TAX & LEGAL UPDATES

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What's inside:

TAX UPDATES

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BIR Revenue Memorandum Circulars (RMC)

RMC No. 121-2022 issued on August 20, 2022 lifts the suspension on field audit and other field operations covered by outstanding Letters of Authority upon approval by the Commissioner.

RMC No. 77-2022 issued on May 30, 2022 suspended all field audit and other field operations of the BIR relative to examinations and verifications of taxpayer's books of accounts, records, and other transactions. As such, no field audit, field operations, or any form of business visitation in execution of Letters of Authority/Audit Notices (LOAs) or MOs should be conducted, nor any new Letters of Authority/Mission Orders be further issued, including the conduct of TCVD.

RMC No. 121-2022 lifts the suspension on field audit and other field operations covered by outstanding LOAs. Upon approval by the Commissioner of the Memorandum Request submitted by the designated requesting official, the investigating office shall immediately resume its field audit and other field operations on all **outstanding Letters of Authority/Audit Notices, and Letter Notices.**

Investigating Office	Requesting Official	Recommending Approval
Revenue District Offices (RDOs)/Regional Investigation Divisions (RIDs)/VAT Audit Sections/Office Audit Sections	Regional Director	Assistant Commissioner, Assessment Service and Deputy Commissioner-Operations Group (DCIR – OG)
National Investigation Division (NID)	HREA, Enforcement & Advocacy Service	Assistant Commissioner, Enforcement & Advocacy Service and Deputy Commissioner-Legal Group (DCIR – LG)
Large Taxpayers Audit Division/LT VAT Audit Unit	HREA, Large Taxpayers Service – Regular/Excise/Programs & Compliance Group	Assistant Commissioner, Large Taxpayers Services (LTS)

In any case, no new Letters of Authority (LOAs), written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued except: (1) in those cases enumerated under RMC No. 77-2022; and (2) in case of reissuance to replace previously issued LOAs due to change of examiners.

RMC No. 127-2022 issued on Sept. 7, 2022 lifts the suspension on field audit and other field operations covered by Mission Orders.

The prohibition on the following as imposed by RMC No. 77-2022 are hereby **removed:**

1. All field audit and other field operations of the BIR covered by outstanding Mission Orders (MOs) authorizing the conduct of enforcement activities and operations of any kind, such as but not limited to ocular inspection, surveillance activities, stock-taking activities, and the implementation of the administrative sanction of suspension and temporary closure of business; and
2. The issuance of new MOs authorizing such activities and operations.

RMC No. 120-2022 issued on August 18, 2022 prescribes guidelines on the penalty imposed for violations on WFH arrangement by Registered Business Enterprises (RBEs) in the Information Technology – Business Process Management (IT-BPM) sector.

RBEs in IT-BPM sector shall be subject to penalty for any violation of the conditions prescribed on Work-Form-Home (WFH) arrangement for the period April 1, 2022 until September 12, 2022. [The Fiscal Incentives Review Board extended the WFH arrangement under December 31, 2022 under FIRB Resolution No. 026-22.]

Among the salient provisions of the RMC are as follows:

- Non-compliance with the prescribed conditions under FIRB Resolution No. 017-22 for at least one day shall result in the suspension of its income tax incentives for the month when the violation took place. In such a case, the RBEs shall pay, as penalty, the regular income tax of either twenty-five percent (25%) or twenty percent (20%), whichever is applicable, for the aforesaid month. In addition, violations committed beyond September 13, 2022 onwards may subject the RBEs to applicable taxes.
- The penalty shall be paid using BIR Form No. 0605, by choosing the radio button pertaining to "Others", under "Voluntary Payment" and by indicating in the field provided the phrase "Penalty pursuant to FIRB Res. No. 017-22". The tax type code shall still be "IT" and the ATC to be indicated is "MC 200".
- RBEs with violation shall continue to file and pay Quarterly Income Tax Return (QITR) following their usual procedure of computation of the tax due as if no violation was committed. A separate computation for the penalty on the WFH arrangement shall be provided in an additional schedule to be attached to BIR Form No. 0605, to present the actual tax due.
- For their Annual Income Tax Return (AITR), RBEs shall continue to file using BIR Form No. 1702-EX for those with Income Tax Holiday (ITH) incentive and BIR Form No. 1702-MX for those enjoying Gross Income Tax (GIT) incentive or those with mixed transactions. However, they are mandatorily required to complete the required information pertaining to allowable deductions pursuant to existing tax laws and regulations (i.e., Part VI-Schedule I for BIR Form No. 1702-EX and Part IV-Schedule 5 for BIR Form No. 1702-MX).
- If the violation happened during the last quarter of the fiscal year (e.g., fiscal year ending November, 2022), the penalty shall be computed based on the manner prescribed in RMC No. 39-2022. For RBEs with violations under FIRB Resolution No. 19-21, the same manner of computation, filing and payment of the penalty as indicated in this memorandum shall be applied.
- The RBE shall pay the penalty using BIR Form No. 0605 on or before the due date prescribed for the filing or payment of the quarterly income tax, subject to adjustment upon the filing of the annual income tax return. For the fiscal quarter with month/s subject to penalty that already ended and returns have been filed, RBEs shall file and/or pay their penalty within ten (10) days after the issuance of this Circular. If the same is paid beyond the said period, administrative penalties shall be imposed considering that the penalty pertains to income tax.

