Legal Opinion

To:        HON. ANDREA D. DOMINGO
Chairman and CEO
Philippine Amusement and Gaming Corporation
(PAGCOR)

From:      JOSE C. CALIDA
Solicitor General

ASG HENRY S. ANGELES
ASG ANGELITA VILLANUEVA MIRANDA
SSS KAREN A. ONG
ASIII LARA CARMELA G. FERNANDO

Re:        APECO does not have the authority to conduct/operate
and regulate gaming operations outside its territorial
jurisdiction which is confined within the Aurora Special
Economic Zone

Date:      22 August 2017

This has reference to your 01 August 2017 Letter requesting for
legal opinion on whether the Aurora Pacific Economic Zone and
Freeport Authority (APECO) is authorized under Republic Act (RA)
No. 9490, as amended, to operate an online gaming activity in PEZA
location, or outside of the Aurora Special Economic Zone.

Statement of Facts:

Republic Act (RA) No. 9490,1 which was enacted on 29 June
2007, created the Aurora Special Economic Zone in the province of
Aurora, under the State’s declared policy of encouraging and

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1 An Act Establishing The Aurora Special Economic Zone In The Province of Aurora Creating For
The Purpose The Aurora Special Economic Zone Authority, Appropriating Funds Therefor And
For Other Purposes.
promoting, among others, legitimate and productive foreign investments to provide jobs to the people, increase their productivity and their individual and family income. To fully implement the State policies and objectives, the *Aurora Special Economic Zone Authority* (ASEZA) was established and entrusted with the operation and management of the Aurora Special Economic Zone.

On 27 July 2009, RA No. 10083 ² was enacted, amending certain provisions of RA No. 9490. The Aurora Special Economic Zone became *Aurora Pacific Economic Zone and Freeport Zone* and now operated and managed by *Aurora Pacific Economic Zone and Freeport Authority*, referred to as APECO.

Among the salient amendments introduced under RA No. 10083 are paragraphs (f) and (g) Section 12, and Section 12-B which provide:

Section 12.
(f) To operate on its own, either directly or through a subsidiary entity, or concession or license to others, tourism-related activities, including games, amusements and nature parks, recreational and sports facilities such as casinos, online games facilities, golf courses and others under priorities and standards set by the APECO.

(g) To authorize the APECO to enter into mutual cooperation agreement with the PEZA for the utilization of the PEZA's resources, facilities and assets.

Section 12-B. *Enjoyment of Benefits of Other Ecozones and Freeport.* The APECO shall enjoy, receive and benefit from the same privileges, licenses or concessions granted or to be granted to other ecozones and free trade zones, such as the Subic Special Economic Zone, the Clark Special Economic and Freeport Zone, the Zamboanga City Special Economic and Freeport Zone and the Cagayan Special Economic and Freeport Zone.

With the aforesaid amendments, APECO granted several concessions and licenses to operators of online gaming. Thereafter, with the intention of extending its online gaming operation outside the territorial limits of Aurora Pacific Economic Zone, APECO requested that a Mutual Cooperation Agreement with Philippine

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² An Act Amending Republic Act No. 9490, Otherwise Known As The “Aurora Special Economic Act Of 2007”.
Economic Zone Authority (PEZA) be entered into in order that it could legitimately extend its operation within PEZA’s location. PEZA declined the request on 19 April 2017.

PEZA was created on 25 July 1994 by virtue of RA No. 7916 as amended by RA No. 8748. One of its functions includes, among others, the formulation of strategy and priority development of each of the ECOZONES, such as the Special Economic Zone, Free Trade Zone, Export Processing Zone and Industrial Estate. PEZA is likewise given the authority to evaluate and recommend the creation of other Ecozones for proclamation by the President.

On the other hand, the Philippine Amusement and Gaming Corporation (PAGCOR) was created by virtue of Presidential Decree (PD) No. 1869, Series of 1983, with regulatory authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, within the territorial jurisdiction of the Philippines, but excluding those authorized, licensed and regulated by, in, and under existing franchises or other regulatory bodies. Its regulatory function is undertaken primarily by the Gaming Licensing and Development Department (GLDD). This includes issuance of licenses or authority to operate casinos, traditional and electronic bingo parlors, electronic gaming outlets, sports betting kiosks and poker rooms to private entities.

