

ALON

Ocean Wave

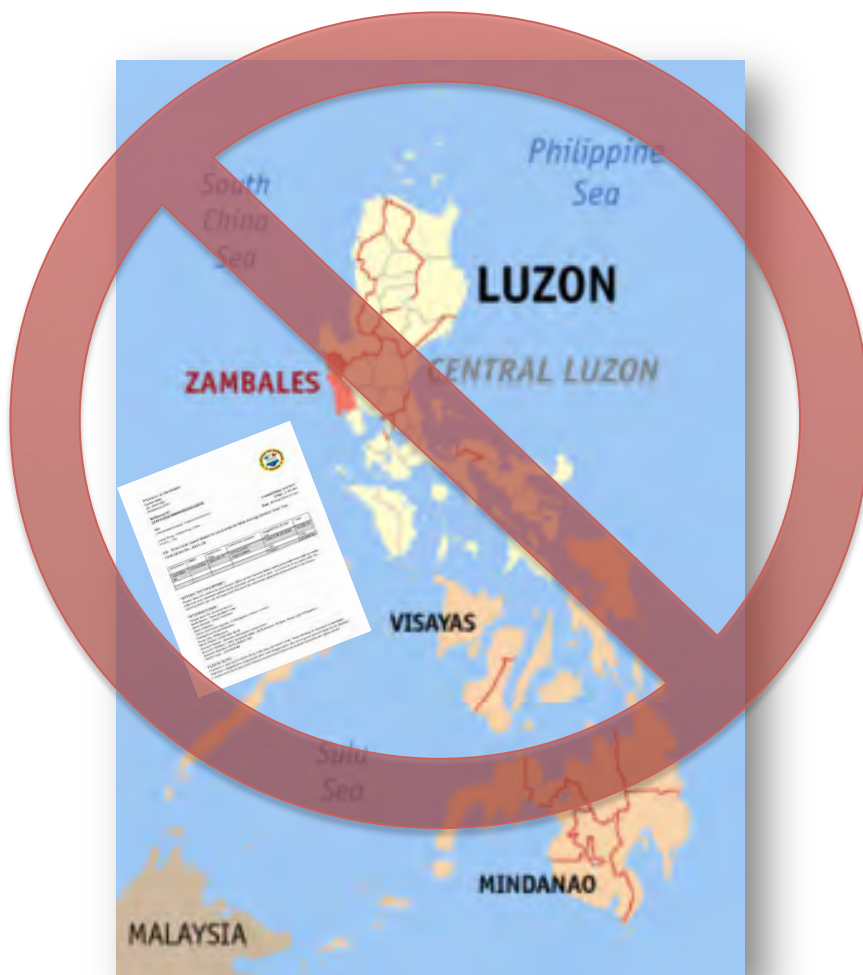
2017
23rd March

PANDIMAN PHILIPPINES Inc.

P&I Correspondent in the Philippines

Topics of interest relating to the Philippine Maritime Industry and Shipping

PHILIPPINES – Zambales, inappropriate charges are illegal



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Further to our ALON 25th August 2015, in regards this topic, there has been a legal opinion by the Philippines Department of Justice (DoJ) dated 7th March 2016, which has now been promulgated by MARINA (Maritime Industry Authority) in their Marine Advisory 2017-09. Both the MARINE circular and the DOJ opinion No8 are included below.

We have been made aware in the past three weeks of many ship owners being in receipt of invoices from the local government of Zambales, charging those ship owners for the transit of their vessels through the coastal waters.

It is clearly verified by both the Philippines Department of Justice (DoJ) and MARINA that these charges are not legal.

“The Province of Zambales improperly exercised the State’s authority under section III, Part II of the United Nations Convention of the Law of the Sea (UNCLOS), given that P028 violates Article 26 (Charges which may be levied on foreign ships) of the same”

MARINA advises that any concerns be made directly to them;

Email address: oadm@marina.gov.ph

Therefore shipowners are to ignore all requests from Zambales of charges for transiting the area

Capt. Andy Malpass

President & GM
Pandiman Philippines





REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS

MARITIME INDUSTRY AUTHORITY



9 March 2017

MARINA ADVISORY NO. 2017-09
Series of 2017

TO : ALL SEAFARERS, SHIPPING COMPANIES/OPERATORS,
MANNING AGENCIES, OTHER MARITIME ENTITIES, MARINA
CENTRAL AND REGIONAL OFFICERS AND EMPLOYEES, ALL
CONCERNED

