



Republic of the Philippines
Tourism Infrastructure & Enterprise Zone Authority

Memorandum

FOR : **MR. JETRO NICOLAS LOZADA** *Aug 8/23* *pls. endorse*
Asst. COO for Assets Management *for cos signature.*

FROM : *[Signature]*
Atty. ARIANE SAMANIEGO
Attorney III, Litigation Services

NOTED : *[Signature]*
Atty. NINO RUPERTO F. AQUINO
OIC – Legal Department

SUBJECT : **Waiver of Concessionaire's Fees**

DATE : *✓* 16 August 2021

This is in reply to your request, and as a directive from the TIEZA Board, to obtain legal opinions from the Office of the Government Corporate Counsel (OGCC) and Commission on Audit (COA) as regards our intention to waive the Concessionaire's fees on some of our TIEZA assets.

For your guidance and consideration. Thank you.

TOURISM INFRASTRUCTURE & ENTERPRISE ZONE AUTHORITY	
ASSETS MANAGEMENT SECTION	
RECEIVED BY:	<i>[Signature]</i>
DATE:	8/19/2021
TIME:	10:13am



Republic of the Philippines
Tourism Infrastructure & Enterprise Zone Authority

12 August 2021

MS. LOURDES D. BENITEZ
Supervising Auditor
Office of the Supervising Auditor

Commission on Audit
6th Floor, Tower 1 Double Dragon Plaza
Double Dragon Meridian Park
Macapagal Avenue corner
Edsa Extension Bay Area
Pasay City 1302

Dear **Ms. Benitez**,

Greetings from TIEZA and hoping you are in good condition amidst the pandemic.

This is to respectfully request for comments on whether TIEZA can waive rentals/concession fees of its concessionaires by reason of the latter's business closure and non-operation during the declared Community Quarantine periods by reason of the COVID19 pandemic.

Background

The different operating entities, particularly Banaue Hotel and Youth Hostel, Zamboanga Golf Course and Beach Park, Dalaguete Public Beach, Malala Cebu, and Club Intramuros Golf Course, rent out a portion of their respective areas to micro, small and medium enterprises (MSMEs), herein referred to as the "*Concessionaires*". As a result of the outbreak of COVID 19, which led to the declaration of varying Community Quarantine and imposition of travel restrictions in several LGUs, the aforementioned entities temporarily closed their operations prompting these *Concessionaires* to likewise close. Hence, said *Concessionaires* requested for the waiver of their rentals/concession fees during the period of closure.

Issue

Can TIEZA waive the rental fees of its *Concessionaires*?



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Discussion

Thus, we seek your comments as regards the propriety of granting said waiver request, as well as the applicability of the following issuances to support TIEZA's approval of said request:

- 1. Republic Act No. 11469 or the Bayanihan to Heal as One Act, which declared the existence of national emergency and granted the President additional authority to combat the effect of the COVID 19 virus.**

Section 3 of RA 11469 provides that it is the policy of the state to:

"xxx

- (e) Mitigate the economic cost and losses stemming from the COVID-19 pandemic;

xxx

- (g) Accelerate the recovery and bolster the resilience of the Philippine economy through measures grounded on economic exclusivity, and collective growth fiscal sustainability;

xxx"

Moreover, Section 4 (ww) provides for *a minimum of 30-day grace period on residential rents and commercial rents of lessees not permitted to work, and MSMEs and cooperatives ordered to temporarily cease operations, falling due within the period of [Community Quarantine], without incurring interests, penalties, fees and other charges provided that all amounts due within the period of [Community Quarantine] shall be amortized in equal monthly installments until December 31, 2020, without any interests, penalties and other charges. Provided furthermore, that the minimum 30-day grace period shall be reckoned from the date of lifting of the ECQ or MECQ.*

- 2. DTI Circular No. 20-12, or the Guidelines on the Concession on Residential Rents, Commercial Rents on MSMEs, which aim to provide lessees in any part of the country economic relief e.g. reduction of expenses or deferment of rental expenses during the period of ECQ and while the Philippines is under the state of public health emergency.**

For clarification, we must determine which are MSMEs. As per RA 6977, as amended by RA 8289:

"xxx



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Sec. 3. *Small and Medium Enterprise as Beneficiaries.* - 'Small and Medium Enterprise' shall be defined as any business activity or enterprise engaged in industry, agribusiness and/or services, 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	less than	P 1,500,001
Small	P1,500,001	P15,000,000
Medium	P15,000,001	P60,000,000

xxx"

DTI Circular No. 20-12 provides in Section 3.5. *Other Concessions for MSMEs* -

"xxx

Notwithstanding the above, the lessors of commercial rents to MSMEs who wish to extend greater generosity may:

- (a) Totally or partially waived the commercial rents that are falling due during the ECQ;
- (b) Grant reprieve or discount number of commercial rents due after ECQ;
- (c) Open for renegotiation the Lease Term Agreements with issues;
- (d) Use other recourse to mitigate the impact of the ECQ to the MSMEs

xxx"