RMC No. 122-2022 issued on August 22, 2022 requires taxpayers to update their registration records in order to enroll in the Online Registration and Update System (ORUS).

The ORUS allows taxpayers to register, update and transact registration-related transactions online.

All taxpayers transacting online with the BIR thru the ORUS, as well as those currently transacting manually for their registration-related transactions, shall update their registration records, such as e-mail address and contact information using the S1905 - Registration Update Sheet (RUS). The RUS is available at the Client Support Section (CSS) of the Revenue District Office (RDO) and the Bureau's Official Website (www.bir.gov.ph) under the Advisory Section.

The designated e-mail address should be the taxpayer's official e-mail address. This shall be used in serving BIR orders, notices, letters, and other processes/ communications to the taxpayers.

Registered taxpayers shall update their Head Office registration first before updating their branches. Employers shall inform their employees on this requirement. The RUS may be submitted via e-mail to the concerned RDO where the taxpayer is registered.

BIR Revenue Memorandum Order (RMO)

RMO No. 43-2022 issued on September 29, 2022 provides guidelines in the issuance and use of Notice to Issue Receipt/Invoice (NIRI).

The new BIR Notice "Notice to Issue Receipt/ Invoice (NIRI)" requires sellers, including online sellers to issue receipt for each sale of service and invoice for each sale goods. Online sellers and persons engaged in online business transactions are required to issue receipts/sales invoice.

The NIRI shall be issued to the following:

1. New Business Registrants (NBR) head office and branches by the RDO where the taxpayer is registered.
2. Online sellers and merchants, vloggers, social media influencers, and online content creators earning income from the platform and/or advertising.

"Ask for Receipt" Notice previously issued by the RDO/LT Division to registered business taxpayers based on RR No. 7-2005 shall be valid until June 30, 2023. It shall be replaced through a staggered issuance of NIRI to existing business registrants.

All registered business taxpayers requesting the replacement of their old "Ask for Receipt" Notice are required to update their registration information before the release of NIRI. A designated official company email address shall be required, which shall be used by BIR in serving its orders, notices, letters, communications, and other processes to taxpayers.

PEZA Memorandum Circular (MC)

PEZA MC No. 2022-054 issued on August 3, 2022 prescribes guidelines on the issuance of Certificate of Entitlement to Tax Incentives (CETI).

- Applications for a CETI by registered business enterprises (RBEs) shall be made prior to the filing of the Income Tax Return. Each registered activity shall be issued a separate CETI.
- CETI shall be issued by PEZA upon verification of the RBE's compliance with the terms and conditions of its registration (e.g., compliance with PEZA reportorial requirements, including those required under CREATE, etc.), as well as compliance with target performance metrics.

For the CETI to be processed, the performance data for the year covered by the CETI being requested must be complete, and entitlement to ITH of RBE's project still under ITH has been validated.

- Request for a CETI should be filed within ninety (90) days prior to the statutory deadline for filing of the Annual ITR.

To illustrate, if an RBE's accounting or taxable period ends on 31 December 2022, said RBE may file its request for CETI beginning on 15 January 2023 or until the report on performance covering the month of 31 December 2022 has been submitted.

