Frequently Asked Questions
Mergers and Acquisitions

A. Review by the PCC of M&As

1. Does the PCC have the power to review mergers and acquisitions?

Yes. The PCC has the power to review mergers and acquisitions (Sections 12(b) and 16, PCA) particularly those having a direct, substantial and reasonably foreseeable effect on trade, industry or commerce in the Philippines (Rule 4, Section 1, IRR).

2. What would trigger the PCC's review of a merger or acquisition?

The PCC may conduct a *motu proprio* review of a merger or acquisition or review a transaction upon notification by the parties thereto (Rule 4, Section 1, IRR).

3. Are all M&As prohibited?

No. Only mergers and acquisitions that substantially prevent, restrict or lessen competition in the relevant market or in the market for goods or services as determined by the PCC are prohibited (Section 20, PCA).

4. Are there any exemptions from prohibited M&As?

Yes. Prohibited M&As may be allowed under the following conditions:

a. The concentration has brought about or is likely to bring about gains in efficiencies that are greater than the effects of any limitation on competition that result or are likely to result from the merger or acquisition agreement; or
b. A party to the merger or acquisition agreement is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement among the known alternative uses for the failing entity's assets. (Section 21, PCA)

5. Who has the burden of proving the existence of conditions that will warrant the exemption of a prohibited M&A?

The party seeking the exemption must prove the existence of such conditions (Section 22, PCA).

B. Thresholds for Compulsory Notification

1. Under what circumstances are the parties required to notify the PCC of a merger or acquisition?

Parties to a merger or acquisition are required to notify the PCC if the size of the party exceeds Php 5.6 Billion, and the value of the transaction exceeds Php 2.2 Billion. (Section 19, PCA; Rule 4, Section 3, IRR as amended by PCC-MC No. 2018-001 and Commission Resolution 03-2019)

2. How does one determine if the threshold for the size of the party is breached?

The threshold for the size of the party is breached if any of the following exceeds Php 5.6 Billion:

a. Aggregate annual gross revenues in, into or from the Philippines of the ultimate parent entity (the "UPE") of at least one of the acquiring or acquired entities, including that of all entities that the UPE controls, directly or indirectly; or
b. Value of the assets in the Philippines of the UPE of at least one of the acquiring or acquired entities, including that of all entities that the UPE controls, directly or indirectly (Rule 4, Section 3(a), IRR)

3. How does one determine if the threshold for the value of the transaction is breached?

Type of Transaction	Value of the Transaction
Merger or acquisition of assets in the Philippines	The aggregate value of the assets in the Philippines being acquired in the proposed transaction exceeds 2.2 Billion Pesos; **OR** The gross revenues generated in the Philippines by assets acquired in the Philippines exceed 2.2 Billion Pesos
Merger or acquisition of assets outside the Philippines	The aggregate value of the assets in the Philippines of the acquiring entity exceeds 2.2 Billion Pesos **AND** The gross revenues generated in or into the Philippines by those assets acquired outside the Philippines exceed 2.2 Billion Pesos
Merger or acquisition of assets inside and outside the Philippines	The aggregate value of the assets in the Philippines of the acquiring entity exceeds 2.2 Billion Pesos **AND** 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 2.2 Billion Pesos
Acquisition of (i) voting shares of a corporation or of (ii) an interest in a non-corporate entity	The aggregate value of the assets in the Philippines that are owned by the corporation or non-corporate entity to be acquired or by entities it controls, other than assets that are shares of any of those corporations, exceed 2.2 Billion Pesos; **OR** The gross revenues from sales in, into, or from the Philippines of the corporation or non-corporate entity or by entities it controls, exceed 2.2 Billion Pesos **AND** 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,

Type of Transaction	Value of the Transaction
	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 thirty-five percent (35%), as the case may be, before the proposed acquisition; **OR** 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 thirty-five percent (35%) before the proposed acquisition.

4. How does one determine if the threshold for the value of the transaction is breached in cases of joint ventures?

In a joint venture transaction, an acquiring entity shall be subject to the notification requirements if:

i. The size of party is breached; AND
ii. The aggregate value of the assets that will be combined in the Philippines or contributed into the proposed joint venture exceeds Php 2.2 Billion; OR
iii. The gross revenues generated in the Philippines by assets to be combined in the Philippines or contributed into the proposed joint venture exceed Php 2.2 Billion.

5. How is the aggregate value of the assets of a joint venture determined?

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:

i. 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;

ii. 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

iii. 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 (Section 3.56, Guidelines on the Computation of Merger Notification Thresholds).

If there will be agreements between the joint venture partners and the joint venture relating to the use of assets still owned by the joint venture partners or to the rendition of certain services, which are, in each case, covered by a separate implementing agreement (*i.e.*, not in the joint venture agreement); and compensated through a separate consideration (*e.g.*, payment of rent or service fees), the value of such assets and the revenue from such services shall not be included to form part of the assets of the joint venture for purposes of calculating the threshold.

6. ***What does "acquisition" mean in relation to increase in capitalization of an existing joint venture?***

An increase in the authorized capital stock of an existing joint venture company does not, on its own, require notification with the Commission.

For purposes of determining whether Joint Venture Parties ("JV Parties") should notify, new shares must be subscribed to by the JV Parties, and such increase in the ownership of shares of the JV Parties in the joint venture company must breach the applicable thresholds under Rule 4 of the Implementing Rules and Regulations of the PCA.