3. IATF Resolution No. 38, which provides amendments, revisions and/or clarifications on the *Omnibus Guidelines on the Implementation of Community Quarantine in the Philippines*.
4. DTI Memorandum Circular No. 20-29, or the *Supplemental Guidelines on the Concessions on Residential Rents and Commercial Rents* (MC No. 20-29), which clarified and addressed certain concerns on Memorandum Circular No. 20-12 and IATF Resolution No. 38, and defines "*commercial lessee*" as a person, natural or juridical who, for consideration under certain terms and conditions, leases from a lessor a building and/or land, store, or space for commercial purposes, which includes MSMEs and other business sectors whose operation is not permitted during the period of community quarantine.
5. DTI Memorandum Circular No. 20-31, or the *Amendment to the Supplemental Guidelines on the Concessions on Residential Rents and Commercial Rents*, which amended Section 3 of



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MC No. 20-29, and further provide that, being *cognizant that the restrictions imposed during the community quarantine resulted to disruptions in business and the corresponding revenue streams*, DTI thereby *enjoins lessors of commercial spaces rented out to affected MSMEs to adopt [measures] in the spirit of goodwill, generosity and fair play*, including *total or partial waiver of the commercial rents that are falling due during the ECQ, MECQ and GCQ*.

Your guidance on this matter will be of great help to TIEZA in undertaking the appropriate steps to maintain and preserve the country's sustainable tourism, especially in the subject entities. We highly appreciate receiving your response preferably within fifteen (15) days from receipt of this letter or at the earliest time possible. Thank you.

Very truly yours,

MARK T. LAPID

Chief Operating Officer



Republic of the Philippines
Tourism Infrastructure & Enterprise Zone Authority

12 August 2021

JUSTICE ELPIDIO J. VEGA

Government Corporate Counsel

Office of the Government Corporate Counsel

3rd Floor MWSS Administration Building,

Katipunan Road, Balara, Quezon City

Dear **Justice Vega**,

Greetings from TIEZA and hoping you are in good condition amidst the pandemic.

This is to respectfully request for a legal opinion on whether TIEZA can waive rentals/concession fees of its concessionaires by reason of the latter's business closure and non-operation during the declared Community Quarantine periods by reason of the COVID19 pandemic.

Background

The different operating entities, particularly Banaue Hotel and Youth Hostel, Zamboanga Golf Course and Beach Park, Dalaguete Public Beach, Malala Cebu, and Club Intramuros Golf Course, rent out a portion of their respective areas to micro, small and medium enterprises (MSMEs), herein referred to as the "*Concessionaires*". As a result of the outbreak of COVID 19, which led to the declaration of varying Community Quarantine and imposition of travel restrictions in several LGUs, the aforementioned entities temporarily closed their operations prompting these *Concessionaires* to likewise close. Hence, said *Concessionaires* requested for the waiver of their rentals/concession fees during the period of closure.

Issue

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Discussion

Thus, we seek your legal opinion as regards the propriety of granting said waiver request, as well as the applicability of the following issuances to support TIEZA's approval of said request:



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1. Republic Act No. 11469 or the Bayanihan to Heal as One Act, which declared the existence of national emergency and granted the President additional authority to combat the effect of the COVID 19 virus.

Section 3 of RA 11469 provides that it is the policy of the state to:

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(e) Mitigate the economic cost and losses stemming from the COVID-19 pandemic;

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(g) Accelerate the recovery and bolster the resilience of the Philippine economy through measures grounded on economic exclusivity, and collective growth fiscal sustainability;

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Moreover, Section 4 (ww) provides for *a minimum of 30-day grace period on residential rents and commercial rents of lessees not permitted to work, and MSMEs and cooperatives ordered to temporarily cease operations, falling due within the period of [Community Quarantine], without incurring interests, penalties, fees and other charges provided that all amounts due within the period of [Community Quarantine] shall be amortized in equal monthly installments until December 31, 2020, without any interests, penalties and other charges. Provided furthermore, that the minimum 30-day grace period shall be reckoned from the date of lifting of the ECQ or MECQ.*

2. DTI Circular No. 20-12, or the Guidelines on the Concession on Residential Rents, Commercial Rents on MSMEs, which aim to provide lessees in any part of the country economic relief e.g. reduction of expenses or deferment of rental expenses during the period of ECQ and while the Philippines is under the state of public health emergency.

For clarification, we must determine which are MSMEs. As per RA 6977, as amended by RA 8289:

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Sec. 3. *Small and Medium Enterprise as Beneficiaries.* - 'Small and Medium Enterprise' shall be defined as any business activity or enterprise engaged in industry, agribusiness and/or services, whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans butt exclusive of the land on which the particular business



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5. DTI Memorandum Circular No. 20-31, or the *Amendment to the Supplemental Guidelines on the Concessions on Residential Rents and Commercial Rents*, which amended Section 3 of MC No. 20-29, and further provide that, being cognizant that the restrictions imposed during the community quarantine resulted to disruptions in business and the corresponding



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*revenue streams, DTI thereby enjoins lessors of commercial spaces rented out to affected MSMEs to adopt [measures] in the spirit of goodwill, generosity and fair play, including **total or partial waiver of the commercial rents that are falling due during the ECQ, MECQ and GCQ.***

Request for Legal Opinion

In view of the foregoing issuances, may we now respectfully request for a legal opinion from your good office to guide us whether TIEZA can waive Concessionaires' fees on its TIEZA assets during the community quarantine period.

Thank you for your kind consideration.

Very truly yours,

MARK T. LAPID

Chief Operating Officer