
15 November 2024

Atty. Alvin B. Curada

Director, Bureau of Working Conditions
Department of Labor and Employment

Re: ECCP Comments on the existing provisions and ongoing revisions of the DOLE Department Order No. 174 series of 2017, specifically on contracting arrangements

Dear Atty. Curada:

The Department Order No. 174, issued last March 2017, marked a pivotal step in advancing fair labour practices and safeguarding workers' rights in the Philippines, setting a critical framework for contracting and subcontracting arrangements under the Labor Code. As global competitiveness increases, the focus on worker safety and protection becomes even more paramount, ensuring that modernization efforts enhance both the nation's resilience and workers' welfare. Therefore, we at the European Chamber of Commerce of the Philippines (ECCP), recognise the Department of Labor and Employment's continued commitment to reviewing and amending the labour policies at hand to address evolving business needs in conjunction with protecting worker's rights.

In view of this, we are pleased to submit our position with regard to the ongoing review of the Department Order No. 174, Series of 2017, which implements Articles 106 to 109 of the Labor Code.

The ECCP opines that the ongoing review of DO 174 **represents a crucial opportunity to strengthen the Philippines position as a prime investment destination while ensuring the highest standards of worker protection are maintained.** Primarily, we believe that the current regulatory framework, while foundational, requires updates to reflect the evolving nature of business operations and employment relationships. Moreover, this approach aims to clarify the parameters of legitimate contracting arrangements in light of emerging business models and technological advancements. This review will help resolve ambiguities in the current framework regarding the classification of contract workers, particularly in new and evolving industries.

The ECCP recognizes this initiative as a vital measure in ascertaining that labour regulations remain relevant and effective in today's dynamic business environment. This process addresses the need to identify areas for growth on contractor registration and compliance requirements. Additionally, the department's strategic increase in registration fees demonstrate a concrete step towards eliminating "fly-by-night" contractors and ensuring only legitimate contracting arrangements persist in the industry. The ongoing review is essential for improving the current

framework which would provide improved mechanisms for monitoring and enforcement. This will also benefit both legitimate contractors and workers by levelling the playing field in the industry.

To this end, we at the ECCP reiterate our support for this policy review that places great importance on ensuring that guidelines remain up-to-date, and that policies are enhanced to gear towards creating a more robust and sustainable contracting environment in the Philippines.

We humbly submit these initial deliberations for your humble consideration. Furthermore, we eagerly look forward to the prospect of augmenting this correspondence with supplementary insights once our committee's contributions are further consolidated. For any queries or additional information, please do not hesitate to contact **XXXX** at advocacy@eccp.com. Thank you for your kind attention.

Sincerely,

Florian Gottein
ECCP Executive Director

Atty. Eliseo "Jon" Zuñiga
ECCP RE&EE Committee Co-Chair

**Comments on the Proposed Department Circular on
“PRESCRIBING AMENDMENTS TO DEPARTMENT CIRCULAR NO. DC2009-05-0008 TITLED, RULES AND REGULATIONS IMPLEMENTING REPUBLIC
ACT NO. 9513, OTHERWISE KNOWN AS THE “RENEWABLE ENERGY ACT OF 2008”**

Section	Comments/Recommendation	Proposed/Suggested Revision
<p>DEPARTMENT CIRCULAR NO. DC2024-_____</p> <p>PRESCRIBING AMENDMENTS TO DEPARTMENT CIRCULAR NO. DC2009-05-0008 TITLED, RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513, OTHERWISE KNOWN AS THE “RENEWABLE ENERGY ACT OF 2008</p>		
WHEREAS , Section 2 of Republic Act (RA) No. 9513, otherwise known as the “Renewable Energy Act of 2008” (RE Act) directs the State to encourage and accelerate the exploration, development and utilization of renewable energy (RE) resources such as but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;		
WHEREAS , under Section 5 of the RE Act, the Department of Energy (DOE) is mandated to implement the provisions of the Act;		
WHEREAS , Chapter VII of the RE Act provides incentives for RE projects, activities, and its commercialization, and establishes the framework for availment thereof by RE developers;		
WHEREAS , pursuant to Section 33 of the RE Act, the DOE issued Department Circular (DC) No. DC2009-05-0008, otherwise known as the “Rules and Regulations Implementing Republic Act No. 9513” (RE Act IRR);		
WHEREAS , there is a need to streamline and rationalize the conditions to avail of the RE Act incentives provided under the RE Act IRR;		

