New Palace circular imposes tighter screening of government deals

By Elijah Felice Rosales
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President Duterte has imposed a more stringent process on the negotiation, ratification and approval of international agreements, including deals on borrowings, guarantees and foreign grants, amid the reported growing interest of foreign states and investment firms in the country.

Duterte issued Memorandum Circular (MC) 16, which requires all heads of departments, bureaus, offices, agencies and instrumentalities of the government, including state-owned or –controlled corporations and state universities and colleges, to coordinate closely with the Department of Foreign Affairs (DFA) for international agreements, and with the Department of Finance (DOF) for deals on borrowings, guarantees and foreign grants.

Prior to the negotiation or signing of an executive or financial agreement, the lead or implementing agency has been required to first secure an authorization from the Office of the President (OP), the DFA and the DOF.

"Authorizations…shall be granted in writing through full powers, special authority, letter or memorandum signed by the President or by the executive secretary by authority of the President," the circular read.

It also directed government heads to strictly observe and comply with the complete staff work (CSW) requirement, stipulated under MC 68, Series of 2004, before securing an authorization from the OP.

The CSW requirement covers basic documentary requirements with a covering memorandum containing a statement of justification, legal basis, coordination done with other agencies, potential problems, fund availability and a draft action.

On the other hand, the OP is mandated by MC 16 to evaluate and process the authorization for not more than 10 working days before the desired date of issuance by the lead agency.

According to Presidential Spokesman Ernesto C. Abella, the memorandum was intended to ensure the thorough evaluation of all agreements entered into by the government.

"Considering the massive and growing interest of foreign governments and investors in the country, the OP has deemed it appropriate to issue MC 16 to ensure the effective and efficient coordination among government agencies."

Under Article 8, Section 20 of the Constitution, "the President may contract or guarantee foreign loans on behalf of the country, with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law".

Executive Order 292, Series of 1987, or the Administrative Code of 1987, authorizes the DFA as the lead agency that shall advise and assist the President in planning, organizing, directing, coordinating and evaluating the total national effort in foreign relations.

The DOF, following the above-mentioned law, is tasked to undertake and supervise the activities related to the negotiation, servicing and restructuring of domestic and foreign debt incurred by the government and its instrumentalities.

Notably, the enactment of MC 16 follows the dismissal of Interior Secretary Ismael D. Sueno, who was fired by Duterte two weeks due to “loss of trust and confidence”.

Before his dismissal, Sueno was at loggerheads with three interior undersecretaries, who accused him of entering into a “dubious” foreign loan agreement for the purchase of Rosenbauer fire trucks.

Sueno denied the allegation, claiming the deal was perfected into contract by the previous administration.