7. **Company A entered into a joint venture last year and secured the approval of the Commission before it proceeded to incorporate the JV entity. The JV entity is now undergoing preparation for a real estate project (Tower I). If the same JV entity embarks on a second real estate project (Tower 2), will it be necessary for the JV entity to again secure PCC approval?**

Rule 4, Section 3(e) of the Rules and Regulations Implementing Rep. Act No. 10667 (IRR) prescribes that a merger or acquisition consisting of successive transactions, or acquisition of parts of one or more entities shall be treated as one transaction, provided, that the successive transactions or acquisition of parts of one or more entities take place within a one-year period between the same parties, or any entity they control or are controlled by or are under common control with another entity or entities.

In view of the foregoing and based on the facts presented, Tower 2 may not be subject to a separate notification, provided that:

The joint venture agreement previously notified with the Commission contemplates multiple Phases, and Tower 2 comprises a Phase thereof;

a. The JV Partners' intention to undertake Tower 2 is clear from the JV agreement previously notified to the Commission; and
b. Any acquisition in pursuance of undertaking the construction of Tower 2 shall occur within one (1) year from the signing of the JV agreement.

8. Are there M&As that breach the thresholds for compulsory notification but are not notifiable to the PCC?

Yes. An M&A that has breached the thresholds for compulsory notification may not be subject to the notification requirement if it is covered by an existing and effective exemption circular issued by the PCC.

9. What exemption circulars have been issued by the PCC?

PCC through Clarificatory Note No. 16-002 has clarified that an internal restructuring within a group of companies is exempt from notification if the acquiring and acquired entities have the same UPE and the restructuring does not lead to a change in control.

Clarificatory Note No. 18-001 has likewise clarified that a merger or acquisition involving several entities controlled by the same natural person(s) is not covered by compulsory notification if there is no change in control, post-transaction.

Clarificatory Note 19-001 also excludes from compulsory notification land acquisitions by one or more entities not for the purpose of obtaining control.

Under Memorandum Circular 2019-001, agencies may seek exemption from compulsory notification in behalf of their Solicited Project's prospective bidders by filing an application for a Certificate of Project Exemption from the PCC, subject to the PCC's review of the said Project.

10. Does the PCC issue certifications to confirm that a transaction does not breach the thresholds for notification?

The Commission does not issue certifications stating that the transaction is not subject to compulsory notification for failing to breach the notification thresholds. If a notification is filed for a transaction that is not notifiable, the parties shall be informed of such fact within fifteen (15) days from submission of the Form.

Parties to a proposed transaction that is not notifiable may submit documents and information to inform the PCC of the transaction and to explain why no notification is being filed in relation thereto. In such instances, the PCC thru MAO issues a letter of acknowledgment as proof that it was informed of the transaction. Issuance of a letter of acknowledgment, however, does not preclude the PCC from conducting a *motu proprio* review of the transaction if warranted by the circumstances.

11. What documents or information must a party submit to inform the PCC of a proposed transaction that falls below the notification thresholds provided under Section 17 of the PCA?

Parties shall submit a letter containing the following information:

a. Description of the proposed transaction;
b. Names of the acquiring and acquired parties to the transaction including their respective UPEs;
c. Description of their operations in the Philippines i.e. those that have assets in the Philippines or generate revenues from sales in, into or from the Philippines;
d. Assets, shares, or other interests being acquired;

e. Intended structure of ownership and control after the completion of the transaction;
f. For acquisition of assets, a description of all general classes of the assets to be acquired; and
g. For acquisition of shares, a description of all general classes of the assets of the acquired entity and entities it controls.

The following documents shall be attached to the letter:

a. Latest Audited Financial Statements of the parties;
b. Latest General Information Sheets of the parties; and
c. Preliminary binding agreement or draft definitive agreement, if available. (*Guidelines on Letters of Non-Coverage from Compulsory Notification)*

The letter must be accompanied by a certification from an authorized person within the group of companies of the requesting party that (a) the letter, together with all appendices and attachments thereto, was prepared and assembled under his supervision; and (b) the information and data provided are complete, true and correct to the best of his knowledge and/or based on authentic records.

Further, the parties must submit an original hard copy and an electronic version saved in a USB. (*Guidelines on Letters of Non-Coverage from Compulsory Notification)*

12. May parties request confirmation that an M&A is an internal restructuring and therefore not subject to compulsory notification?

Yes. To request confirmation that a proposed transaction is an internal restructuring under CN No. 16-002 and therefore not subject to compulsory notification, parties must submit a letter similar to those submitted for M&As that fall below the threshold.[1] In addition, parties must submit the following:

a. Diagrams or charts showing the relationship between the acquiring group and the acquired entity before and after the proposed transaction; and
b. Evidence of control in cases where the parent company owns one-half (1/2) or less of the voting power of the other entity. (*Guidelines on Letters of Non-Coverage from Compulsory Notification)*

13. What are "gross revenues" and how is it determined?

Gross revenues from sales consist of all inflow of money arising in the course of ordinary activities of a company, which shall be as stated on the (i) most recent 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 (Section 2.1, Guidelines on the Computation of Merger Notification Thresholds).

14. What does "regularly prepared" mean?

[1] See Question no. 11 above.

"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 (Section 2.2, Guidelines on the Computation of Merger Notification Thresholds).

