

FREQUENTLY ASKED QUESTIONS IN RELATION TO THE ENHANCED COMMUNITY QUARANTINE

On 07 April 2020, the Office of the President announced the extension of the Luzon wide Enhanced Community Quarantine (“ECQ”) until 11:59PM of 30 April 2020, upon recommendation of the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (“IATF-EID”).

In light thereof, we have put together for you the recent Executive Issuances in relation to the ECQ, particularly those aimed at easing the economic impact caused by the COVID-19 pandemic in the areas of rentals, loans, taxes, and labor. In the latter part of this newsletter, we have also included a brief discussion on the common questions regarding the conduct of board and stockholders’ meetings during the ECQ period.

RENTALS

Q: What are the concessions granted on the payment of residential rent in relation to the Enhanced Community Quarantine (“ECQ”)?

A: A minimum of thirty (30) days grace period shall be granted on residential rents falling due within the period of ECQ, without incurring interests, penalties, fees, and other charges. (Section 3.1 of the Department of Trade and Industry Memorandum Circular No. 20-12 [“DTI MC No. 20-12”])

As of date, the ECQ period shall be from 17 March 2020 to 30 April 2020 at 11:59PM. (Presidential Proclamation No. 929, Series of 2020)

Q: Who is entitled to the thirty (30) day grace period on residential rent?

A: Any person/s leasing a bedspace, room, dormitory, apartment, house, building, and/or land on which one’s dwelling is located used principally for residential or dwelling purposes, regardless of amount or mode and terms of payment. (Sec. 2 of DTI MC 20-12)

Q: How shall the concession on residential rent be applied?

A: Residential rent shall be amortized equally in the next six (6) months after the lapse of the thirty (30) day grace period following the last rental due date which fell due within the ECQ. (Sec. 3.1 and 3.3 of DTI MC 20-12)

Example: Your rent payment of Twelve Thousand Pesos (₱ 12,000.00) shall fall due on 30 March 2020, which is well within the ECQ period. Applying the rental concession, you will not have to pay for rent on 30 March 2020 but will be required to pay Fourteen Thousand Pesos (₱14,000.00) every month beginning 30 April 2020 up to 30 September 2020.

Q: Is there a similar rental concession granted to commercial establishments?

A: YES. A minimum of thirty (30) days grace period shall be granted on commercial rents falling due within the period of the ECQ payable by Micro, Small, and Medium Enterprises (MSMEs) that have temporarily ceased operations, without incurring interests, penalties, fees, and other charges. (Section 3.2 of DTI MC No. 20-12)

Nothing herein prevents the lessor of commercial spaces from granting or extending greater concessions than that prescribed by law such as a total or partial waiver of commercial rents, rental reprieves, or rental discounts. The lessor may also renegotiate the lease term agreements with the lessee/s or use some other recourse to help mitigate the impact of the ECQ on the business of the MSME. (Sec. 3.5 of DTI MC No. 20-12)

Furthermore, any existing waivers of rental payments due made by lessors, such as those in recognition of the closure of the lessee’s business during the ECQ, shall be honored. (Sec. 4 of DTI MC No. 20-12)

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Q: What are considered MSMEs for purposes of the thirty (30) day grace period on commercial rent?

A: A business activity or enterprise, whether single proprietorship, cooperative, partnership, or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant, and equipment are situated, must have value falling under the following categories:

MICRO: not more than ₱3,000,000.00

SMALL: ₱3,000,001.00 – ₱15,000,000.00

MEDIUM: ₱15,000,001.00 – ₱100,000,000.00 (Sec. 3 of Republic Act No. 6977)

Upon request for application of the rental concession, the MSME shall provide supporting documents, such as, but not limited to, financial statements as proof of enterprise size and lease contract as proof of tenancy. (Sec. 5 of DTI MC No. 2012)

Q: How shall the concession on commercial rent be applied?

A: Commercial rent shall be amortized equally in the next six (6) months after the lapse of the thirty (30) day grace period following the last rental due date which fell due within the ECQ. (Sec. 3.2 and 3.3 of DTI MC 20-12) The example above on the concession on residential rent may similarly be applied here.

Q: Will I be entitled to a refund on rents (residential or commercial) already paid in advance?

A: NO. Lessors are not obligated to refund residential and commercial rents paid by the lessees during the ECQ period. Nevertheless, the lessor shall grant a minimum of thirty (30) days grace period from the next due date of the residential or commercial rents without incurring interest, penalties, fees, and charges. (Sec. 3.4 of DTI MC 20-12)

Q: What is the consequence for a lessor's refusal to provide the thirty (30) grace period to lessees?

A: Lessors who refuse to provide the thirty (30) day grace period to the lessees shall be penalized with imprisonment of not less than two (2) months or a fine of not less than Ten Thousand Pesos (₱10,000.00), or both at the discretion of the Court. (Sec. 6[e] of Republic Act No. 11469)

LOANS**Q: When will the thirty (30) day grace period on loans commence? Will it be from the payment due date falling within the ECQ period or from the end of the ECQ i.e. 30 April 2020?**

A: The thirty (30) day grace period shall commence from the payment due date falling within the ECQ period. (Frequently Asked Questions - Bangko Sentral ng Pilipinas at <http://www.bsp.gov.ph/downloads/Publications/FAQs/BayanihanActFAQs.pdf>)

Q: Will the principal amount payable during the grace period be added to the principal amount due in the next payment due date or will the final due date of the entire loan move by thirty (30) days?

