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25 June 2009

**PPA OPERATIONS MEMORANDUM CIRCULAR
NUMBER 05 - 2009**

T O : All District Managers/Port Managers
AISL/PSAA/FSA/PISA/PLSA/Shipping Lines/Agents
UHPAP/Pilot Associations/Harbor Pilots
And Others Concerned

S U B J : **CONTINUED COLLECTION OF THE TEN PERCENT (10%)
GOVERNMENT SHARE FROM PILOTAGE SERVICES**

This is in reference to the nationwide implementation being undertaken by the PDOs/PMOs for the direct collection of the Ten (10%) Government Share from pilotage services. Relative thereto, the attention of all concerned is invited to the Office of the Government Corporate Counsel (OGCC) Opinion dated 02 June 2009, copy attached, on the query whether or not PPA can continue to collect the government share on pilotage fee despite the adverse decision of the Regional Trial Court (RTC) in Civil Case No. 02-104716 entitled "United Harbor Pilots Association of the Philippines vs. PPA".

The OGCC is of the considered view that PPA can still collect government share on pilotage fees despite the adverse RTC decision. The RTC ruling has not yet become final and executory, with the appeal seasonably filed by PPA. The decision of the RTC in favor of the pilots does not yet bind PPA and the Court of Appeals Decision dated 29 July 2008, setting aside the injunctive writ issued by the RTC, still controls the relationship of the parties with respect to the fees. It may be noted that said Court of Appeals Decision effectively quashing the injunctive writ has not been appealed by UHPAP and thus remains. The Supreme Court Resolution dated 04 March 2009 has declared said Court of Appeals Decision as final and executory.

In sum, the Office of the Government Corporate Counsel (OGCC) is of the considered view that PPA can continue to collect the government share on pilotage fees while awaiting a final and executory judgment on the matter in Civil Case No. 02-104716.

In view of this favorable development, all PDOs/PMOs and others concerned are hereby advised that the PPA collection of the Ten Percent (10%) Government Share on Pilotage Services prior to issuance of the Vessel Departure Clearance shall be maintained and continued in all ports nationwide. The operating guidelines as prescribed in the attached 01 April 2009 PPA Memorandum entitled "Collection Of Ten Percent Government Share From Pilotage Services" shall also be strictly observed by all concerned.

For guidance and strict compliance.

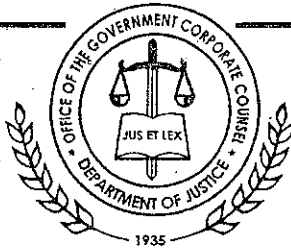

LEOPOLDO F. BUNGBUNG
Assistant General Manager for Operations

VISION

By 2010, PPA shall have met the international standards in port facilities and services in at least ten (10) ports in support of national development.

MISSION

We commit to provide reliable and responsive services in our ports, sustain development of our port communities and the environment, and be a model corporate agency of the government.



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
OFFICE OF THE GOVERNMENT CORPORATE COUNSEL
3rd Floor MWSS Administration Building, Katipunan Road
Balara, Quezon City

2 June 2009

ATTY. DAVID R. SIMON

Manager, Legal Services Department
PHILIPPINE PORTS AUTHORITY
Bonifacio Drive, South Harbor,
Port Area, Manila

PPA RECORDS RCUD BY: *[Signature]*

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RE: Whether or Not PPA Can Continue to Collect the Government Share on Pilotage Fee Despite the Adverse Decision of the Regional Trial Court in the *Civil Case No. 02-104716* entitled "*United Harbor Pilots Association of the Philippines vs. PPA*"

Sir:

This refers to your letter dated 15 May 2009 requesting our legal advise on whether Philippine Ports Authority (PPA) can continue collecting the ten percent (10%) government share on pilotage fee from the United Harbor Pilots Association of the Philippines (UHPAP).

By way of background, the United Harbor Pilots Association of the Philippines (UHPAP) filed a case against PPA, questioning the validity of the imposition and collection by the latter of the ten percent (10%) government share on pilotage fees. The case was docketed as Civil Case No. 02-104716 and entitled "United Harbor Pilots Association of the Philippines (UHPAP) v. PPA" was filed before the Regional Trial Court of Manila, Branch 22. During the pendency of the case, the RTC in its Order dated 25 July 2007 issued a writ of preliminary injunction enjoining PPA from collecting the assailed government share. Thus, PPA filed a petition for certiorari before the Court of Appeals questioning the Order dated 25 July 2007 of the RTC granting the injunctive writ. In a Resolution dated 29 July 2008, the Court of Appeals reversed and set aside the Order dated 25 July 2007 of the RTC. The Court of Appeals Resolution effectively quashed the injunctive writ issued in favor of the UHPAP. UHPAP did

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.....-committed to uphold justice
under the rule of law

[Signature]

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not appeal the resolution of the Court of Appeals and instead waited for the decision on the merits of case of the RTC.