15. Do gross revenues pertain to gross sales or only to gross profit (i.e. gross sales less cost of goods sold)?

In computing gross revenues, entities must include their gross sales without deducting the cost of goods sold. 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 (Section 2.6, Guidelines on the Computation of Merger Notification Thresholds).

16. What should be the basis for determining the aggregate value of assets in the Philippines?

The aggregate value of assets in the Philippines shall be 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; provided, that such statements have been prepared in accordance with the generally or internationally accepted accounting principles adopted by the filing entities (Section 2.19, Guidelines on the Computation of Merger Notification Thresholds).

17. Will the value of the transaction (i.e., aggregate value of assets or gross revenues from sales) be reckoned as of the date of signing of the definitive agreement or as of the date of closing of such transaction?

The value of assets or gross revenues from sales shall be reckoned as of the time of notification to the Commission.

18. Can the parties withdraw their filing if, during review of the transaction, new audited financial statements were released showing that the gross revenues or assets do not exceed the thresholds for notification ?

No, the parties cannot withdraw their filing. The value is reckoned as of the time of filing, based on the documents submitted together with the Notification Form, shall be considered in determining the thresholds for notification.

C. Pre-Notification Consultations

1. What is a pre-notification consultation?

A pre-notification consultation (PNC) is a meeting between parties to a proposed merger or acquisition and a staff of the MAO to discuss the content and timing of a notification. It may also serve as a venue for parties to receive guidance on notification thresholds to facilitate their assessment of whether or not their proposed transaction must be notified to the Commission.

2. ***Is a PNC mandatory for all transactions which is required to be notified to the PCC****?*

No. The PNC is optional on the part of parties to proposed mergers or acquisitions who wish to clear any uncertainty regarding information required in the Notification Form. However,

parties are encouraged to avail of PNCs so that they may be able to submit all the necessary information upon notification and thus allow the PCC to commence review of the transaction the soonest possible time.

3. What are discussed during PNCs?

Aside from seeking guidance on notification thresholds, parties may seek clarification on information required under the Notification Form, inquire what other additional information may be required for review, and discuss their identified markets.

The PCC, however, will not give views or opinions on whether a transaction would be likely to require further review, or if it will substantially prevent, restrict or lessen competition in the relevant market or in the market for goods or services. (Rule 4, Rules on Merger Procedure)

4. What is the nature and extent of advice given during PNCs?

Advice given by the PCC during PNCs are nonbinding in nature (Rule 4, Section 4(b), IRR; Rule 4, Section 4.4, Rules on Merger Procedure).

5. Is a PNC allowed for merely hypothetical mergers or acquisitions?

No. A request for PNC may be denied if such request is determined by PCC to have been made in relation to a purely speculative or hypothetical transaction (Rule 4, Section 4.8, Rules on Merger Procedure)

6. How are requests for PNCs made?

Parties may submit a written request for PNC to the MAO, either by personal service or by email to mergers@phcc.gov.ph. The request must provide the following information:

a. Names and business contact information of the entities concerned;
b. Type of transaction; and
c. Markets or lines of business covered by the proposed merger or acquisition. (Rule 4, Section 4, IRR; Rule 4, Section 4.2, Rules on Merger Procedure)

7. Should both parties request a PNC?

Both the acquiring and acquired parties are encouraged to meet with the staff of MAO for a PNC so that they may receive proper guidance regarding the requirements and procedure of notification. The parties may request joint or separate consultations to discuss their respective filings.

8. Who should be present during the PNC?

Officers of the acquiring and acquired entities, not just their counsels, are encouraged to attend the PNC so that they could be familiar with the requirements and procedure of notification.

D. Filing Notifications

1. When is the PCC deemed notified of a proposed merger or acquisition?

The PCC shall be deemed notified after (i) submission of all acquiring and acquired entities of complete Notification Forms, and (ii) payment of filing fees. (Rule 5, Section 5.12, Rules on Merger Procedure)

2. How do we notify the PCC of a proposed merger or acquisition?

Parties to a notifiable transaction must each submit a filled-up Notification Form, together with all the annexes or attachments required therein, and pay the filing fee. The Commission shall be deemed to have been notified of a proposed transaction after payment of the filing fee.

3. Where can we get a Notification Form?

The Notification Form is available in the PCC website (www.phcc.gov.ph). Should there be any uncertainty with respect to the information required therein, the notifying parties should refer to the Instructions which are likewise available on the website.

4. What formal requirements must notifying parties comply with upon submission of Notification Forms?

The PCC shall determine if the Notification Form complies with the following formal requirements before accepting the same upon submission:

a. The original Form is signed and certified by a general partner of a partnership, an officer or director of a corporation, or in the case of a natural person, the natural person or his/her legal representative, and duly notarized;
b. In the case of a partnership or a corporation, the Form shall be accompanied by an original Secretary's Certificate or Special Power of Attorney or its equivalent in foreign jurisdictions, naming the authorized signatory of the Form as possessing actual authority to make the certification on behalf of the entity filing the notification, and naming the persons authorized to file and represent them before the PCC;
c. Original affidavit attesting to the fact that a definitive agreement has been signed and that each party has an intention of completing the proposed transaction in good faith;
d. Documents executed abroad are duly authenticated by the Philippine embassy or consul in the country of execution;
e. All documents are properly bound, with each attachment labeled with a tab;
f. Electronic version of the completed Form in a secure USB, with each attachment saved as a separate file, and each file name referring to the identifying appendix number;

5. What is the effect of non-compliance with the formal requirements?

The PCC may refuse to accept a Form if it fails to comply with any of the formal requirements, if the notifying party fails to attach any document required by the Form, or if the Form is not substantially in the prescribed form (Rule 5, Sections 5.4 and 5.5, Rules on Merger Procedure).

