000,000	Net loss on financial asset at fair value through profit or loss (Note 5)	--	10,000,000
Trading and services	70,000,000	200,000,000	Trust and placement fees	50,000	10,000,000
	<b>120,000,000</b>	<b>300,000,000</b>	Taxes and licenses (Note 16)	90,000,000	80,000,000
<b>GROSS PROFIT</b>			Insurance expense (Note 15)	10,000,000	10,000,000
Manufacturing activities	30,000,000	300,000,000	Professional fees (Note 15)	5,500,000	5,000,000
Trading and services	(50,000,000)	(50,000,000)	Miscellaneous	20,000,000	10,000,000
Other income	20,000,000	50,000,000			

For purposes of determining the size of the transaction, the aggregate gross revenues from sales in the Philippines is PhP300,000,000.

Intragroup items or income representing duplication arising from transactions between the acquired entity and entities it controls, directly or indirectly, are eliminated. Thus, the dividend income in the amount of PhP200,000,000 earned by Acquired Co. from Acquired Controlled Co. is not included in the amount representing gross income from its sales in the Philippines.

ACQUIRED CO. SEPARATE STATEMENTS OF FINANCIAL POSITION (In Philippine Peso (PhP))			ACQUIRED CONTROLLED CO. STATEMENTS OF FINANCIAL POSITION (In Philippine Peso (PhP))		
As of Years Ended 31 December			As of Years Ended 31 December		
2017			2017		
2016			2016		
<b>ASSETS</b>			<b>ASSETS</b>		
<b>Current Assets (Note 5)</b>			<b>Current Assets (Note 3)</b>		
Cash	PhP20,000,000	PhP50,000,000	Cash	PhP100,000,000	PhP100,000,000
Inventory	10,000,000	30,000,000	Inventory	100,000,000	200,000,000
Total Current Assets	30,000,000	80,000,000	Total Current Assets	200,000,000	300,000,000
<b>Noncurrent Assets</b>			<b>Noncurrent Assets</b>		
Note and interest receivables (Note 11)	100,000,000	120,000,000	Note and interest receivables (Note 11)	100,000,000	200,000,000
Property and equipment (Note 15)	170,000,000	100,000,000	Property and equipment (Note 16)	500,000,000	100,000,000
Investments in subsidiaries (Note 3)	50,000,000	100,000,000	Total Noncurrent Assets	<b>300,000,000</b>	300,000,000
Total Noncurrent Assets	<b>320,000,000</b>	320,000,000		<b>PhP900,000,000</b>	PhP600,000,000
	<b>PhP350,000,000</b>	PhP640,000,000			

**Note 3 – Investment in Subsidiaries and Investment in Associate**

**Note 3.1 Investment in Subsidiaries**

This account consists of the following:

	% of Ownership	2017	2016
Acquired Controlled Co.	95.00%	PhP50,000,000	PhP45,000,000
Total		<b>PhP50,000,000</b>	PhP45,000,000
Allowance for impairment loss		--	100,000
Carrying value		PhP50,000,000	PhP44,900,000

For purposes of determining the size of the transaction, the aggregate amount of assets in the Philippines of Acquired Co. is PhP1,200,000,000.

The amount representing duplication of ownership interest between Acquired Co. and Acquired Controlled Co. is deducted from the PhP1,250,000,000 value of Acquired Co.'s assets in the Philippines.

3.53 The aggregate revenue from sales in, into, or from the Philippines of Acquired Co. is three hundred million pesos (PhP300,000,000). On the other hand, the aggregate value of assets in the Philippines of Acquired Co. is one billion two hundred million pesos (PhP1,200,000,000). Because Acquired Co. does not have assets in the Philippines exceeding two billion pesos (PhP2,000,000,000), even though as a result of the transaction Acquiring Co. will own more than thirty-five percent (35%) of Acquired Co. the size of the transaction test was not satisfied.

### **B.5. Joint ventures**

3.54 Proposed joint ventures should satisfy the size of party test and the size of transaction test to be subject to compulsory notification.