BOI Board Resolution

BOI Board Resolution No. 22-05 issued on June 24, 2022 provides guidelines on applications by BOI-registered business enterprises for a certificate of local business tax exemption.

The exemption from local business tax under Section 133(g) of RA No. 7160 applies to all BOI-registered business enterprises (RBEs), with registered projects or activities under an approved Strategic Investment Priority Plan, certified to as pioneer or non-pioneer, for a period of 6 years or 4 years, respectively, from date of registration.

Upon registration with the BOI, the local business tax exemption of 4 years shall be included in the Specific Terms and Conditions (STC) of the BOI-registered project, without prejudice to upgrade to pioneer status.

To avail the local business tax exemption of 6 years, the RBE shall apply with the BOI Legal and Compliance Service (LCS) for pioneer status or request for upgrade thereof. The application or request for upgrade to pioneer status shall be accompanied with the ff:

a. Justifications based on Article 17 of EO No. 226, as amended;
b. Applicable endorsement from Department of Science and Technology, Department of Agriculture, Department of Energy, or other appropriate government agencies; and
c. Other information or documents as may be required by the BOI.

Upon compliance with the above requirements, the application or request shall be evaluated by the relevant BOI Service of the Industry Development Services, whether the project or activity is Pioneer, subject to approval of the Board.

The RBE whose registered project or activity is upgraded to pioneer status shall submit the original copy of its BOI Certificate of Registration, together with its STC, to the BOI LCS for annotation of its status as pioneer and pay the corresponding amendment fee.

DOF Local Finance Circular (LFC)

LFC No. 001-2022 issued on Sept. 1, 2022 sets guidelines on the imposition of local business tax, fees, and charges to service contractors.

This Circular prescribes the guidelines for cities and municipalities on the imposition of local business tax, fees, and charges to a service contractor providing temporary and outsourced personnel for its clients.

1. Local Business Tax (LBT)
   a. All sales or transactions by a service contractor in an LGU where there is no branch or sales office shall be recorded in its principal office, and the LBT due thereon shall be paid to the LGU where its principal office is located;
   b. All sales or transactions by a service contractor in an LGU where it has a branch or sales office shall be recorded in the said branch or sales office, and the LBT due thereon shall be paid to the LGU where such branch or sales office is located;
   c. Personnel deployed by a service contractor to its client shall not be liable to pay LBT to the LGU where it is being deployed; and
   d. Employees who are telecommuting or in a WFH arrangement shall not be liable to pay LBT to the LGU where it is telecommuting or working-from-home.

2. Mayor's or Business Permit Fee
   a. Service contractors maintaining a principal office, branch or sales office, project office, administrative office, and other similar offices in relation to its business shall be liable to pay the Mayor's or Business Permit fee, as provided under a duly enacted ordinance of the LGU concerned.
   b. Service contractors providing temporary and outsourced personnel, including personnel who are in telecommuting or in a WFH arrangement, for its client in an LGU where it does not maintain any office shall not be liable to pay Mayor's or Business Permit Fee.

3. Occupation Permit Fees

   Cities and municipalities, where temporary and outsourced personnel are deployed by the service contractor, may impose, and collect occupation fees on every personnel who will be engaged in the practice of the occupation or calling not requiring government examination. The service contractor shall annually submit the list of outsourced personnel deployed in the LGU for purposes of collecting occupation permit fees.

   Temporary and outsourced personnel who are in a telecommuting or in a WFH arrangement may be subject to occupation fees where its principal or branch office is located.

   However, individuals who already paid their professional tax in their respective principal offices, as provided in Section 139 of the LGC, are exempted from the imposition and collections of occupation fees.

4. Other Fees and Charges

The principal office, branch or sales office, project office, and administrative office of a service contractor are subject to regulation and imposition of fees and charges by the city or municipality where such offices are located to recover the cost of services that the LGU may render as a function of regulation and/or service provision, and as may be provided under a duly enacted local ordinance.

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LEGAL UPDATES

Sycip Salazar Hernandez & Gatmaitan

Guidelines on Arbitration of Intra-Corporate Disputes for Corporations
SEC Memorandum Circular No. 8, Series of 2022

With the enactment of Section 181 of Republic Act No. 11232, or the Revised Corporation Code ("RCC"), the inclusion of arbitration clauses in a corporation's articles of incorporation or by-laws has been expressly recognized as a dispute resolution mechanism for intra-corporate disputes.