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<p>NOW, THEREFORE, in consideration of the foregoing premises, the DOE hereby issues the following amendments to the RE Act IRR:</p> <p>Section 1. <i>Definition of Terms.</i>— As used in the Act and this IRR, <u>the terms below</u> shall be defined as follows:</p> <p>(a) <u>“Certificate of Authority” or “COA” refers to a pre-RE Contract certificate signed by the DOE Secretary authorizing an RE Developer to procure the necessary permits and tenorial instruments for the exploration, development, construction and installation, and commercial operation of the RE Project and conduct reconnaissance and other activities needed for pre-feasibility studies;</u></p>		
<p>(b) <u>“Energy Storage System” or “ESS” refers to a facility capable of absorbing energy directly from the Grid or Distribution System, or from an RE Plant or from a Conventional Plant connected to the Grid or Distribution System and storing it for a time period, and injecting stored energy when prompted, needed to ensure reliability and balanced power system. ESS technologies, but shall not be limited to, Battery Energy Storage System (BESS), Compressed Air Energy Storage (CAES), Flywheel Energy Storage (FES), and Pumped-Storage Hydropower;</u></p>		
<p>(c) <u>“Integrated RE Plant and ESS” or “IRESS” refers to a combination of RE Plant/s and ESS that is solely charged by the RE Plant/s;</u></p>		

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<p>(d) <u>“Emerging RE Technologies” refers to innovative technologies that harness RE resources which are typically in the early stages of development or adoption and often offer novel solutions to enhance efficiency, reduce costs, promote sustainability, and address specific challenges within the RE sector such as, but not limited to: advanced solar photovoltaics (PV) with higher efficiency and lower costs, next-generation wind turbines designed for improved performance and reliability, tidal and wave energy converters, innovative biomass conversion processes, advanced energy storage technologies such as flow batteries and green hydrogen storage systems, bioenergy solutions, and Enhanced Geothermal Systems (EGS), which enables the extraction of geothermal energy from resources that were previously considered uneconomical or inaccessible;</u></p>		
<p>Section 2. Section 13 of the RE Act IRR, as amended, is hereby further amended to read as follows:</p> <p>SEC. 13.Fiscal Incentives for Renewable Energy Projects and Activities</p> <p>DOE-certified existing and new RE Developers of RE facilities, <u>IRESS and Emerging RE Technologies</u>, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:</p>		

<p>A. Income Tax Holiday (ITH)</p> <p>(1) <i>Period of Availment</i> – The duly registered RE Developer shall be fully exempt from income taxes levied by the National Government for the period as follows:</p> <p>(a) Existing RE Projects – Seven (7) years from the start of commercial operations.</p> <p>(b) All RE Developers that acquire, operate and/or administer existing RE facilities that were or have been in commercial operation for more than seven (7) years, upon the effectivity of the Act, shall not be entitled to ITH, except for any additional investment: <u><i>Provided, That the corresponding RE Contract was assigned to the RE Developer.</i></u></p> <div style="text-align: center;">xxx xxx xxx</div>	<p>Referring to the line - <u>the corresponding RE Contract was assigned to the RE Developer</u></p> <p>May we request clarification on what “assigned” means? For example, does this mean there is a need for transfer of the RE Contract to an RE Developer (as assignee)?</p> <p>Or does this mean that the RE Developer secured an RE Contract for the additional investment, then would still be entitled to ITH with respect to the additional investment?</p>	<p>(1) Period of Availment – The duly registered RE Developer shall be fully exempt from income taxes levied by the National Government <u>on all income or revenue, including but not limited to income from “take or pay” contracts as well as dispatched and undispached capacity for ancillary services</u> for the period as follows:</p> <p style="text-align: center;">xxx</p>
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<p>(2) <i>Entitlement for New and Additional Investments subject to prior approval by the DOE</i></p>		
<p>(a) New investment – RE Developers undertaking discovery and development of new RE Resource distinct from their registered operations may qualify as new projects, subject to the <u>issuance of a corresponding RE Contract and setting up of separate books of accounts.</u> In such cases, a fresh package of ITH from the start of commercial operations shall apply.</p> <div style="text-align: center; margin-top: 20px;">xxx xxx xxx</div>		<p>(a) New investment – RE Developers undertaking discovery and development of new RE Resource distinct from their registered operations may qualify as new projects, subject to the <u>issuance of a corresponding RE Contract or with valid amendments and setting up of separate books of accounts.</u> In such cases, a fresh package of ITH from the start of commercial operations shall apply.</p>