6. Who are considered as notifying parties?

The UPEs of the acquiring and acquired entities must each submit a Notification Form (Rule 4, Section 2 (b), IRR).

7. **In a scenario involving multiple sellers, may the UPE of one of the sellers be authorized by the respective UPEs of the other sellers to fill out the notification form and file for and on behalf of the UPEs of such other sellers?**

   If notice to the Commission is required for a merger or acquisition, all acquiring and acquired pre-acquisition UPEs or any entity authorized by the UPE to file their notification on its behalf must each submit a Notification Form and comply with the procedure under the Rules (Rule 4, Section 2(b), IRR).

   In a transaction that involves a *single* acquired entity with multiple sellers, the UPE that directly or indirectly controls the acquired entity must accomplish the Notification Form and submit supporting documents, not the UPE of the sellers of the acquired entity. In cases where there is joint control over the acquired entity, the UPEs exercising joint control must accomplish the Notification Form.

   In an acquisition involving *multiple* acquired entities, each acquisition is considered a separate transaction for purposes of notifying with the Commission. In such case, each transaction must be notified separately with the pre-acquisition UPEs of the acquiring and acquired entities in each transaction filing notifications.

   Notwithstanding the foregoing, if the *multiple* acquired entities belong to the *same* Notifying Group and have the same UPE, the transaction may be covered by a single notification; provided, the shares or assets of these entities will be acquired by the same acquiring entity.

8. ***Who is the acquiring entity in a transaction?***

   The acquiring entity is the buyer or the entity making the acquisition in the proposed transaction.

9. ***Who is the acquired entity in a transaction?***

   The acquired entity is the target company or the entity whose assets, voting shares or non-corporate interests are being acquired.

10. ***Which companies will be considered as the acquiring and acquired entities in a joint venture transaction?***

    For joint ventures, the contributing entities shall be deemed acquiring entities, and the joint venture shall be deemed the acquired entity (Rule 4, Section 2 (c), IRR).

11. ***Which are the acquiring and acquired entities in the following scenarios:***

    a. ***Corporation Alpha will merge with Corporation Beta with Corporation Alpha being the surviving entity.***

       The acquiring entity is Corporation Alpha and the acquired entity is Corporation Beta.

    b. ***Corporation Alpha and Corporation Beta will consolidate and form Corporation Charlie.***

       The acquiring entities are Corporation Alpha and Corporation Beta and the acquired entity is Corporation Charlie.

*c. **Corporation Alpha, Corporation Beta, and Corporation Charlie will enter into a joint venture to form JV Corporation.***

The acquiring entities are Corporation Alpha, Corporation Beta, and Corporation Charlie and the acquired entity is the JV Corporation.

12. What is an ultimate parent entity?

The UPE is the juridical entity that, directly or indirectly, controls a party to the transaction, and is not controlled by any other entity (Rule 2(m), IRR).

***13.* Can a *natural person* be the filing UPE?**

The UPE is, as a general rule, a juridical person. However, when circumstances warrant, the PCC may consider the beneficial owner (which may be a natural person) as the UPE for purposes of filing notifications under the PCA.

14. Is the filing UPE required to submit documents proving that no other entity controls it?

Currently, the Notification Form does not require submission of documents evidencing that the filing entity is the UPE of the acquiring or acquired entity. This, however, does not preclude the PCC from requiring submission of such documents to ascertain that the reported ultimate parent entity is correct.

15. When should the Notification Form be submitted to the PCC?

Parties to a proposed merger or acquisition must ensure that they submit their Notification Forms within thirty (30) days from the signing of definitive agreements relating to the transaction and prior to any act of consummation (Rule 2, Section 2.1, Rules on Merger Procedure).

Note that transacting Parties must still submit their Notification Forms within the 30-day notification period even when they have pending requirements or applications with other government agencies

16. What is a definitive agreement?

A definitive agreement sets out the complete and final terms and conditions of a merger or acquisition, including the rights and obligations between or among the transacting parties. Such agreement may be in the form of a share purchase agreement, asset purchase agreement, joint venture agreement or other similar agreement. The inclusion of conditions which must be fulfilled by a party or the parties to make the agreement effective against a party or the parties will not negate the definitive nature of the agreement (PCC Clarificatory Note No. 16-001).

17. Must both notifying parties submit their Notification Forms simultaneously?

It is preferable that both notifying parties submit their Notification Forms simultaneously. It must be noted that determination of sufficiency shall commence after all Notifying Parties have submitted their respective Notification Forms (see Instructions to Form).

Note, however, that in a voting securities acquisition (i.e. tender offers, third party and open market transactions, in which the acquiring entity proposes to buy voting securities from shareholders of the acquired entity, rather than from the entity itself), the acquired entity may submit its Notification Form no later than ten (10) calendar days from the day the

acquiring entity files its Notification Form. If the tenth day falls on a Saturday, Sunday or holiday, the Notification Form may be submitted by the acquired entity on the next business day (Paragraph 5, Clarificatory Note No. 17-001).