As one of PAGCOR’s missions is to be a responsible and responsive partner of the Philippine government in its nation-building programs, its earnings are distributed as follows:

- 5 percent of winnings goes to the BIR as franchise tax;
- 50 percent of the 95 percent balance goes to the National Treasury as the National Government’s mandated income share;
- Cities hosting PAGCOR casinos are given fixed amount for their respective community development projects;
- PAGCOR pays Corporate Income Tax in compliance with the National Internal Revenue Code;

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3 An Act Providing For The Legal Framework And Mechanisms For The Creation, Operation, Administration And Coordination Of Special Economic Zones In The Philippines, Creating For This Purpose The Philippine Economic Zone Authority (PEZA) and For Other Purposes.
- 5 percent of the balance after the franchise tax and the National Government's mandated income share goes to the Philippine Sports Commission for financing of the country's sports development programs;
- 1 percent of the net income goes to the Board of Claims, an agency under the Department of Justice, which compensates victims of wrongful detention and prosecution.

Aside from the above, PAGCOR has also been tapped to provide funds for the implementation of vital laws such as the Early Childhood Care and Development (ECCD) program which basically promotes pre-school education and the Sports Incentives and Benefits Act which provides monetary rewards to athletes who win in international sports competitions.

PAGCOR is likewise in coordination with the Department of Energy (DOE) for the implementation of RA 9153 or the Renewable Energy Act of 2008, funding of which will be sourced from 1.5% of PAGCOR's annual net income. More importantly, the remaining balance of PAGCOR’s income is remitted to the Social Fund to sustain the priority projects of the Office of the President.

With the proliferation of nationwide illegal gambling and gaming activities, President Rodrigo Roa Duterte issued Executive Order (EO) No. 13, recognizing the privileges granted to, and the jurisdictional authority of Cagayan Economic Zone Authority (CEZA), the Freeport Area of Bataan (AFAB) and the Aurora Pacific Economic Zone and Freeport Authority. EO No. 13 also defined what constitutes an illegal gambling, and directed that any gambling operator desiring to operate outside the jurisdiction of government authority which issued its existing license shall apply for a separate license with the appropriate authority. Sections 2 and 3 of EO No. 13 provide:

SECTION 2. Illegal Gambling Defined. Pursuant to existing laws, "illegal gambling" is committed by any person who, in any manner, shall directly or indirectly take part in any game scheme, regardless of whether winning thereat is dependent upon chance or skill or both, wherein wagers consisting of money, articles of value or representative or licensed by the government agency duly empowered by law or its charter to license or authorise the conduct of such games, or is conducted in a manner that violates the terms and condition duly prescribed by the said government agency.
All gambling activities, and activities and services directly or indirectly related to or in support of such gambling activities, conducted beyond the territorial jurisdiction of the government authority which issued the license therefor, shall be dealt with as illegal gambling.

SECTION 3. Clarification on online gambling. No duly licensed online gambling operator, or provider of activities and services related to or in support of online activities, shall directly or indirectly allow persons who are physically located outside the territorial jurisdiction of the licensing authority to place bets, or in any way participate, in the games conducted by such operator, whether through an online portal or similar means. Nothing herein, however, shall prohibit the duly licensed online gambling operator from allowing the participation of persons physically located outside Philippine authority.

The license to operate online gambling granted to qualified operators shall not be assigned, shared, leased, transferred, sold or encumbered to any other party. Any gambling operator desiring to operate outside the jurisdiction of the government authority which issued its existing license shall apply for a separate license with the appropriate authority.

Notwithstanding all the legal safeguards discernible from the wordings of the statutes concerning APECO, PEZA and PAGCOR, and of EO No. 13 as well, APECO is of the trust that it can operate online gambling activity outside of the Aurora Economic Zone.

