

MEMORANDUM CIRCULAR NO. 20-~~20~~ - 30 - 2020

**GUIDELINES ON REFUND OF PAYMENTS MADE
FOR EVENTS AFFECTED BY THE STATE OF PUBLIC HEALTH EMERGENCY**

COMPLEMENTARY TO MEMORANDUM CIRCULAR NO. 20-12 (GRACE PERIOD ON RENT)

WHEREAS, Section 6, Article XII of the 1987 Philippine Constitution declares that, "The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands."

WHEREAS, to enable government to respond to the Coronavirus Disease (COVID-19) situation, President Rodrigo Roa Duterte issued Proclamation No. 922 declaring a "State of Public Health Emergency" throughout the Philippines.

WHEREAS, Section 3(h) of Republic Act No. 11469, or the Bayanihan Heal as One Act, recognizes in the Declaration of Policy the urgent need to "promote and protect the collective interests of all Filipinos in these challenging times."

WHEREAS, DTI has been receiving requests for guidelines on pre-payments of personal (i.e. weddings and birthdays) or business/work-related events (i.e. conferences, meetings and workshops) or other similar functions, for which pre-payments were made before the declaration of a Public Health Emergency, the staging of which events may have been scaled-down or cancelled in view of the ongoing public health emergency and the resultant social distancing directives;

WHEREAS, the effects of the pandemic, including its economic impact, are unprecedented and recognizing that the declaration of a Community Quarantine and the restrictions that accompany it are unforeseen and uncontrollable, the DTI deems it proper to consider it as a fortuitous event or force majeure and the applicable provisions in the New Civil Code of the Philippines as well as the fundamentals of equity and fair play therein shall be the guiding principles in case the relationship of parties is not governed by a contract, or even in case of an existing contract, if the same does not provide for the assumption of risk brought about by a fortuitous event or force majeure;

WHEREAS, Article 19 of the aforesaid Code states that, "Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith";

WHEREAS, embodying the principle that no person may unjustly enrich himself at the expense of another, Art. 22 thereof further states that: "Every person who through an act of performance by another, or any other means, acquires or come into possession of something at the expense of the latter without just or legal ground, shall return the same to him";

WHEREAS, in the landmark case of David Reyes vs. Jose Lim, Et, Al (G.R. No. 134241, , August 11, 2003), the Supreme Court expressly articulated that "There unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principle of justice, equity and good conscience";


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WHEREAS, in keeping with the spirit of *Bayanihan*, the party in receipt of the unutilized advance payment for a personal or work-related event has the moral obligation and social responsibility to refund the same or offer a fair concession agreed upon by both parties.

WHEREFORE, foregoing considered, this Memorandum Circular is hereby issued to complement the 30-day grace period granted under MC No. 20-12, S.2020 for the information and guidance of those concerned.

Section 1. Objective. – This Memorandum Circular aims to provide a balanced economic relief to all persons, including businesses involved in events which may have been scaled-down or cancelled in view of the ongoing public health emergency and the resultant social distancing directives.

Section 2. Scope. - The provisions hereof shall cover all persons, natural or juridical, whose transactions or commitments related to holdings of events, personal or business/work-related, where full or partial pre-payments have been made, which event or functions may have been scaled-down or cancelled in view of the ongoing public health emergency and the resultant social distancing directives for the imposed Community Quarantine, whether ECQ, MECQ, or GCQ.

For purposes of this MC, personal events shall refer to birthdays, christenings, weddings, anniversaries, thanksgiving, family reunions, leaseholds, and the like, while business/work-related events shall refer to conferences, seminars, workshops, team buildings, planning sessions, symposium, and the like, paid under the name of the company, firm, or association.

A scaled-down event is one which reduces the number of guests to ensure compliance with the social distancing directive in the venue.

Section 3. Refund Concession. – In the interest of fairness, payments received either as down payment and/or deposit for any personal or business/work-related event or function, the date of which falls during a declared community quarantine where restrictions, particularly social distancing directives are imposed, but which events or functions have to be cancelled or scaled-down as a result thereof, shall, upon request and notice, be refunded fully or partially.

The advance payment covers the use or occupancy of the leased premises or venue, the food to be catered during the event and other related services such as rent of a vehicle or equipment to be used in such event.

Section 4. Fortuitous Event or Force Majeure: Exceptions. – The terms and conditions on *force majeure* stated in a valid contract between the parties shall be recognized. In the absence thereof, the relevant provisions of the New Civil Code of the Philippines may serve as guide.