18. What is the consequence if a party fails to notify the PCC within the period for Notification?

In general, merger parties and their UPEs who failed to notify the PCC within thirty (30) days from the signing of definitive agreements relating to the transaction but has yet to consummate the merger will be fined in the amount of ½ of 1% of 1% of the value of transaction, but not exceeding two million pesos (Rule 16, Section 16.2, Rules on Merger Procedure).

In voting securities acquisition, failure of the acquired entity to submit the Notification Form within the ten (10) day period[2], may lead to insufficient information necessary for the review of the transaction, such that the Commission will be unable to complete its review within the initial thirty (30) day period. As a consequence, the Commission may be constrained to proceed to a Phase 2 review of the transaction (Paragraph 6, Clarificatory Note No. 17-001).

19. Must the parties file a new notification in case of changes in the transaction during the review?

Parties to a proposed transaction under review shall inform the PCC of any substantial modification to the transaction. On the basis of the information provided, the PCC shall determine if a new notification is required (Rule 4, Section 5(j), IRR).

20. What will constitute a substantial modification to the transaction?

Substantial modification includes instances where the parties assign their ownership, rights or interests to other entities, or when there is a change in the identity, type, or quantity of assets or shares purchased, among others (Rule 5, Section 5.14, Rules on Merger Procedure), or when the parties decide to abandon the notified merger, resulting in the withdrawal of the notification (Rule 5, Section 5.15, Rules on Merger Procedure).

21. Must parties inform the PCC of anticipated mergers between notifying parties?

Yes. Merger parties must also inform the PCC if another merger will be pursued in similar or related markets involving the same parties or any entity within their notifying group, their assigns or successors-in-interest (Rule 5, Section 5.15, Rules on Merger Procedure).

E. Filling Up the Notification Form

1. Who are authorized to sign the Notification Form?

The Notification Form must be signed by a general partner of a partnership, an officer or director of a corporation, or in the case of a natural person, the natural person or his/her legal representative (Rule 4, Section 5(b), IRR). An external counsel or a business consultant cannot sign the Notification Form.

[2] See Question No. 17 above

2. ***Is there a specific officer in the corporation who should sign the Notification Form?***

   None. As long as an officer has knowledge of the transaction and the company's business, he may be sign the Notification Form provided that he has been duly authorized by the notifying party as may be seen in the authorization (e.g. Secretary's Certificate, Partnership Resolution, Special Power of Attorney) submitted together with the Notification Form.

3. ***Who should be named as contact person in the Form?***

   The contact persons to be named in the Notification Form must be officers of the company who are familiar with the operations of the organization. Please note that an external counsel may not be named as the contact person, unless, he/she is duly authorized by the company and as an alternate contact person only.

4. ***May an external counsel be indicated in Section 2.3 of the Notification Form (individual located in the Philippines authorized to receive communications on behalf of a foreign UPE)?***

   Yes, an external counsel may be stated in Section 2.3; provided, that the said counsel is duly authorized by the foreign UPE. A party may also disclose in Section 2.4 if it is being assisted by external counsel.

5. ***Should an external counsel representing a notifying party submit written authorization from his principal?***

   Yes. An external counsel who represents a notifying party must submit written proof of authority to represent the party before the PCC, to submit documents, and to receive notices in relation to the notification of the proposed transaction.

6. ***May an external counsel who has been duly authorized to represent a notifying party sign documents in behalf of the party?***

   No. Only the officer/s authorized in accordance with Section 8.2 of the Notification Form may sign certifications and documents on behalf of a notifying party.

7. ***If it is not customary in the jurisdiction of the filing UPE to issue a Secretary's Certificate, what may the entities submit to prove the authority of the person signing the form and making the notification in behalf of the ultimate parent entity?***

   The party may submit a special power of attorney executed by the officer/s of the UPE who, under its local laws, can issue a special power of attorney on its behalf. The basis of the officer's right should also be provided to the Commission.

8. ***If a party submits a translation of a document that is written in a foreign language, must the original document written in a foreign language still be submitted?***

   Yes. Both the original and translated documents must be submitted to the PCC.

9. ***Is an official translator necessary for documents written in language other than English and Filipino?***

An official translator is not required. It is sufficient that the document be translated by any person competent to translate it into English language. The translator is required to execute an affidavit attesting to his competency to translate the document into English language and that the translated document is a true and accurate English translation.

10. For purposes of Sections 3.3 to 3.6 of the Notification Form, can the parties limit the entities to those that are related to the transaction?

No, the entities to be disclosed under Sections 3.3 to 3.6 of the Notification Form cannot be limited to those that are related only to the transaction under review. All entities controlled, directly or indirectly, by the UPE must be included in the response to these sections.

11. For purposes of Section 3.3 to 3.6 of the Notification Form, can the parties limit the entities to be disclosed to those that have presence in the Philippines only?

No, the entities to be disclosed under Sections 3.3 to 3.6 of the Notification Form cannot be limited to those have presence in the Philippines only. All entities controlled, directly or indirectly, by the UPE must be included for the abovementioned sections, regardless where the entities constituting the Notifying Group operate.

An entity operating exclusively outside the Philippines shall still be considered a Party's UPE if:

a. The juridical entity directly or indirectly controls a Party; and
b. Such juridical entity is not controlled by another entity

12. What is a horizontal relationship?

This refers to a situation where two or more persons both operate as sellers or both operate as buyers in the same market.

Example: Both acquiring and acquired entities are in the same line of business of clothes manufacturing.

13. What is a vertical relationship?

This refers to a situation where an entity operates in a market that is immediately upstream or downstream of a market in which another entity operates, such that the two entities are in an actual or potential buyer-seller relationship.