In line with this, on September 19, 2022, the Securities and Exchange Commission issued the Guidelines on Arbitration of Intra-Corporate Disputes for Corporations (the "Guidelines") setting out the procedures and guidelines for the implementation of Section 181 of the RCC. The Guidelines apply to appointments made by the Securities and Exchange Commission, upon request of the parties, of arbitrators tasked to resolve intra-corporate disputes of domestic corporations in accordance with Section 181 of the RCC. The Guidelines are not applicable if the arbitration agreement expressly states a seat or place of arbitration that is other than the Philippines.

Considering that arbitration is voluntary or contractual in nature, the Guidelines provide that arbitration must be based on an arbitration agreement which may come in the form of an arbitration clause included in a corporation's articles of incorporation or by-laws, or set forth in a separate agreement. If an arbitration agreement is in place, disputes between the corporation and its stockholders or members arising from the implementation of the articles of incorporation or by-laws, or from intra-corporate relations, shall be referred to arbitration. If the arbitration agreement contains any conditions precedent to arbitration, such as prior resort to negotiation or mediation, such conditions precedent must first be complied with.

All arbitration agreements executed pursuant to the Guidelines must contain the following stipulations:

1. The number of arbitrators (e.g., one or three);
2. The designated independent third party who shall appoint the arbitrator or arbitrators;
3. The procedure for the appointment of the arbitrator or arbitrators; and
4. The period within which the arbitrator or arbitrators should be appointed by the designated independent third party.

Arbitration agreements that do not meet the foregoing minimum provisions shall be unenforceable under the Guidelines, but may still proceed under other relevant arbitration laws, as applicable.

The arbitral tribunal shall have the power to rule on its own jurisdiction, and on questions relating to the validity of the arbitration agreement. Further, the arbitral tribunal may grant interim measures necessary to ensure enforcement of the award, prevent a miscarriage of justice, or otherwise protect the rights of the parties. These interim measures

may include: (a) preliminary injunction directed against a party to arbitration; (b) preliminary attachment against property or garnishment of funds in the custody of a bank or a third person; (c) appointment of a receiver; (d) detention, preservation, delivery or inspection of property; or (e) appointment of a management committee.

A final arbitral award rendered by the arbitral tribunal shall be considered a commercial arbitration award and shall be executed in accordance with the rules of procedure to be promulgated by the Supreme Court to implement Section 181 of the Revised Corporation Code.

Considering that the Philippines adopts a state policy in favor of arbitration, it is hoped that the Guidelines will help enable arbitration achieve its purpose of providing an efficient and effective alternative mechanism for speedily resolving intra-corporate disputes.

By: Benedicto P. Panigbatan and Paolo Gabriel P. Bautista | SyCip Salazar Hernandez and Gatmaitan

BOI Memorandum Circular No. 2022-007 Specific Guidelines to implement the 2022 Strategic Investment Priority Plan

The 2022 Strategic Investment Priority Plan (SIPP), approved on May 24, 2022, enumerates the activities granted investment incentives and tax benefits under the Tax Code as amended by the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act. Pursuant to the 2022 SIPP, the Board of Investments (BOI) approved Memorandum Circular (MC) No. 2022-007 dated August 8, 2022 outlining the specific guidelines on the implementation of Tiers I, II, and III of the 2022 SIPP.

General Guidelines for all Tiers

Regardless of industry tier, all projects must satisfy the qualifications for registration provided under the 2020 IPP General Policies and Specific Guidelines, as amended by BOI Memorandum Circular No. 2021-005 covering the process for approval of the application, project status, and special considerations granted to certain industries.

Tier I Guidelines

BOI MC No. 2022-007 did not provide any additional requirements for activities to qualify under Tier I as mandated under the 2020 and 2022 SIPP. As provided in BOI's earlier issuances, Tier I activities cover all activities listed in the 2020 Investment Priorities Plan, as amended by Memorandum Circular No. 2021-005, unless listed under Tier II or Tier III.

Tier I activities consist of (1) preferred activities (i.e. activities relating to the fight against COVID-19, strategic services, mass housing, and innovation drivers); (2) export activities; and (3) activities granted mandatory incentives under special laws.