Surprisingly, on 25 July 2017, the Office of the Government Corporate Counsel (OGCC) rendered an opinion affirming APECO’s stand on the matter based on the following:

a) APECO’s authority to operate or license online gaming facilities is expressly granted by its charter;
b) The APECO licensees for online game facilities can operate in PEZA Zones; and

c) APECO license for online game facility operator to operate in PEZA zones is subject to PEZA’s guidelines and directions;

OGCC argued that APECO’s authority or legal jurisdiction is defined by its mandate and the express power granted to it by
enabling law, and based on its charter, it is allowed to operate on its own or directly or through a subsidiary and to enter into a mutual cooperation agreement with PEZA for the utilization of PEZA’s resources, facilities and assets. The OGCC further opined that APECO’s authority extend beyond its geographical location and it can operate in PEZA zones, subject only to the supervision and control of PEZA for purposes of policy direction and coordination.

**Issue:**

Whether or not APECO, or any of its licensees, are authorized to operate an online gaming activity outside APECO’s territorial jurisdiction which is confined within the *Aurora Special Economic Zone*.

**Resolution:**

The APECO, or any of its licensees, are not authorized to operate an online gaming activities outside APECO’s territorial jurisdiction which is confined only within the Aurora Special Economic Zone. The Mutual Cooperation Agreement between APECO and PEZA, signed on 28 July 2017, wherein the latter authorized APECO’s licensees to operate online gaming activities within PEZA’s jurisdiction is violative of RA No. 9490, as amended, and of EO No. 13, Series of 2016.

**Discussion:**

The legal opinion of OGCC is a clear *reductio ad absurdum* which means a “reduction to absurdity”.

a.) The territorial jurisdiction of *Aurora Ecozone* does not include the PEZA location.

The geographical location defining the territorial limits of *Aurora Pacific Economic and Freeport Zone* is specifically described in Section 2 of RA No. 10083, such that the corresponding metes and bounds of *Aurora Ecozone* shall be within the *APECO Parcel 1* and *Parcel 2*, containing an area of 496 hectares and 12,427 hectares, respectively. Thus, these geographical boundaries are the limits of
APECO's authority to operate, or to allow the operation of online gaming activity.

Otherwise stated, APECO has no authority to extend its operation and management of Aurora Ecozone outside of its well-defined territorial jurisdiction. It is preposterous for OGCC to contend that the extension of APECO's jurisdiction beyond its authority would appear to qualify as an exception to the principle that activities of a locator within an economic zone should be limited within the territory of the latter.⁴

Accentuating on the importance of delineating territorial boundaries, the Supreme Court, in Mariano, Jr. v. Commission on Elections,⁵ said:

The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are ultra vires. Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Code in requiring that the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions.

By parity of reasoning, it is unconceivable to adopt OGCC's view that the metes and abounds of the Aurora Ecozone is not determinative of APECO's limits of jurisdictional operation.

A perusal of the Governing Principles⁶ enumerated under Section 4 of RA 9490, as amended by Section 3 of RA 10083 show that it is the

⁵ G.R. Nos. 140743 & 140745, September 17, 2009, 600 SCRA 33.
⁶ Section 4. Governing Principles.- The Aurora Pacific Economic Zone and Freeport shall be managed and operated by the Aurora Pacific Economic Zone and Freeport Authority, hereinafter referred to as the APECO, created under Section 10 of this Act, under the following principles:

(a) Within the framework and limitations of the Constitution and applicable provisions of the Local Government Code, the Aurora Ecozone shall be developed into and operated as a
manifest intention of the lawmakers to absolutely limit the authority granted to APECO within Aurora Ecozone only with the repeated
decentralized, self-reliant and self-sustaining industrial, commercial/trading, agro-industrial,
tourist, banking, financial and investment center with suitable residential areas.

(b) The **Aurora Ecozone shall be provided with transportation, telecommunications and other facilities** needed to attract legitimate and productive investments, generate linkage industries and employment opportunities for the people of the Province of Aurora and its neighboring towns and cities.

(c) The **Aurora Ecozone may establish mutually beneficial economic relations with other entities or enterprises** within the country or, subject to the administrative guidance of the Department of Foreign Affairs (DFA), the Philippine Economic Zone Authority (PEZA) and/or the Department of Trade and Industry (DTI), with foreign entities or enterprises.

(d) Foreign citizens and companies owned by non-Filipinos in whatever proportion may set up enterprises in the **Aurora Ecozone**, either by themselves or in joint venture with Filipinos in any sector of industry, international trade and commerce within the **Aurora Ecozone**.