Example: The acquiring entity is a clothes manufacturer while the acquired entity manufactures threads.

14. Is it necessary to submit the documents required by Section 8 of the Notification Form for all entities identified in Section 6 of the Notification Form?

Yes, the parties must submit all documents required by Section 8 of the Notification Form for each entity identified in their response to Sections 7.1 and 7.3 of the Notification Form.

15. The Notification Form was executed outside the Philippines, does it have to be authenticated?

Yes. If the Notification Form was executed outside the Philippines, the party must obtain an Apostille as proof of authentication (for use in Apostille-contracting countries). Since the Philippines is a member of the Apostille Convention, documents for use in the Philippines do not require further authentication (legalization) by the concerned Foreign Embassies or Consulates. For Austria, Finland, Germany, and Greece, the document must still be authenticated before the Philippine Embassy or Consular Office nearest to the place of execution.

The parties to the proposed merger or acquisition may, pending the authentication of the Form, submit a photocopy of the same accompanied by an undertaking which states that the duly certified and authenticated Notification Form will be submitted at a specified date.

16. Can the parties submit only documents which they deem relevant to the review of the transaction?

No, the parties must submit all documents required by the Notification Form and requested by the MAO.

17. Can the parties submit only parts of documents which they deem relevant to the review of the transaction?

No, the parties cannot submit only the parts of the documents that are relevant to the transaction. The parties must submit each pertinent document complete.

18. Is an explanation necessary if a party cannot provide the information or documents required by the Notification Form or requested by the MAO?

The parties are expected to submit all documents required by the Notification Form and requested by the MAO. If a party is unable to provide any information or documents for any reason, the parties must explain its failure to provide such. A party may be excused from submitting a document only for justified reasons as determined by MAO.

Note, however, that should the Commission discover at any time during the review of the proposed transaction that such documents actually exist, the failure of a party to submit the same shall constitute a ground for the return of the notification filed by both parties. Further, such failure to submit shall be considered a fraudulent act which may form a basis for the Commission to question the merger or acquisition even if it has received a favorable ruling.

19. What is the effect of a party's failure to submit information or documents required by the Notification Form?

Should a notifying fail to provide any information or document required by the Notification Form, the filed Notification Form shall be considered incomplete. The Notification Forms and all documents filed by both parties shall be returned and the transaction shall be deemed to have not been notified to the Commission.

F. Confidentiality

1. May we refuse to submit information or documents required under the Notification Form or requested by MAO on the ground of confidentiality?

No, a claim for confidentiality is not a ground for non-submission of information required by the PCC.

2. What are considered confidential business information?

Confidential Business Information refers to information, which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures, which are not generally known to the public or to other persons who can obtain economic value from its disclosure or use, or is liable to cause serious harm to the person who provided it, or from whom it originates, and is subject of efforts that are reasonable under the circumstances to maintain its secrecy.

3. May an entity claim confidentiality for information that does not fall under the definition of Confidential Business Information?

The PCC may, upon a valid claim of confidentiality, extend confidential treatment to information that is not Confidential Business Information if such information is not generally known to the public and is the subject of reasonable efforts under the circumstances to maintain its secrecy, or the disclosure of such information is prejudicial to any investigation conducted for the enforcement of the Act, its IRR, and other competition laws (Rule 9, Section 9.3, Rules on Merger Procedure).

The PCC shall also keep confidential the identity of persons providing information under condition of anonymity, unless such confidentiality is expressly waived (Rule 9, Section 9.3, Rules on Merger Procedure).

4. Is confidential treatment automatically vested upon submission of Confidential Business Information to the PCC?

No. Submissions to the PCC of information or documents by merger parties, resource persons, or other third parties should indicate if there are claims of confidentiality. Claims for confidentiality must comply with the requirements under Rule 9 of the Rules on Merger Procedure. Blanket or overly broad confidentiality claims shall not be accepted.

5. How can we request confidential treatment of information and documents we submit to the PCC?

A party must clearly identify any material that it considers to be confidential, provide a justification for the request of confidential treatment thereof, and specify the time period within which confidentiality is requested. In addition, the party must provide a separate non-confidential version (Section 13(b), Rule 4 of the IRR) at the same time as the original submission.

Such claims must be substantiated, such that it must be accompanied by a detailed explanation why particular parts of their submissions should not be disclosed, including an explanation of the nature of the information, and the elements provided under Section 9.2 or 9.3 of the Rules on Merger Procedure, as applicable.

Information claimed to be confidential should be identified as follows:

a. In the confidential versions of submissions, confidential information must be market by enclosing it in square brackets or underlining the text;
b. In the non-confidential version of submissions, redactions must be market by square brackets containing the word, "CONFIDENTIAL"; and
c. The applicant must submit a separate annex in table form identifying the confidential information and giving reasons why the information should be treated as confidential.