Tier II Guidelines

Based on BOI MC No. 2022-007, activities that qualify under Tier II must be supported with a strong justification that is deemed acceptable to the concerned Investment Promotion Agency ("IPA"), in relation to addressing a product, service, or technology gap in the industry value chain.

The activities included in the enumeration comprise of green ecosystems, health-related activities, defense-related activities, industrial value-chain gaps, and food security related activities, consistent with the listing of activities under the 2022 SIPP. BOI MC 2022-007, however, mandates additional requirements for green ecosystems which now require an endorsement from the Department of Energy (DOE) and/or Department of Environment and Natural Resources (DENR), depending on the product or service offered. Further, food security related activities that comply with criteria based on the United Nations – Food and Agriculture Organization's (UN-FAO) food security dimensions have also been allowed to qualify for registration. The UN-FAO's criteria focus on aspects of availability, access, and stability with corresponding lists of qualified projects depending on the food security dimension highlighted.

Tier III Guidelines

Activities under Tier III cover research & development (R&D), and activities adopting advance digital production technologies of the fourth industrial revolution (i.e. robotics, artificial intelligence, data manufacturing), as well as highly technical manufacturing and production of innovative products and services. Establishment of innovation support facilities such as but not limited to R&D hubs, centers of excellence, science & technology parks, innovation incubation center, tech startups, and space-related infrastructures are also covered by this tier.

BOI MC 2022-007 specifies that applications for registration of the foregoing activities must be accompanied by an endorsement from the Department of Science and Technology (DOST), Department of Trade and Industry (DTI) – Competitiveness and Innovation Group (CIG), or any other institutions as may be identified by the BOI. For space-related infrastructures, the application must be accompanied by an endorsement from the Philippine Space Agency.

To qualify for registration, data centers are specifically required to have at least 20% of their total power consumption from renewable energy, the threshold of which may be increased as determined by the BOI Board.

2022 SIPP Guidelines

The latest memorandum circular issued by the BOI to provide guidelines for the implementation of the 2022 SIPP seems to lack detail on determining how some activities can be classified under Tier I, Tier II, or Tier III. The discretion on this classification has mostly been delegated to different government agencies through the endorsements/certifications required by BOI MC 2022-007 to qualify for registration.

Moreover, there are certain activities that seem to overlap in terms of their inclusion in tier classifications. For instance, innovation drivers and strategic services both qualify under Tier I, but may also qualify under advanced digital production technologies covered by Tier III. These are subject to future guidelines that may be issued by the BOI to clarify these overlaps.

By: Benedicto P. Panigbatan and John Alfred H. Mendoza I SyCip Salazar Hernandez and Gatmaitan

Republic of the Philippines, represented by the Anti-Money Laundering Council ("AMLC") vs. Roberto V. Ongpin, et al. (G.R. No. 207078 promulgated on June 20, 2022)

The remedies of freeze order and order of bank inquiry are extraordinary, issued only upon a finding of probable cause that the accounts sought to be frozen or inquired into are related to any of the predicate crimes under the Anti-Money Laundering Act. The burden of proving probable cause always rests with the Anti-Money Laundering Council, never with the account owners.

Facts:

Deltaventure is a stock corporation primarily engaged in real estate business. On April 7, 2009, Deltaventure applied for a P150,000,000.00 credit line with the DBP Baguio City Branch. As security for the loan, Deltaventure offered to pledge its Philweb shares, as well as those registered in with 7 other companies. At the time Deltaventure applied for the credit line, it was beneficially owned by Roberto V. Ongpin (Mr. Ongpin), a former member of the DBP Board of Directors. Ongpin's executive secretary at Philweb, Josephine A. Manalo (Ms. Manalo), served as Deltaventure's president; and Ma. Lourdes A. Torres (Ms. Torres), its treasurer. This credit line was approved by DBP.

On November 4, 2009, Deltaventure applied for another credit line with DBP, this time for P510,000,000.00. Its stated purpose was to acquire from DBP 50,000,000 shares of Philex Mining stock, to be registered directly in the name of Goldenmedia, a company also beneficially owned by Mr. Ongpin. As security, Goldenmedia pledged back to DBP the Philex shares that would be registered in its name. This credit line was approved by the DBP on the same day. The next day, Philex shares were sold by DBP to Deltaventure, and these were registered to Goldenmedia's name and pledged back to DBP.

