

PCC ADVISORY 2019 – 001

ADJUSTMENT OF THE THRESHOLDS FOR COMPULSORY NOTIFICATION OF MERGERS AND ACQUISITIONS

PCC Memorandum Circular 18-001 dated 01 March 2018 provides that unless otherwise modified or repealed by the Commission, the thresholds set out in Rule 4, Section 3 (a), (b) and (d) of the IRR as amended in Section 1 hereof shall be automatically adjusted commencing on March 1, 2019 and on March 1st of every succeeding year, using as index the Philippine Statistics Authority's official estimate of the nominal Gross Domestic Product (GDP) growth of the previous calendar year rounded up to the nearest hundred millions. **The annual nominal GDP from 2017 to 2018 grew by 10.23 percent.**

Hence, **effective 01 March 2019**, parties to a merger or acquisition shall be required to provide notification when:

- (a) The aggregate annual gross revenues in, into or from the Philippines, or value of the assets in the Philippines of the ultimate parent entity of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, exceeds Five Billion Six Hundred Million Pesos (PhP 5,600,000,000.00).

and

- (b) The value of the transaction exceeds Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00), as determined in subsections (1), (2), (3) or (4), as the case may be.

- (1) With respect to a proposed merger or acquisition of assets in the Philippines if either

- i. The aggregate value of the assets in the Philippines being acquired in the proposed transaction exceeds Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00); or
- ii. The gross revenues generated in the Philippines by assets acquired in the Philippines exceed Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00).

- (2) With respect to a proposed merger or acquisition of assets outside the Philippines, if

- i. The aggregate value of the assets in the Philippines of the acquiring entity exceeds Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00); and
- ii. The gross revenues generated in or into the Philippines by those assets acquired outside the Philippines exceed Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00).

(3) With respect to a proposed merger or acquisition of assets inside and outside the Philippines, if

- i. The aggregate value of the assets in the Philippines of the acquiring entity exceeds Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00); and
- ii. The aggregate gross revenues generated in or into the Philippines by assets acquired in the Philippines and any assets acquired outside the Philippines collectively exceed Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00).

(4) With respect to a proposed acquisition of (i) voting shares of a corporation or of (ii) an interest in a non-corporate entity

- i. If the aggregate value of the assets in the Philippines that are owned by the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00); or
- ii. The gross revenues from sales in, into, or from the Philippines of the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00);

and

- iii. If
 - A. As a result of the proposed acquisition of the voting shares of a corporation, the entity or entities acquiring the shares, together with their affiliates, would own voting shares of the corporation that, in the aggregate, carry more than the following percentages of the votes attached to all the corporation's outstanding voting shares:

- I. Thirty-five percent (35%), or
 - II. Fifty percent (50%), if the entity or entities already own more than the percentage set out in subsection I above, as the case may be, before the proposed acquisition;

or

- B. As a result of the proposed acquisition of an interest in a non-corporate entity, the entity or entities acquiring the interest, together with their affiliates, would hold an aggregate interest in the non-corporate entity that entitles the entity or entities to receive more than the following percentages of the profits of the non-corporate entity or assets of that non-corporate entity on its dissolution:

- I. Thirty-five percent (35%), or

- II. Fifty percent (50%), if the entity or entities acquiring the interest are already entitled to receive more than the percentage set out in subsection I immediately above before the proposed acquisition.

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(d) In a notifiable joint venture transaction, an acquiring entity shall be subject to the notification requirements if either (i) the aggregate value of the assets that will be combined in the Philippines or contributed into the proposed joint venture exceeds Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00) or (ii) the gross revenues generated in the Philippines by assets to be combined in the Philippines or contributed into the proposed joint venture exceed Two Billion Two Hundred Million Pesos (PhP 2,200,000,000.00). In determining the assets of the joint venture, the following shall be included:

- 1) All assets which any entity contributing to the formation of the joint venture has agreed to transfer, or for which agreements have been secured for the joint venture to obtain at any time, whether or not such entity is subject to the requirements of the act; and
- 2) Any amount of credit or any obligations of the joint venture which any entity contributing to the formation has agreed to extend or guarantee, at any time.

The adjusted thresholds for notification shall apply to mergers or acquisitions, the definitive agreements of which are executed on 01 March 2019 and thereafter.

The adjusted thresholds for notification shall not, however, apply to:

- a) Mergers or acquisitions pending review by the Commission;
- b) Notifiable transactions consummated before 01 March 2019; and
- c) Transactions already subject of a decision by the Commission.

All mergers or acquisitions, the definitive agreements of which are executed prior to the adjustment of the thresholds contemplated herein, are subject to the thresholds for notification that are applicable prior to the adjustment.