6. Are there instances where the confidentiality rule will not apply?

The confidentiality rule will not apply if a party consents to the disclosure, or the document or information is mandatorily required to be disclosed by law or a valid order of a court of competent jurisdiction or of a government or regulatory agency, including an exchange (Section 34, PCA). More specifically, confidential information shall not be disclosed by PCC, except in the following circumstances:

a. When there is consent from the entity claiming confidentiality;
b. When disclosure is required by law;
c. When disclosure is required by a valid order of a court of competent jurisdiction or pursuant to a lawful writ or process of a government agency;
d. When disclosure is based on an agreement with a government agency; Provided, that, the information shall be treated by such agency as confidential, and used for law enforcement purposes; or
e. When necessary for enforcing the Act, its IRR and other existing competition laws, and for purposes of advancing the review (Rule 9, Section 9.14, Rules on Merger Procedure)

G. *Filing Fees*

1. Are there fees for notifying the PCC of proposed M&As?

Yes. The notification and review of M&As required to be notified to the Commission shall be subject to the payment of the following fees:

Stage/Phase	Fee	Payment Schedule
Notification Filing and Phase 1Review	Php 250,000.00[3]	Within ten (10) days from receipt of an Order of Payment from the PCC
Notification Filing under Expedited Review	PhP 150,000.00	Upon submission of the Forms, after MAO determines that the Forms of all Parties are compliant with Section 3.4 of the Rules on Expedited Merger Review
Phase 2 Review	1% of 1% of the value of the transaction which shall not be less than Php1,000,000.00 nor exceed Php5,000,000.00.	Within ten (10) days from receipt of an Order of Payment from the PCC

(PCC Memorandum Circular No. 17-002)

[3] *inclusive of 1% Legal Research Fund.*

2. Who should pay the filing fees?

Generally, the fees are paid by the acquiring entity. However, should the parties agree, the PCC shall accept payment by the acquired entity.

3. When should the parties pay the filing fees?

All fees must be paid by within ten (10) days from its receipt of an Order of Payment for the Notification Fee or the Phase 2 Review Fee, as the case may be, from the PCC (Section (B), PCC Memorandum Circular No. 17-002).

For notifications filed under Expedited Merger Review, the fees must be paid upon the determination by MAO that the Forms of all notifying parties are compliant with Section 3.4 of the Rules on Expedited Merger Review.

4. What are the modes of payment available to the parties?

All fees shall be paid by manager's cheque, payable to the Philippine Competition Commission (Section (B), PCC Memorandum Circular No. 17-002).

5. Should the filing fees be paid in full?

Yes. The PCC does not accept partial payment of filing fees.

6. What is the effect of non-payment of filing fees?

If the parties fail to pay filing fees in accordance with PCC Memorandum Circular No. 17-002, their Notification Forms will be returned. Consequently, no notification of the proposed transaction shall be deemed to have been made to the PCC (Section (C), PCC Memorandum Circular No. 17-002).

H. M&A Review

1. What are the phases of M&A review?

	Sufficiency Determination	Phase 1 Review	Phase 2 Review
Purpose	To verify if the notifying parties have submitted all information and documents required by the Notification Form	To determine if the notified transaction may be cleared, or if it raises any competition concerns that would warrant a more detailed review	To determine whether the transaction is likely to result in substantial lessening of competition in the market
Duration	15 days[4]	30 days	60 days
Commencement	Upon submission by all notifying parties of	1st business day following the date of	Issuance to notifying parties of a Phase 2 Notice and a Phase 2

[4] Includes only the period during which MAO determines completeness of the Notification Forms and does not take into account the period during which parties comply with Notices of Deficiency

	their respective Notification Forms	payment of the filing fee	Request for Additional Information
Termination	Upon payment by the parties of the filing fees	Upon approval or prohibition of the transaction, lapse of the 30-day period, or notification that the transaction will proceed to Phase 2 review	Upon approval or prohibition of the transaction, or lapse of the 60-day period
Outcomes	Notification proceeds to Phase 1 review; Parties are informed that the transaction is not notifiable; Notification Forms are returned without prejudice to refiling	Transaction is approved or deemed approved; Transaction proceeds to Phase 2 review; Transaction is prohibited	Transaction is – (i) Approved or deemed approved; (ii) Prohibited; or (iii) Prohibited subject to conditions

2. Can the relevant periods be extended by the parties?

Yes. During the Phase 1 and Phase 2 Review periods, parties who are unable to submit documents and information within the period specified by PCC may request for an extension; provided that the party waives the 30 and 90-day periods of review (Rule 6, Section 6.4, Rules on Merger Procedure).

3. How can parties request for extension of time to comply with Requests for Information?

Parties may file a request for extension of time prior to the expiration of the specified period using the Model Request for Extension and Waiver which is available at the PCC website (Rule 6, Section 6.4, Rules on Merger Procedure).

4. Does the Commission always use up the 30 and 60-day waiting periods for Phase 1 and Phase 2 review of M&As?

The Commission may, in its discretion, terminate a waiting period prior to its expiration (Section 5(l), Rule 4 of the IRR).

5. Will the PCC still request information and documents during review of the transaction even if the parties were already issued Notices of Deficiency?

Yes. At any time during the review period, the PCC may require parties to provide such additional data, information, or documents as it deems necessary for its review (Rule 6, Section 6.3, Rules on Merger Procedure).

If the PCC deems it necessary, it may conduct site visits or inspections of the business premises of the parties, their customers and/or their competitors, in order to better understand how products are manufactured, distributed or sold, how services are rendered, or the nature of competition in the market, among others (Rule 6, Section 6.7, Rules on Merger Procedure).

Additionally, the PCC may conduct interviews, require a person to provide information or documents, or to provide testimony (Rule 6, Section 6.8, Rules on Merger Procedure).