(e) The **Aurora Ecozone shall be managed and operated as a separate customs and taxation territory** ensuring free flow or movement of goods and capital within, into and out of its territory.

(f) The **Aurora Ecozone may provide incentives** such as tax and duty-free importations of raw materials, capital and equipment to registered enterprises located therein. However, exportation or removal of goods from the territory of the Aurora Ecozone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, and the National Internal Revenue Code (NIRC) of 1997, as amended.

(g) The **areas comprising the Aurora Ecozone** may be expanded or reduced when necessary. For this purpose, the APECO, in consultation with the LGUs, shall have the power to acquire either by purchase, negotiation or condemnation proceedings, any private land within or adjacent to the Aurora Ecozone for the following purposes: (1) consolidation of lands for Aurora Ecozone development; (2) acquisition of right of way to the Aurora Ecozone; and (3) the protection of watershed areas and natural assets valuable to the prosperity of the Aurora Ecozone.

(h) **Goods manufactured by an Aurora Ecozone enterprise** shall be made available for immediate retail sale in the domestic market, subject to the payment of corresponding taxes on raw materials and other regulations that may be formulated by the APECO, in consultation with the PEZA, the Department of Finance (DOF), and the DTI. However, in order to protect domestic industries, a negative list of industries shall be drawn up and regularly updated by the PEZA and the Board of Investments (BOI). Enterprises engaged in industries included in such negative list shall not be allowed to sell their products locally.

(i) The **defense of the Aurora Ecozone and the security of its perimeter fence** shall be the responsibility of the national government in coordination with the APECO and the LGUs concerned.

(j) The **national government shall actively cooperate and coordinate with the Aurora Ecozone and the LGUs to ensure its speedy development** as the vital gateway to the Pacific. (Emphasis and underscoring supplied)
mention of developing, providing transportation, telecommunications, and other facilities, the setting up of enterprises, international trade and commerce, and providing of tax incentives in importation of raw materials, capital and equipment, within Aurora Ecozone. As in fact, the lawmakers’ intent to limit the authority of APECO solely within the border of Aurora Ecozone, is clear with the incorporation of paragraph g, Section 4, which provides:

(g) The areas comprising the Aurora Ecozone may be expanded or reduced when necessary. For this purpose, the APECO, in consultation with the LGUs, shall have the power to acquire either by purchase, negotiation or condemnation proceedings, any private land within or adjacent to the Aurora Ecozone for the following purposes: (1) consolidation of lands for Aurora Ecozone development; (2) acquisition of right of way to the Aurora Ecozone; and (3) the protection of watershed areas and natural assets valuable to the prosperity of the Aurora Ecozone.

Based on the above paragraph, the expansion or reduction of the Aurora Ecozone shall only be through acquisition of any land within or adjacent land to the Aurora Ecozone, but all for the same purpose of the development and prosperity of Aurora Ecozone. In the same manner, the APECO has no authority to expand its operation in PEZA’s location.

b.) APECO’s authority to license casinos and online gaming facilities is bounded by, and confined within, the scope and extent of its powers and functions under its Charter.

Section 12 (f)\(^7\) of R.A. No. 9490, as amended by Section 6 of R.A. No. 10083, in its simple language, merely provides that APECO can operate on its own, either directly or through a subsidiary entity, or

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\(^7\) Section 12. Powers and Functions of the Aurora Pacific Economic Zone and Freeport Authority (APECO). - The APECO shall have the following powers and functions:

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(f) To operate on its own, either directly or through a subsidiary entity, or concession or license to others, tourism-related activities, including games, amusements and nature parks, recreational and sports facilities such as casinos, online game facilities, golf courses and others under priorities and standards set by the APECO. (Emphasis and underscoring supplied)
concession or license to others, tourism-related activities, including games, amusements and nature parks, recreational and sports facilities such as casinos, online game facilities, golf courses and others under priorities and standards. There is no categorical provision however that this authority of APECO can extend in PEZA location. It is elementary in statutory construction that a word, phrase, or provision should not be construed as a detached and isolated expression but must be interpreted in relation to other provisions of the law.\(^8\)

Thus, Section 12 (f) could only be construed by applying its plain meaning and language, and by relating it to other provisions of the law. A meticulous review of RA 9490, as amended, would show that there is no intention on the part of the framers of the law allowing APECO to operate in PEZA location.