SUBJECT : DEPARTMENT OF JUSTICE (DOJ) OPINION ON THE VALIDITY
OF THE PROVINCIAL ORDINANCE NO. 28, SERIES OF 2015,
ENTITLED "AN ORDINANCE FOR THE PROVINCIAL COAST
WATCH SURVEILLANCE AND ENVIRONMENT MONITORING IN
THE PROVINCE OF ZAMBALES FOR THE IMPLEMENTATION
OF A VESSEL TRAFFIC SERVICE SYSTEM"

Notice is hereby given to all concerned that in line with above-mentioned subject, the DOJ, through its Opinion No. 8 (copy attached) dated 7 March 2016, opines that Provincial Ordinance No. 28 (PO28) is invalid and legally infirm as it violates the 1987 Constitution, Republic Act (RA) No. 7160 (the Local Government Code), RA 9993 (Philippine Coast Guard (PCG) Law 2009), Presidential Decree (PD) No. 857, as amended by Executive Order (EO) No. 513, s. 1978 and EO 159, s. 1987 (Providing for the Creation/ Reorganization of the Philippine Ports Authority (PPA)), and EO 57, s. 2011 (Establishing a National Coast Watch System).

It further states that PO28 usurps powers and functions that have already been allocated to the PCG, PPA and National Coast Watch Council under the various laws and issues that created them. Furthermore, the Province of Zambales improperly exercised the State's authority under Section III, Part II of the United Nations Convention of the Law of the Sea (UNCLOS), given that PO28 violates Article 26 (Charges which may be levied on foreign ships) of the same.

Any queries relating to this Advisory may be directed to:

Office of the MARINA Administrator
Telephone Nos. : +63 2 523 9078 | +63 2 526 0971 | +63 2 524 2895
Address : Room 401, 4/F Parkview Plaza, 984 Taft Ave. corner
T. M. Kalaw St., Ermita, Manila, Philippines
E-mail Address : oadm@marina.gov.ph

For information and guidance of all concerned.


MARC AL Q. C. AMARO III, PhD
Administrator

Date of Publication: 3/07/17
Date of Submission to ONAR:

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Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

ELC-L-7C16-126

7 March 2016

Hon. Jose Luis M. Alano
Executive Director
National Coast Watch Council Secretariat

Dear Hon. Alano:

This refers to your request for opinion on the validity of Provincial Ordinance 28 (PO28), series of 2015, entitled "An Ordinance for the Provincial Coast Watch Surveillance and Environment Monitoring System in the Province of Zambales." Specifically, you wish to know:

1. Whether or not the Provincial Government of Zambales has the authority and mandate under existing laws to establish a maritime surveillance system independently from and without due regard to the mandates and functions of national agencies;
2. Whether or not a local government unit can validly exercise the State's authority under pertinent provisions of Section 3 of Part II of the UN Convention on the Law of the Sea pertaining to innocent passage by foreign ships in the Territorial Sea of the Philippines; and
3. Whether or not the fees and charges collected pursuant to PO28 (the "Additional Fees") are a form of levy or tax not falling within the limitations under Section 133(e) of the Local Government Code, or if the same are circumscribed by Memorandum Circular No. 2011-151 of the Department of Interior and Local Government (DILG).

BACKGROUND

The Province of Zambales (the Province) adopted PO28 to "upgrade the monitoring capacity and facilities of the Province over its territorial waters to international standards for national and local security, prevention of maritime crime and transportation of illegal substances, the improvement of port operations, and the maintenance and improvement of the maritime air environment of the Province." In summary, PO28 provides for:

¹ PO28, Sec. 2.