6. In the course of PCC's request for information from third parties, will the fact of the transaction be disclosed?

Yes. The following classes of information are not generally considered confidential by the PCC:

a. The fact of the transaction itself
b. Information that relates to the business of any other merger parties but is not commercially sensitive in the sense that disclosure would cause harm to the business
c. Information that reflects the merger parties' views of how the competitive effects of the transaction could be analyzed
d. Information that is general knowledge within the industry, or is likely to be readily verified by any diligent market participant or trade, finance or economic expert (Rule 9, Section 9.5, Rules on Merger Procedure).

7. If any stage of the review has lapsed and the parties do not receive any notice from the PCC, can the parties proceed with the transaction?

When the periods for Phase 1 and Phase 2 review have expired and no decision has been promulgated for whatever reason, the merger or acquisition shall be deemed approved and the parties may proceed to implement or consummate it. (Rule 4, Section 5(n), IRR)

8. May a transaction that has been approved by the PCC still be challenged?

Yes, if a favorable ruling from the Commission was obtained on the basis of fraud or false material information may still be challenged.

9. When may the parties start consummating their definitive agreement?

The parties may consummate the Definitive Agreement after the PCC approves the proposed transaction or after the 30- or 60- day waiting periods for review shall have lapsed without the PCC having rendered a decision.

I. Return and Refiling of Notification Forms

1. Under what circumstances will the Notification Form filed by a party be returned?

When the parties fail to submit documents or information required by the Notification Form or requested by MAO.

i. During the Sufficiency Determination Stage

A party to whom a Notice of Deficiency issued has fifteen (15) days to submit all the documents and information enumerated therein. Failure of the party to do so shall be a ground for MAO to return the Notification Forms filed by both parties (Rule 5, Section 5.20, Rules on Merger Procedure).

In addition, the Forms may be returned for the following reasons:

a. Submission of incorrect or misleading information; or
b. Incorrect designation of any of the merger parties' UPE (Rule 5, Section 5.22, Rules on Merger Procedure)

ii. Phase 1 Review

If at any time during the review process, the PCC finds that any information or document required under the Form, which is relevant or material to the PCC's review, has been withheld from the PCC, the PCC will return the Forms to the merger parties: *Provided,* that the parties shall be given the opportunity to justify why such information or document was withheld (Rule 5, Section 5.13, Rules on Merger Procedure).

iii. Phase 2 Review

If any of the parties should fail to submit all documents and information requested in the Phase 2 Request for Additional Information within fifteen (15) days from receipt of the said request, the notification shall be deemed expired and the parties must refile their Notification Forms (Rule 4, Section 5(i), IRR; Rule 7, Section 7.4, Rules on Merger Procedure).

3. What is the process of claiming returned Notification Forms?

To claim a returned Notification Form, the party, in case of a natural person, or authorized representative indicated in the Notification Form, in other cases, must personally receive the Notification Form and related documents from the Records Office of the PCC. Should the documents be claimed by a person other than the notifying party or the authorized representative, the claimant must submit an original copy of his proof of authority together with a photocopy of a government-issued ID, the original copy of which must likewise be presented.

4. What are the effects of return?

No notification shall be considered to have been made (Rule 5, Section 5.20, Rules on Merger Procedure).

In case the Forms are returned for deficiency, the merger parties may re-file their corrected and complete Forms at any time prior to any acts of consummation of their merger (Rule 5, Section 5.21, Rules on Merger Procedure).

In case parties fail to submit a complete response to a Phase 2 Request for Additional Information within the 15-day period from receipt thereof, shall result in the expiration of their notification and the parties must refile their notification. The refiled notification should include the information required under the Phase 2 Request. Otherwise, the notification shall be considered deficient (Rule 7, Section 7.4, Rules on Merger Procedure).

5. What are the effects of re-filing the Notification Form or filing of a new Notification Form?

The proposed merger or acquisition will again have to go through the 15-Day Sufficiency Determination Stage, 30-Day Phase 1 Review, and 60-Day Phase 2 Review. Moreover, filing fees must be paid anew.

K. Penalties

1. What are the fines for violating Sections 17 and 20 of the Philippine Competition Act?

Violation	Fine
Non-notification of a consummated merger, or violation of the waiting period (gun jumping)	Transaction void; Merger parties subject to fine (1% to 5% of the value of the transaction) Basic Fine: 3% of value of the transaction which may be increased or decreased on a case-by-case basis
Late notification of non-consummated merger	Fine equivalent to ½ of 1% of 1% of the value of the transaction, but not exceeding Php2M
Prohibited mergers	1st offense: Up to Php100M 2nd offense: Not less than Php100M but not more than Php250M 3rd offense and up: Not less than Php150M but not more than Php250M
Non-notification of prohibited merger	Fine imposable upon gun jumping or late notification AND fine imposable upon prohibited mergers
Any other violation not specifically penalized	Not less than Php50,000.00 but not more than Php250,000.00.

2. What is the basis of fines?

The fine is based on the value of the transaction which shall be set with reference to the following, whichever is higher:

a. the aggregate value of the assets in the Philippines subject of the proposed transaction or owned by the acquired corporation, including entities it controls, or

b. the gross revenues generated by assets subject of the proposed transaction or from sales in, into, or from the Philippines of the acquired corporation, including entities it controls (Rule 16, Section 16.4, Rules on Merger Procedure).

3. Who shall be liable for the fines?

Merger parties, together with their pre-acquisition UPEs, successors or assigns, shall be solidarily liable for the fines (Rule 16, Section 16.13, Rules on Merger Procedure).