PPA, in the meantime, continued to collect the assailed government share. However, on 20 February 2009, a decision was rendered by the RTC in favor of UHPAP declaring null and void the imposition of the ten percent (10%) government share on pilotage fees. PPA filed a notice of appeal, but is still awaiting the order granting the appeal and elevating the records to the Court of Appeals. Meanwhile, PPA received several letters from the different members of the UHPAP demanding that PPA refrain from collecting the questioned government share pursuant to the decision of the RTC.

Hence, this query.

It is our considered view that PPA can still collect the government share on pilotage fees despite the adverse decision of the RTC on the matter. The decision of the RTC has not yet become final and executory, with the appeal seasonably filed by PPA. In the case of *VLASON ENTERPRISES CORPORATION, v. COURT OF APPEALS and DURAPROOF SERVICES*, the Supreme Court held:

"Section 1 of Rule 39 provides that execution shall issue only upon a judgment that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal it, if no appeal has been duly perfected. **In the present case, however, we have already shown that the trial court's Decision has not become final and executory against petitioner. In fact, the judgment does not even bind it.** Obviously, Respondent Court committed serious reversible errors when it allowed the execution of the said judgment against petitioner." (Bold Supplied)

Corollary to the aforequoted jurisprudence, the decision of the RTC in favor of the pilots does not yet bind PPA. We share your view that the Decision of the Court of Appeals dated 29 July 2008, setting aside the injunctive writ issued by the RTC, still controls the relationship of the parties with respect to the collection of the fees. Notably, the decision of the Court of Appeals effectively quashing the injunctive writ has not been appealed and thus remains. A copy of the Supreme Court Resolution dated 4 March 2009 which declares the Court of Appeals' Decision final and executory is hereto attached for your ready reference.

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In sum, it is our considered view that PPA can continue to collect the government share on the pilotage fee while awaiting a final and executory judgment on the matter in Civil Case No. 02-104716.

Please be guided accordingly.

Very truly yours,

[Handwritten Signature]
ALBERTO C. AGRA
Government Corporate Counsel
26 *CF*

*ppa-uhpap-gov't. share
gca garcia/rocel*

*..... committed to uphold justice
under the rule of law*

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Makati City
Tel. No. 818-6301 Local 259-261
Fax No. 813-7554

COURT OF APPEALS (x)
Ma. Orosa St.
Ermita, 1000 Manila
CA-G.R. SP No. 102782

JUDGMENT DIVISION (x)
JUDICIAL RECORDS OFFICE (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
Supreme Court, Manila

Please notify the Court of any change in your address.
GR185327. 03/04/09 (62)



SECOND DIVISION

Sirs/Mesdames:

Quoted hereunder, for your information, is a resolution of this Court dated **04 March 2009**:

G.R. No. 185327 (United Harbor Pilots Association vs. Philippine Ports Authority [PPA] Board of Directors, et al.).- The Court resolves to:

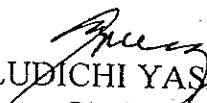
1. **NOTE** petitioner's manifestation dated 12 January 2009 that it will forego with the filing of the petition inasmuch as the main case is already deemed submitted for decision per attached Order dated 25 November 2008 of the RTC, Br. 22, Manila, and **GRANT** petitioner's prayer that the petition be considered withdrawn for practical purposes; and

2. **INFORM** the parties that no petition has been filed in this case and that the judgment sought to be reviewed has now become final and executory, and **DECLARE** this case **CLOSED** and **TERMINATED**.

In view of the Resolution dated 14 January 2009 which granted petitioner's motion for extension of time to file the petition, the Court **NOTES WITHOUT ACTION** respondents' motion for leave to file attached opposition to petitioner's motion for additional extension of time to file petition for review, and aforesaid opposition dated 16 January 2009. *Tinga, J., on sabbatical leave.*

WITNESS the Honorable Leonardo A. Quisumbing, Chairperson, Honorable Conchita Carpio Morales, Presbitero J. Velasco, Jr., Arturo D. Brion, and Antonio Eduardo B. Nachura (designated additional member per Special Order No. 571), Members, Second Division, this 4th day of March, 2009.