A month later, on December 2, 2009, DBP, Goldenmedia and 3 other companies sold their Philex shares to Two Rivers Pacific Holdings Corporation (Two Rivers), thus, resulting in Two Rivers acquiring a controlling interest in Philex. Notably, Two Rivers can be traced back to Manuel V. Pangilinan while Philex's vice chair was Mr. Ongpin.

Given the foregoing transactions, several investigations and complaints were lodged against Mr. Ongpin, Mr. Pangilinan, Ms. Manalo, Ms. Torres and the 28 DBP officers involved in the approval of the two credit lines of Deltaventure. These complaints resulted in a Resolution by the Anti-Money Laundering Council ("AMLC") which authorized its Secretariat to file actions under the Anti-Money Laundering Act ("AMLA") to recover the purportedly illegally tainted money from these transactions and prosecute those involved in deriving it.

Thus, on December 3, 2012, the Republic of the Philippines, through the AMLC, filed an Urgent Ex Parte Petition seeking a freeze order to be issued against 179 bank accounts, probably related to the grant of the loans to Deltaventure, before the Court of Appeals ("CA"). On December 6, 2012, the CA issued the Freeze Order effective for 20 days. In that 20-day period, several Motions to Lift the Freeze Order were filed by the owners of the frozen accounts.

In the same period, on December 11, 2012, the Republic through the AMLC, filed an Ex Parte Application for Bank Inquiry which the CA docketed under the same docket number for the Petition for Freeze Order. The following day, December 12, 2012, AMLC filed a Motion to Extend the Freeze Order for six months, from December 26, 2012 to June 26, 2013.

On December 13, 2012, the CA granted the Application for Bank Inquiry and on December 26, 2012, the CA issued a Resolution which extended the Freeze Order. The disposition included a colatilla, specifically stating that "the Court resolves to: 1. Extend the Freeze Order for a period of six (6) months from its expiration on 26 December 2012 or until 26 June 2013 unless sooner lifted by the Court as warranted by the evidence presented and/or as required by the Court."

On February 8, 2013, the AMLC filed an Urgent Ex Parte Motion for Severance praying that the proceedings on the Petition for Freeze Order be separated from the proceedings on the Application for Bank Inquiry. It noted that these remedies are "separate and distinct" and "with different objectives." It argued that a freeze order is aimed at preserving monetary instruments, while a bank inquiry order authorizes the examination of deposits and investments. It added that in a petition for freeze order, only the filing is ex parte, but the subsequent stages are with notice to the parties. Meanwhile, in a bank inquiry order, the entire proceedings are ex parte so as not to defeat the purpose of a bank inquiry as a "discovery tool." To jointly conduct these proceedings will allegedly defeat the bank inquiry's purpose. This was denied by the CA reasoning that the law did not provide that the proceedings after a bank inquiry order had been issued were ex parte and that the actions for issuing a freeze order and a bank inquiry order involved a common set of facts and questions of law. Thus, the AMLC filed a Motion for Reconsideration.

After the hearing, on May 7, 2013, the CA issued the Assailed Resolution which lifted the Freeze Order over the bank accounts, except Boerstar Corporation's Bank of Commerce Account No. 900000028241 and denied reconsideration of the February 15, 2013 Resolution denying the Motion for Severance.

On May 24, 2013, the Republic, through the AMLC, filed a Petition for Review on Certiorari against the Assailed CA Resolution.

Some issues:

1. Is this Petition for Review on Certiorari filed on May 24, 2013 already moot considering that the extended Freeze Order had already expired on June 26, 2013?

2. Were the Motions to lift deemed denied when the Court of Appeals extended the Freeze Order?
3. Is it within the power of the Court of Appeals to order the AMLC to continue presenting evidence to justify the continued freezing of the accounts despite finding probable cause that the bank accounts are related to an unlawful activity?
4. Was there probable cause to believe that the frozen accounts were related to an unlawful activity?

Rulings:

1. Yes, this Petition for Review on Certiorari filed on May 24, 2013 is already moot considering that the extended Freeze Order had already expired on June 26, 2013. However, the Supreme Court held that the case falls under one of the exceptions since it involves a situation of exceptional character and is of paramount public interest, thus warranting a resolution on the merits.