Henceforth, as discussed above, APECO's power to grant licenses for the operation of online gambling is limited only with the territory of Aurora Ecozone.

c.) APECO's power to enter into mutual cooperation agreement with PEZA for the utilization of the PEZA's resources, facilities and assets does not include the authority to operate online gaming in PEZA location.

Contrary to OGCC's opinion, the grant to APECO of the power to enter into mutual cooperation agreement with PEZA for the utilization of the PEZA's resources, facilities and assets, by virtue of Section 6 of RA No. 10083, cannot be construed to mean that APECO can now grant licenses for gambling activity beyond the Aurora Ecozone.

The law is clear that APECO may only utilize PEZA's resources, facilities and assets. But these privileges must always be in accord with the fundamental principles and policies in the creation of

APECO and PEZA. Notably, nowhere in the law creating PEZA or APECO does it authorized APECO to extend its gambling operation in PEZA.

Similarly, PEZA’s powers and functions are limited to those that were enumerated under Section 13 of RA No. 7916, as amended. It does not include the power to allow APECO to operate gambling activity within its( PEZA’s) location. Section 13 of RA No. 7916 provides:

Sec. 13. General Powers and Functions of the Authority. The PEZA shall have the following powers and functions:

(a) **To operate, administer, manage and develop the ECOZONE according to the principles and provisions** set forth in this Act;
(b) To register, regulate and supervise the enterprises in the ECOZONE in an efficient and decentralized manner;
(c) To coordinate with local government units and exercise general supervision over the development, plans, activities and operations of the ECOZONES, industrial estates, export processing zones, free trade zones and the like;
(d) In coordination with local government units concerned and appropriate agencies, to construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license, bulk purchase from private sector and build-operate-transfer schemes or joint venture, adequate facilities and infrastructure, such as light and power systems, water supply and water distribution systems, telecommunication and transportation, buildings, structure, warehouses, roads, bridges, ports and other facilities for the operation and development of the ECOZONE;
(e) To create, operate and/or contract to operate such agencies and functional units or offices of the authority as it may deem necessary;
(f) To adopt, alter and use a corporate seal; make contracts, lease, own or otherwise dispose of personal or real property, sue and be sued; and otherwise carry out its duties and functions as provided for in this Act;
(g) To coordinate the formulation and preparation of the development plans of the different entities above;
(h) To coordinate with the National Economic Development Authority (NEDA), the Department of Trade and Industry (DTI), the Department of Science and Technology (DOST), and the local government units and appropriate government agencies for policy and program formulation and implementation; and
(i) To monitor and evaluate the development requirements of entities in subsection (a) and recommend to the local government units or other appropriate authorities the location, incentives, basic services, utilities and infrastructure required or to be made available for said entities.

The underlying policy of the State in the establishment and creation of PEZA is to encourage, promote, induce and accelerate a sound and balanced industrial, economic and social development of the country in order to provide jobs to the people specially those in the rural areas, increase their productivity and their individual and family income, and thereby improve the level and quality of their living condition through the establishment, among others, of special economic zones in suitable and strategic locations in the country and through measures that shall effectively attract legitimate and productive foreign investments.

Correspondingly, the fundamental principles in the establishment of both PEZA and APECO are the same. Hence, the grant of power to APECO to enter into mutual beneficial economic relations with PEZA must be interpreted in line with such declared policy. Section 2 of RA 9490, as amended states:

Section 2. Declaration of Policy. - It is hereby declared the policy of the State to actively encourage, promote, induce and accelerate the sound and balanced industrial, economic and social development of the country in order to provide jobs to the people, especially those in rural areas, increase their productivity and their individual and family income, and thereby improve the level and quality of their living conditions through the establishment, among others, of special economic zones in suitable and strategic locations in the country and through measures that shall effectively attract legitimate and productive foreign investments. (Emphasis and underscoring supplied)
In view of the foregoing, APECO’s power to operate online game facilities, and power to enter in mutual beneficial agreement with PEZA, should not, in any way, be construed as a grant of authority to gaming entities to operate in the PEZA zone, because it is outside the Aurora Ecozone and hence, beyond the APECO’s statutory power.

d.) EO No. 13, Series of 2017, categorically prohibits online gambling licensees to operate outside the territorial jurisdiction of the government authority which issued their license.