Very truly yours,


LUDICHI YASAY-NUNAG
Clerk of Court

By:

MA. LUISA L. LAUREA
Asst. Clerk of Court



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01 April 2009

MEMORANDUM

TO : All District Managers/Port Managers
UHPAP/Pilot Associations/Harbor Pilots
AISL/PSAA/FSA/PISA/PLSA/Shipping Lines/Agents
And Others Concerned

FROM : The Assistant General Manager for Operations

SUBJ : COLLECTION OF TEN PERCENT (10%) GOVERNMENT
SHARE FROM PILOTAGE SERVICES

This is in reference to the ongoing nationwide implementation by the PDOs/PMOs of the direct collection of the Ten (10%) Government Share from pilotage services. Relative thereto, all concerned are hereby directed to strictly observe the following operating guidelines:

1. As basis for billing regular pilotage services, all PMOs/Harbor Pilots/Shipping Lines shall be guided by PPA Administrative Order No. 04-2003 dated 21 November 2003 (Guidelines On The Pilotage Services To Be Rendered In All Ports And The Corresponding Fees Therefor), particularly on the required pilotage services for entering and leaving a port as specifically listed under Section 2, and on the applicable EO 1088 rates under Section 5 thereof.
2. As basis for billing "special services" or those pilotage services not required in a particular port but may be requested by the Master or vessel's Agent, all PMOs/Harbor Pilots/Shipping Lines shall be guided by Section 3 of PPA AO 04-2003. Moreover, Section 5.3 of PPA AO 04-2003 prescribes a uniform fee of 100% of the EO 1088 rates for each special service by the Harbor Pilot, as requested by shipping.
3. As basis for billing "premium fees" for pilotage services rendered during nighttime, Sunday or holiday, all PMOs/Harbor Pilots/Shipping Lines shall be guided by the unnumbered PPA Memorandum dated 20 December 2004 entitled "Further Clarifying Paragraph 2, Section 6.3 Of PPA Administrative Order No. 04-2003".
4. In view of PPA's implementation of its direct collection system, all Shipping Lines/Agents are hereby directed to pay the 10% government share on pilotage services to the PMO concerned, prior to issuance of vessel Departure Clearance.

On the basis of the vessel's arrival information, ETA/ETD and other related data on pilotage movements, the PMO shall compute the regular pilotage fees, special pilotage service fees and premium pilotage fees that are applicable under existing port regulations, and shall collect the total 10% government share corresponding to all pilotage services.

VISION

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MISSION

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Immediately after vessel departure and upon receipt of actual vessel movements, the PMO shall recheck the actual pilotage services rendered and the correct government share that should be collected, and make additional billing to the shipping line for deficiencies, if any.

5. Considering that the 10% pilotage government share is now directly paid by shipping to PPA, all Pilot Associations/Harbor Pilots are hereby directed that only their 90% share on pilotage services shall henceforth be billed and collected from the shipping lines/agents. In view of PPA's direct collection system, all Shipping Lines/Agents shall pay only the 90% harbor pilot share on pilotage services to the Pilot Association/Harbor Pilot.
6. In order to standardize the computation of pilotage fees and facilitate the payment by the shipping lines of the respective government and harbor pilot shares, all PMOs/Harbor Pilots/Shipping Lines shall uniformly use the PPA-prescribed Peso/Dollar Exchange Rate to convert the applicable EO 1088 pilotage rates.
7. On the propriety of PPA's direct collection of its government share on pilotage services, it is reiterated to all concerned that the Supreme Court held in its 06 March 2008 Decision in G.R. No. 157484 that PPA has sufficient authority to implement the direct collection system. Considering that there is no more legal impediment, the 10% pilotage government share together with payments for vessel charges shall now be collected by the PMOs before granting Departure Clearance to a vessel.

All concerned PDOs/PMOs shall give widest dissemination of these operating guidelines to their respective Harbor Pilots/Associations and shipping clients.

For guidance and strict compliance.


LEOPOLDO F. BUNGUBUNG

Encl : PPA Administrative Order No. 04-2003
PPA Memorandum Dated 20 December 2004

Cc : The General Manager
The Assistant General Manager for Finance and Administration
The Manager, Legal Services Department

PDOM/NL:
LFB/RQA