   Republic Act No. 9160 or the Anti-Money Laundering Act was first enacted in 2001 and has been amended four times since then, specifically by (a) Republic Act No. 9194, enacted in 2003; (b) Republic Act No. 10167, enacted in 2012; (c) Republic Act No. 10365, enacted in 2013; and (d) Republic Act No. 10927, enacted in 2017.

   Section 10 which governed the issuance of Freeze Orders has been amended each time while Section 11 which governed Bank Inquiry Orders was amended twice by (a) Republic Act No. 9194, enacted in 2003; and (b) Republic Act No. 10167, enacted in 2012.

   Given that most of the past cases involving Freeze Orders and Bank Inquiry Orders were decided during the effectivity of the Anti-Money Laundering Act before it was amended by several statutes, including Republic Act No. 10167 which governs this case, this case should, therefore, be resolved on the merits despite its mootness.

2. Yes, in extending the Freeze Order, the CA deemed denied the Motions to lift it.

   However, the colatilla placed by the CA in its Resolution was not void. Under the current Section 10(1) of the amended Republic Act No. 9160, the CA is required to conduct a summary hearing within 20 days from the freeze order's issuance, after which it may modify, lift, or otherwise extend the freeze order. On December 26, 2012, or within 20 days from the issuance of the Freeze Order, the CA issued the Resolution extending the effectivity of the Freeze Order until June 26, 2013, thus denying the Motions to Lift the same. However, by placing the colatilla, what the CA truly meant was that the Freeze Order's extension could be reconsidered. The Supreme Court declared that such colatilla is not void.

3. Yes, the CA may order the AMLC to continue presenting evidence to justify the continued freezing of the accounts. It is true that by issuing the Freeze Order and even extending it, probable cause that the frozen accounts are related to the alleged unlawful activity was already established. This finding, however, was not final since respondents Mr. Ongpin, Ms. Manalo, and Ms. Torres moved for reconsideration.

   The burden of proof has never shifted to respondents. Petitioner confused "burden of proof' with "burden of evidence." "Burden of proof' refers to "the duty of a party to present evidence on the facts in issue necessary to establish [their] claim or defense by the amount of evidence required by law." In actions for the issuance of a freeze order, the burden of proving probable cause always rests with the AMLC.

   Once it has established a prima facie case against the owner of the accounts sought to be frozen, the "burden of evidence" shifts to the owner to present

counterevidence and prove that their accounts are funded by legitimate sources. If the counterevidence balances the evidence of probable cause, the burden of evidence shifts back to the AMLC to justify the continued freezing of the accounts. In this case, the Supreme Court held that the AMLC failed to do so.

4. Yes, among the 179 bank accounts frozen, only Boerstar's Bank of Commerce Account No. 900000028241 was probably related to the alleged unlawful activity.

   There were few accounts found to have been involved in covered or suspicious transactions under the Anti-Money Laundering Act. A covered transaction involves cash or other equivalent monetary instrument valued at more than P500,000.00 in one banking day, while a suspicious transaction involves any of the circumstances enumerated in Section 3(b-1) of the Anti-Money Laundering Act. Unfortunately, the AMLC failed to show that these accounts were related to the allegedly irregular loan transactions between Deltaventure and DBP, the predicate crime for which the AMLC was authorized to commence freeze order and bank inquiry proceedings against respondents.

By: Benedicto P. Panigbatan and Ara Patrice P. Rillera I SyCip Salazar Hernandez and Gatmaitan

Expanded Coverage of Compulsory Insurance for Rehires and Direct Hires (August 19, 2022)
(published in the KCCP E-Newsletter for August 2022 Issue, Vol. 65, P5-6.)

The Department of Labor and Employment (DOLE) issued Department Order No. 228, Series of 2021 on November 3, 2021 (DO No. 228-21), providing the expanded compulsory insurance coverage for rehires and direct hires. In relation to this, the Philippine Overseas Employment Administration (POEA) issued Memorandum Circular No. 10, Series of 2022, on March 7, 2022 (MC No. 10-2022), containing the implementing guidelines of DO No. 228-21. In view of these issuances, the compulsory insurance coverage for Overseas Filipino Workers (OFWs), previously applicable only to agency-hires, is now extended to rehires and direct hires.