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<p><i>B. Exemption from Duties on RE Machinery, Equipment and Materials</i></p> <p>Within the first ten (10) years from the issuance of a Certificate of Registration to an RE Developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall be exempt from tariff duties:</p> <p>(1) <i>Conditions for Duty-Free Importation</i> – An RE Developer may import machinery and equipment, and materials and parts thereof exempt from the payment of any and all tariff duties thereon subject to the following conditions:</p> <p>(a) The machinery and equipment are directly and actually needed and will be used exclusively in the RE facilities for the transformation of and delivery of energy to the point of use;</p> <p style="text-align: center;">xxx xxx xxx</p> <p>(e) <u>Endorsement of the DOE is obtained before the importation.</u></p>		
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May we recommend to allow the process that should no comments be received from DOE within say 30 days from submission of complete documentary requirements then the COE is deemed issued.

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<p>Section 3. Section 18 of the RE Act IRR as amended, is hereby further amended to read as follows:</p> <p>SEC. 18. Conditions for Availment of Incentives and Other Privileges</p> <p>A. <i>Registration/Accreditation with the DOE</i></p> <p>For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE shall register with the DOE, through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:</p> <p>(1) <i>DOE Certificate of Registration</i> – Issued to an RE Developer holding a valid RE Service/Operating Contract.</p> <p style="text-align: center;">xxx xxx xxx</p> <p>The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment: <u>Provided, That the Certificate of Registration may, at the option of the RE Developer, be issued upon receipt of proof of financial closing.</u></p> <p style="text-align: center;">xxx xxx xxx</p>		
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<p><i>B. Registration with the Board of Investments</i></p> <p>The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.</p> <p style="text-align: center;">xxx xxx xxx</p> <p>The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration <u>and/or availment of incentives under the Act</u> shall be favorably acted upon by the BOI, on the basis of the certification issued by the DOE: <u>Provided, That such certification is issued in accordance with the agreement between the DOE and BOI. For this purpose, the DOE and BOI shall review and/or revise, as necessary, their agreement and administrative arrangement within thirty (30) days from the effectivity of this Circular.</u></p> <p style="text-align: center;">xxx xxx xxx</p>		
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<p><i>C. Certificate of Endorsement by the DOE</i></p> <p>RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the RE Act only after securing <u>the following</u>:</p> <p>(1) <u>ITH - Certificate of Registration and RE Developer's Certificate of Compliance or its equivalent duly issued by the ERC;</u></p> <p>(2) <u>Duty-free importation –</u></p> <p>(a) <u>RE project as proposed - Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis;</u></p> <p>(b) <u>New investment – RE Contract, Certificate of Registration for the new RE project and Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis;</u></p> <p>(c) <u>Additional investment – Certificate of Registration for the Additional Investment and Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.</u></p>		
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<p>(3) <u>Special Realty Tax Rates on Equipment and Machinery – Certification on RE equipment and machinery comprising the RE facility;</u></p> <p><u>No certification shall be required to avail of the other incentives and benefits under the Act but the RE Developer shall comply with the requirements of the concerned government agencies.</u></p>	<p>May we request DOE to provide a list of “additional requirements of the concerned agencies” as an annex instead of a blanket general statement to enable us to prepare and comply.</p>	
<p>The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier of locally-produced RE equipment: <u>Provided, That the request is filed with all documents required under prevailing regulations of the DOE: Provided, further,</u> That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.</p> <p><u>The DOE may recall, withdraw or revoke any certification issued hereunder if:</u></p> <p>(1) <u>The RE Service/Operating Contract covering the registered RE project is terminated with finality;</u> <u>or</u></p> <p>(2) <u>The RE Developer commits any of the acts prohibited under the Act and this IRR.</u></p>	<p>May we recommend that the penalty be limited to prohibited acts related to the availment of incentives as there are a number of minor infractions that do not merit the revocation of certification.</p>	

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<p>Section 4. Separability Clause. If any provision of this Circular is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and existing.</p> <p>Section 5. Repealing Clause. Other issuances inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.</p> <p>Section 6. Effectivity. This Circular shall take effect fifteen (15) days following its publication in two (2) newspapers of general circulation and filing with the University of the Philippines Law Center – Office of the National Administrative Register.</p>		
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