Either the party who made pre-payment or the party receiving such pre-payment for events or functions covered by this MC could be an obligor depending on the circumstances. However, the presence of any of the following fortuitous events voids the obligation:

- a. The restriction or directive on social distancing is the sole and proximate cause of the cancelled or scaled-down event or function;
- b. The restriction or directive on social distancing is the independent of the will of the obligor;
- c. The restriction or directive on social distancing is either unforeseeable or unavoidable that renders it impossible for the obligor to fulfill his obligation in a normal manner;
- d. The obligor did not have a hand in the issuance of the directive on social distancing for the purpose of avoiding the obligation.

Further, if payment was made after the effectivity of the government issuance imposing certain restrictions, particularly on social distancing, the party who made such payment shall not be entitled to the refund concession. In the same manner that if expenses were incurred after such restrictions took effect, the venue owner/representative shall be obliged to effect a full refund of amount received.

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Section 5. Procedure for Refund Concession. – Where an event or function referred to herein is cancelled or scaled down as a consequence of the implementation of restrictions, particularly on social distancing during the community quarantine, the refund concession shall be carried out in accordance with the following:

- a. For cancelled events or functions, the schedule of which falls during the period covered herein, the owner of the venue or its representative shall give the other party the following options:
 - i. Consume the amount paid at a later date, which shall be no longer than one (1) year from the lifting of the restrictions imposed by the government; or
 - ii. Get the net of the amount paid after deducting relevant actual expenses incurred before the imposition of restrictions, with proof thereof;
 - iii. Get back the full amount paid regardless of expenses incurred after the imposition of restrictions;
- b. For scaled-down events or functions, the schedule of which falls during the period covered herein, the owner of the venue or its representative shall give the other party the following options:
 - i. Consume the amount paid at a later date but not later than one (1) year from the lifting of restrictions imposed by the government;
 - ii. Get a refund in such amount proportionate to the agreed scaled-down event or function after deducting relevant actual expenses incurred before the imposition of restrictions, with proof thereof; or
 - iii. Get a refund in such amount proportionate to the agreed scaled-down event or function regardless of expenses incurred after the imposition of restrictions; or
- c. Nothing in this issuance shall prevent a person covered herein, in an act of goodwill, from returning the full amount without deduction of relevant actual costs;
- d. Similarly, the obligee in a contract may, in an act of liberality, make a full or partial refund on any pre-payment received.

Section 6. Refund Concession Procedure. – The parties concerned shall observe the following:

- a. The party who made the advance reservation or payment shall notify the owner/representative of the venue of its decision to cancel or scale down the scheduled event;
- b. Within five (5) days from receipt of said notice, the venue owner/representative shall send a reply acknowledging receipt thereof, indicating the options available as provided herein, together with the details on how to proceed with each option;
- c. Within five (5) days from receipt of the option taken, the venue owner/representative shall send a letter confirming receipt thereof;
- d. Refunds shall be implemented within the period and terms agreed upon by the parties. In the absence thereof, the period shall be within thirty (30) days from receipt of notice confirming receipt of the option taken as mentioned in the preceding paragraph, by the party who made the payments;
- e. If the foregoing efforts fail, the DTI-Fair Trade Enforcement Bureau or DTI Regional or Provincial Offices shall, upon written request, issue a letter directing both parties to undergo DTI's alternative dispute resolution proceeding;
- f. Pending receipt of notice from the DTI, the requesting party shall update the DTI-FTEB of any development on the subject concern.

CERTIFIED TRUE PHOTOCOPY


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Section 7. Failure to Update the DTI-FTEB. – Failure of a party to update the DTI-FTEB or DTI-RO/PO of any development regarding the subject issue shall create the presumption that the same has been resolved by and between the parties.

Section 8. Charges and Sanctions. – Relevant provisions of existing laws such as RA 7394, known as the Consumer Act of the Philippines, the New Civil Code of the Philippines, RA 11469, regulations, policies and ordinances, whichever is applicable, may be used as basis for filing charges for violation thereof.

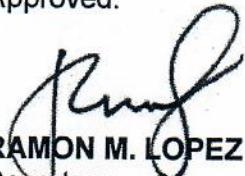
Section 9. Separability Clause. - The provisions of this Circular are hereby declared to be separable and in the event any provision or part thereof is declared unconstitutional or invalid, the other provisions or parts thereof which are not affected thereby, shall remain in full force and effect.


Section 10. Repealing Clause. - The provisions of any similar issuance that are inconsistent with this Circular are hereby repealed or modified accordingly.

Section 11. Effectivity. - This Memorandum Circular shall take effect immediately upon publication hereof.

Issued this 2nd day of June 2020 in Makati City, Philippines.

Approved:


RAMON M. LOPEZ
Secretary


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