Section 1 of DO No. 228-21 provides that each migrant worker deployed by a recruitment or manning agency shall be covered by a compulsory insurance policy, which shall be secured at no cost to the worker. The same section provides that the coverage shall include all agency-hired workers and migrant workers classified as rehires. While the provisions do not expressly state that direct hires are covered by the compulsory insurance, this may be inferred from the subsequent section, which provides that, "[i]n the case of rehires, direct hires, and name hires and for

their families, the cost or expenses shall be borne by their foreign employers or the workers themselves, subject to a complete refund upon arrival of the OFW concerned at the worksite or country destination."

The expanded coverage of compulsory insurance has been clarified in MC No. 10-2022, which expressly provides that the mandatory insurance coverage of OFWs shall now cover rehires, otherwise known as "Balik Mangagawa" (BM), and direct hires or name hires. The MC defines rehires or BMs as OFWs who have served or are currently serving employment contracts and are: (a) returning to the same employer and the same job site; or (b) returning to the same employer in a new job site. On the other hand, direct hires or name hires refer to workers who are able to secure an overseas employment opportunity without the assistance or participation of a recruitment agency.

For agency-hires, the insurance coverage for each OFW shall be secured by the recruitment or manning agency at no cost to the OFW. Meanwhile, for BMs and direct hires, the cost or expense for the insurance cover shall be borne by their foreign employers or the workers themselves, subject to a full refund upon the first day of arrival of the OFW at the worksite or country of destination.

The minimum coverage of any insurance policy for the benefit of OFWs, which shall be effective for the duration of the migrant worker's employment contract, shall include the following: [a] accidental death, with at least US$15,000 survivor's benefit payable to the migrant worker's declared beneficiaries; [b] natural death, with at least US$10,000 survivor's benefit payable to the migrant worker's listed beneficiaries; and [c] permanent total disablement, with at least US$7,500 disability benefit payable to the migrant worker.

All licensed Philippine recruitment and manning agencies, and their principals or employers, shall offer an enhanced insurance coverage, if available and approved by the Insurance Commission, to all OFWs that will include all acts or incidents considered as force majeure and all health issues, including all man-made hazards and perils at the worksite or country destination, in addition to the minimum coverage for all OFWs.

DO No. 228-21 took effect on March 17, 2022.

By: Ronald Mark C. Lleno, Il Young Choi, Raymond Joseph C. Garcia, and Jill Irish C. Ramirez | SyCip Salazar Hernandez & Gatmaitan

Other Labor Updates

- Republic Act No. 11641 or the Department of Migrant Workers Act merged and consolidated several departments, including the Philippine Overseas Employment Administration (POEA), all Philippine Overseas Labor Offices under the DOLE, the International Labor Affairs Bureau under the DOLE, the National Reintegration Center for Overseas Filipino Workers (OFWs) under the Overseas Workers Welfare Administration, and the Office of the Social Welfare Attaché under the Department of Social Welfare and Development, among others, and constituted the Department of Migrant Workers. This newly constituted government agency shall, among other

duties, formulate and implement national policies, programs, and guidelines that will ensure the protection of OFWs, including their safe, orderly and regular migration, and regulate the recruitment, employment, and deployment of OFWs. Currently, the government still observes the rules and regulations implemented by the POEA with respect to recruitment and placement of OFWS.

- The DOLE issued Department Order No. 228, series of 2021 which requires that each migrant deployed by a recruitment/manning agency to be covered by a compulsory insurance policy which shall be secured at no cost to the said worker and shall be effective for the duration of the migrant worker's employment. The insurance policy may be obtained by the employer for the applicant or by the applicant for himself subject to a full refund by the employer upon the first day of arrival of the applicant at the worksite or country of destination. The insurance should be obtained from an insurance provider accredited by the Philippine Insurance Commission or any life insurance provider of the employer.

- The DOLE issued Department Order No. 221, series of 2021 which sets outs the revised guidelines for the issuance of an Alien Employment Permit (AEP) to foreign nationals intending to engage in gainful employment in the Philippines. Under the regulations, foreign nationals working without AEPs or with expired AEPs, and the employer employing such foreign nationals, shall be barred from filing AEP applications for five years. Further, foreign nationals working with fraudulent AEPs and their employers shall be barred from filing AEP applications indefinitely.

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