Sections 2 and 3 of EO No. 13 provide:

SECTION 2. Illegal Gambling Defined. Pursuant to existing laws, “illegal gambling” is committed by any person who, in any manner, shall directly or indirectly take part in any game scheme, regardless of whether winning thereat is dependent upon chance or skill or both, wherein wagers consisting of money, articles of value or representative or licensed by the government agency duly empowered by law or its charter to license or authorize the conduct of such games, or is conducted in a manner that violates the terms and condition duly prescribed by the said government agency.

All gambling activities, and activities and services directly or indirectly related to or in support of such gambling activities, conducted beyond the territorial jurisdiction of the government authority which issued the license therefor, shall be dealt with as illegal gambling.

SECTION 3. Clarification on Online Gambling. No duly licensed online gambling operator, or provider of activities and services related to or in support of online gambling activities, shall directly or indirectly allow persons who are physically located outside the territorial jurisdiction of the licensing authority to place bets, or any way participate, in the games conducted by such operator, whether through an online portal or similar means. Nothing herein, however, shall prohibit the duly licensed online gambling operator from allowing the participation of persons physically located outside Philippine territory.

The license to operate online gambling granted to qualified operators shall not be assigned, shared, leased, transferred, sold, or
encumbered to any other party. Any gambling operator desiring to operate outside the jurisdiction of the government authority which issued its existing license shall apply for a separate license with the appropriate authority.

The above EO cannot be any clearer. The language is plain hence there is no room for interpretation. All gambling activities, and activities and services directly or indirectly related to or in support of such gambling activities that will be conducted by APECO's licensees beyond the territorial jurisdiction of Aurora Ecozone is considered as an illegal gambling.

Notably, the gambling operators in Aurora Ecozone derived their licenses from APECO. APECO's territorial jurisdiction is only within the Aurora Ecozone. Therefore, such licenses are without force and effect in PEZA location, and any activity conducted in PEZA location pursuant to such licenses is considered as an illegal gambling.

Be that as it may, Section 13 of EO No. 13 provided for a resolution. If any of the duly licensed gambling operators in APECO wish to operate in PEZA, they could apply for a separate license from the appropriate authority, which in this case is PAGCOR. Notably, it is the declared policy under PD No. 1869, as amended, (the law that consolidated all decrees and issuances relative to the franchise and powers of PAGCOR) to centralize and integrate the right and authority to operate and conduct games of chance into one corporate entity to be controlled, administered and supervised by PAGCOR, excluding however, those authorized, licensed and regulated by, in, and under existing franchises or other regulatory bodies, special laws and local government units.

Simply put, APECO, and all other special economic and Freeport zones, to include, Subic Special Economic Zone, the Clark Special Economic and Freeport Zone, the Zamboanga City Special Economic and Freeport Zone and the Cagayan Special Economic and Freeport Zone, shall continuously enjoy the privileges and powers granted to them by their own charters, to include the power to operate on its own, either directly or through a subsidiary entity, or concession or license to others, tourism-related activities, including games, amusements and nature parks, recreational and sports facilities such as casinos,
online games facilities. However, the exercise of such power shall be confined or limited within the well-defined geographical limits of each of the special economic zones. Beyond those defined territorial jurisdiction, PAGCOR has the sole and absolute power to regulate any and similar gambling activities that will be conducted.

e.) PEZA’s control and supervision
   over APECO’s policy direction
   and coordination does not
   include APECO’s power to
   license online gaming facilities.

OGCC opined that APECO licensees can operate in PEZA zones, subject to PEZA’s power and supervision and the requirement of a separate license under EO No. 13. This opinion, which is purely ridiculous, has undoubtedly enlarged the scope of PEZA’s control and supervision over policy direction and coordination.

Policy, by its plain import, means a course or principle of action adopted or proposed by a government, party, business, or individual. Thus, PEZA, in line with its purposes, intents and objectives spelled out under Section 3 of RA No. 7916, has supervision and control only with regard to APECO’s intended course of action in order that it can administer itself on economic, financial, industrial and tourism development. PEZA must see to it that APECO is operating within the scope of its given authority, and within the bounds of its territorial jurisdiction.