A: The last payment due date will move by thirty (30) days. Interest accrued during the thirty (30) day grace period may be paid in lump sum on the new date or on a staggered basis over the remaining term of the loan. (FAQs – BSP at <http://www.bsp.gov.ph/downloads/Publications/FAQs/BayanihanActFAQs.pdf>)

TAXES**Q: Are the statutory deadlines for submission and/or filing of certain documents and/returns, as well as payment of certain taxes further extended in view of the extension of the ECQ?**

A: YES. The extended due dates enumerated in Section 2 of Revenue Regulation No. 7-2020 are further extended for a period of fifteen (15) calendar days, except those where the extended due dates granted are reckoned from the lifting of the ECQ. (Revenue Memorandum Circular 39-2020)

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For more information on the extended filing and due dates, please see Revenue Regulation No. 7-2020.

Q: Is there also an extension on the deadline to avail of tax amnesty on delinquencies?

A: YES. The deadline to avail of the tax amnesty on delinquencies is has been extended to 08 June 2020 in view of the extension of the ECQ. (Revenue Memorandum Circular No. 38-2020)

LABOR

Q: Does the COVID-19 Adjustment Measures Program (“CAMP”) cover middle income workers?

A: YES. In a virtual press briefing last 13 April 2020, Cabinet Secretary Karlo Nograles announced that the President has approved the Small Business Wage Subsidy Program (“SBWSP”), which shall include a wage subsidy for middle income workers.

Secretary Nograles explained that the wage subsidy shall range between Five Thousand Pesos (₱5,000.00) to Eight Thousand Pesos (₱8,000.00), to be distributed in two (2) tranches in May 2020. (Duterte Approves ₱50.8B Wage Subsidy for Middle Class Workers, MSMEs, 14 April 2020, Philippine Daily Inquirer at <https://newsinfo.inquirer.net/1258322/duterte-approves-p50-8-b-wage-subsidy-for-middle-class-workers>)

We shall keep you posted of the official issuance from the Department of Labor and Employment regarding the procedure for availment of the wage subsidy and implementation of the SBWSP.

CORPORATIONS

Q: May a corporation’s board of directors or trustees continue to hold regular and special meetings during the ECQ?

A: YES. In light of the prohibition on mass gatherings, directors or trustees who cannot physically attend or vote at board meetings can participate and vote through remote communication such as videoconference, teleconferencing, or other alternative modes of communication that allow them reasonable opportunities to participate. (Sec. 52 of Republic Act No. 11232, otherwise known as the Revised Corporation Code [the “RCC”])

Corporations may issue their own internal procedures for the conduct of board meetings through remote communication or other alternative modes of communication to address administrative, technical, and logistical issues. (Sec. 4 of Securities and Exchange Commission Memorandum Circular No. 6, Series of 2020 [“SEC MC No.6-2020”])

A director or trustee who participates through remote communication shall be deemed present for purposes of attaining quorum. (Sec. 5 of SEC MC No.6-2020)

Q: May the stockholders of a corporation also hold regular and special meetings during the ECQ?

A: YES. In light of the prohibition on mass gatherings, stockholders may vote by proxy or when so authorized in the bylaws or a majority of the board of directors, through remote communication or in absentia. A stockholder or member who participates through proxy, remote communication or in absentia shall be deemed present for purposes of quorum. (Sec. 23, 49, and 57 of the RCC)

For the convenience of the stockholders and members, corporations shall issue their own internal procedures embodying the mechanisms for participation in meetings and voting through remote communication or in absentia. (Sec. 13 of SEC MC No. 6-2020)

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NEWSLETTER

VGD

VOL. 3 SERIES OF 2020

Q: What happens in case the corporation is unable to conduct the annual stockholders' meeting for the election of directors, trustees, and officers due to health and safety concerns relating to COVID-19?

A: In case the annual stockholders' meeting for the election of directors or officers, originally scheduled between 01 March 2020 to 31 May 2020, is not held due to COVID-19, and where the corporation has no facilities for remote communication, the same shall be reported to the SEC within thirty (30) days from the original meeting date, accompanied by a statement specifying a new date for the election which must be within sixty (60) days from the originally scheduled date. The report shall be submitted to cmdnotice@sec.gov.ph and shall contain the following:

1. Corporate Name;
2. SEC Registration Number;
3. Date of Annual Meeting per ByLaws;
4. Date of Actual meeting;
5. Reason for Non-Holding of Meeting;
6. Venue of the Intended Meeting; and
7. Signed and Dated by the Corporate Secretary. (SEC Memorandum Circular No. 9, Series of 2020)

Q: Is there a way for a corporation to submit its reportorial requirements to the SEC during the ECQ?

A: YES. The SEC has allowed for the filing of the following documents through electronic mail, as well as through registered or ordinary mail or courier:

1. General Information Sheet;
2. Audited Financial Statement; and
3. All other General Special Forms and Letters.

The above-mentioned documents must be submitted in Portable Document Format ("PDF") and contain an electronic signature. Such documents may be submitted unnotarized provided that the body of electronic mail contains a statement declaring the authenticity of the submitted documents and a commitment to submit notarized physical versions of the exact same documents once the state of public health emergency is lifted. For the purpose, the SEC shall, in the future, set and announce a specific date for submission of the duly notarized hard copies. (SEC Memorandum Circular No. 10, Series of 2020)

While the spread of the COVID-19 brings about unprecedented challenges and a pervading atmosphere of uncertainty, we also acknowledge that it presents with it new opportunities to create solutions to the unique challenges of our time. As fight this common battle, we here at VGD are committed to be with you every step of the way.



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