3.55 To satisfy the transaction test of a proposed joint venture under Rule 4, Section 3 (d) of the IRR, as amended, it is necessary that the aggregate value of the assets combined or contributed “in” the Philippines or the gross revenues generated “in” the Philippines by the assets to be combined or contributed “in” the Philippines exceeds Two Billion Pesos (PhP2,000,000,000.00).

*i. Value of assets*

3.56 For purposes of calculating the aggregate value of the assets to determine the size of the transaction under Rule 4, Section 3 (d) of the IRR, the following shall be included:

- (a) Value of all assets that are not owned by any of the joint venture parties for which agreements have been secured by any of the joint venture parties for the joint venture to obtain at any time, whether or not such entity is subject to the requirements of the act;
- (b) Any amount of credit or any obligations of the joint venture which any of the joint venture parties agreed to extend or guarantee to the joint venture, at any time; and
- (c) Value of the assets owned by any of the joint venture parties that will be combined in the Philippines or contributed into the proposed joint venture;

3.57 The value of (a) shall be the transaction price or the consideration paid for such assets as stated in the executed agreement secured for the joint venture.

3.58 The value of (b) shall be that as stated in the agreement used to document and implement the extension of credit or guaranteed obligation.

3.59 The value of (c) shall be that as stated on the last regularly prepared balance sheet or the most recent audited financial statements in which those assets are accounted for, except in the following situations:

1. The joint venture party that own the assets that will be combined in the Philippines or contributed into the proposed joint venture does not prepare balance sheet or financial statements (e.g., the joint venture party that own the assets is a natural person);
2. The balance sheet or the audited financial statements is more than six (6) months old; or
3. The balance sheet or the audited financial statements do not provide for particulars, such that the value of the assets are not disaggregated and cannot be determined with certainty.

3.60 For the abovementioned situations, where the balance sheet or the financial statements cannot be used to determine the value of the assets, the joint venture parties shall engage the services of real estate appraisal company or valuation specialist employed by a professional services organization, depending on the type of asset to be combined or contributed as discussed below.

3.61 The value provided in the valuation report, which must not be more than six (6) months old at the time of submitting the Notification Form and prepared by a real estate appraiser duly-accredited by the Securities and Exchange Commission (“SEC”) shall be the basis in computing the aggregate value of the following assets to be contributed or combined in the proposed joint venture:

- (a) Land
- (b) Building
- (c) Condominium units
- (d) All additions or improvements introduced on a real property

3.62 The value provided in the valuation report, which must not be more than six (6) months old at the time of submitting the Notification Form and prepared by a valuation specialist employed by a professional services organization shall be the basis in computing the aggregate value of the following assets to be contributed or combined in the proposed joint venture:

- (a) Motor vehicle
- (b) Sea vessel
- (c) Aircraft
- (d) Heavy equipment
- (e) Machinery
- (f) Intellectual Property Rights (patents, trademarks, brandnames, copyrights)
- (g) Mining permits
- (h) Timber license
- (i) Inventories
- (j) Furniture
- (k) Personal properties

3.63 If shares of stock in a listed corporation (whether domestic or foreign) not controlled, directly or indirectly, by the acquiring UPE is to be contributed or combined in the proposed joint venture, the market price shall be the basis in computing the aggregate value of the said asset.

3.64 The market price is the average trade price within a period of twelve (12) months prior to the filing of the Notification Form.

3.65 If shares of stock not traded or listed in an exchange of a corporation not controlled, directly or indirectly, by the acquiring UPE is to be contributed or combined in the proposed joint venture, the value of the shares shall be determined using either an

asset or income approach, prepared by a third party valuation specialist. *Provided*, that such valuation of the shares of stock does not exceed six (6) months old.

3.66 If the proposed joint venture will be incorporated, and the asset to be contributed to the joint venture is in the form of cash for shares, the whole amount representing the subscribed capital stock, regardless of the date of actual payment, shall be considered as asset contributed or combined in the proposed joint venture.

*ii. Gross revenues*

3.67 In calculating the gross revenues to determine the size of the transaction under Rule 4, Section 3 (d) of the IRR, as amended, only the gross revenues generated in the Philippines by the assets to be combined or contributed in the proposed joint venture are relevant.

3.68 The said gross revenues shall be computed from the last regularly prepared statement of income and expense or audited financial statement of the contributing entity in which those assets are accounted for.