A rehash, in interpreting that APECO can operate outside its territorial jurisdiction would not only be contrary to the provisions on illegal gambling which restricts the license within the territorial jurisdiction of APECO but will also cause confusion considering that PAGCOR’s power of regulation will overlap with that of APECO.

Moreover, in terms of revenue collection, it is reported that PAGCOR is the third largest source of government revenue, next to the Bureau of Internal Revenue and the Bureau of Customs. As explained in the case of Basco v. PAGCOR, the role of PAGCOR in the Government and the society cannot be overemphasized, to wit:

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P.D. 1869 was enacted pursuant to the policy of the government to "regulate and centralize thru an appropriate institution all games of chance authorized by existing franchise or permitted by law" (1st whereas clause, PD 1869). As was subsequently proved, regulating and centralizing gambling operations in one corporate entity — the PAGCOR, was beneficial not just to the Government but to society in general. It is a reliable source of much needed revenue for the cash strapped Government. It provided funds for social impact projects and subjected gambling to "close scrutiny, regulation, supervision and control of the Government" (4th Whereas Clause, PD 1869). With the creation of PAGCOR and the direct intervention of the Government, the evil practices and corruptions that go with gambling will be minimized if not totally eradicated. Public welfare, then, lies at the bottom of the enactment of PD 1896.

Informatively, APECO'S earnings are distributed, based on its Charter, as follows:

Section 5. Incentives to Registered Enterprises. - The APECO may administer the following incentives to the registered enterprises located therein to the extent of the activity/project:

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(C) Imposition of a tax rate of five percent (5%) on Gross Income Earned (GIE). - Except for real property tax on land, no local and national taxes as prescribed under Republic Act No. 8424, also known as "The National Internal Revenue Code of 1997, as Amended" such as income tax, excise tax and franchise taxes, shall be imposed on registered
enterprises operating within the Aurora Ecozone. In lieu thereof, five percent (5%) of the gross income earned shall be paid as follows:

(a) Three percent (3%) to the national government;
(b) One percent (1%) shall be remitted by the business establishments in equal shares to the respective treasurer’s office of the province and the municipality where the enterprise is located; and
(c) One percent (1%) shall be remitted by the registered enterprises to the APECO.

All persons and service establishments in the Aurora Ecozone shall be subject to national and local taxes under the National Internal Revenue Code of 1997, as amended, and the Local Government Code.

Clearly, PAGCOR’s earnings are widely distributed within the framework of the national government. On the other hand, APECO’s earnings, although majority of which, go to the national government, still its primary purpose to enhance the economic growth of the province of Aurora cannot be denied as 20% (1% of 5%) of the total earnings from registered enterprises will go to APECO.

In view of PAGCOR’s large scope, PAGCOR’s earnings would be distributed to more recipients unlike that of APECO. In giving APECO the power to operate and regulate online gaming activities within PEZA zones, PAGCOR’s revenue will reduce dramatically considering that the only limitation on the regulatory power of APECO over online game facilities is the number of PEZA zones that are or may still be established. As of now, there are more than 300 ecozones (243 of which are Information Technology Parks/Centers) across the country and these will surely increase in the years to come. As the number of PEZA zones increases, there is a corresponding threat of a decrease in the revenue of PAGCOR.
In sum, to give such power to APECO to regulate online gaming activities within PEZA zones through the expedience of entering into a mutual cooperation agreement will expand the APECO’s power to ad infinitum. Until there is PEZA zone being established, APECO may operate online game activities therein. This could not be the intention of the President in issuing E.O. No. 13 considering that part of the PAGCOR’s earning will go to the Office of the President to fund its priority projects.

We hope that you find the foregoing sufficient for your purposes.

Should you have any questions or clarifications, please do not hesitate to contact us.

JOSE C. CALIDA
Solicitor General

HENRY S. ANGELES
Assistant Solicitor General

ANGELITA VILLANUEVA MIRANDA
Assistant Solicitor General

KAREN A. ONG
Senior State Solicitor

LARA CARMELA G. FERNANDO
Associate Solicitor III