Resolution No. 3, 2015

1. The implementation of a coast watch² surveillance and monitoring system in all ports and provincial waters³ of the Province.⁴
2. The acquisition of said coast watch surveillance and monitoring system from Xanatos Marine Ltd. (Xanatos), a private Canadian company, which offered it at no cost and capital to the Province.⁵ By virtue of a Memorandum of Agreement (MOA) signed by the Province and Xanatos on 13 April 2015, Xanatos was commissioned to:
 - a. Establish all the monitoring sites in different strategic parts of the province;
 - b. Ensure the efficient operation and maintenance of the system;
 - c. Prepare a daily monitoring report for the Governor or his official representative;
 - d. Ensure confidentiality of all reports, data, and monitoring documentation;
 - e. Prepare monthly billings for all shipping agents covered by this project;
 - f. Maintain close coordination with the Office of the Governor as to documentation and operation; and
 - g. Establish, appoint and empower its local representative, Xanatos Philippines Corporation, for the sole purpose of maintaining proper coordination between the parties, particularly on matters pertaining to billing and accepting payments.⁶
3. The imposition of the Additional Fees (which result from the use of the coast watch system) on top of the usual and standard shipping fees prescribed by law.⁷
 - a. The Additional Fees are covered by Recommendation V-102 on "The application of 'User Pays' principle to Vessel Traffic Services" of the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA Recommendation).
 - b. The Additional Fees will be collected by the Province through Xanatos.
 - c. The net profit, after deducting expenses, fees and taxes, will be divided between the Province and Xanatos, in accordance with the MOA.⁸

² Sec. 4(1) of PO28 defines "coast watch" as the "monitoring of territorial waters by the use of state-of-the-art equipment for the real time observation of sea traffic, events, activities and operations of these waters."

³ Sec. 4(5) of PO28 defines "provincial waters" as "a belt of coastal waters extending from 15km to 100km from the baseline (usually the mean low-water mark) of a coastal state."

⁴ PO28, Sec. 3.

⁵ PO28, Sec. 5.

⁶ PO28, Sec. 7.

⁷ PO28, Sec. 8.

⁸ PO28, Sec. 10.



SUMMARY

Based on the documents submitted to this Department, we opine that PO28 is invalid and legally infirm as it violates the 1987 Constitution, Republic Act (RA) No. 7160 (the Local Government Code),⁹ RA No. 9993 (Philippine Coast Guard Law of 2009),¹⁰ Presidential Decree No. 857,¹¹ as amended by Executive Order (EO) No. 513, s. 1978¹² and EO No. 159, s. 1987 (Providing for the Creation/Reorganization of the Philippine Ports Authority),¹³ and EO No. 57, s. 2011 (Establishing a National Coast Watch System).

We directly respond to your queries and further opine that: *First*, PO28 usurps powers and functions that have already been allocated to the Philippine Coast Guard (PCG), the Philippine Ports Authority (PPA), and the National Coast Watch Council (NCWC) under the various laws and issuances that created them. The Province is thus neither authorized nor mandated to exercise such powers. *Second*, the Province improperly exercised the State's authority under Section III, Part II of the UNCLOS, given that PO28 violates Article 26 (Charges which may be levied on foreign ships) of the same. *Finally*, PO28 does not fall within the limitations set by Section 133(e) of RA No. 7160 and DILG Memorandum Circular No. 2011-151 because the Additional Fees Imposed by PO28 relate to vessels passing through provincial waters and not on the goods or merchandise carried by such vessels, as contemplated by these issuances.

DISCUSSION

At the outset, we note that the provisions of PO28 indicate that it is a provincial ordinance that imposes a fee¹⁴ or charge¹⁵ for both revenue and regulatory purposes. As such, it must comply with the procedural requirements of hearing,¹⁶ posting¹⁷ and

⁹ An Act Providing for a Local Government Code of 1991.

¹⁰ An Act Establishing the Philippine Coast Guard as an armed and uniformed service attached to the Department of Transportation and Communications, thereby repealing Republic Act No. 5173, as amended, and for other purposes.

¹¹ Providing for the reorganization of port administrative and operation functions in the Philippines, revising Presidential Decree No. 505 dated 11 July 1974, creating the Philippine Port Authority (PPA), by substitution and for other purposes.

¹² Reorganizing the PPA.

¹³ Reverting to the PPA its corporate autonomy, ensuring the rapid development of ports or the port system directly under it, and authorizing it to execute port projects under its port program.

¹⁴ Sec. 131(l) of RA-no. 7160 defines "fees" as a charge fixed by law or ordinance for the regulation or inspection of a business activity.

¹⁵ Sec. 131(g) of RA No. 7160 refers to "charges" as pecuniary liability, as rents or fees against persons or property.

¹⁶ Sec. 187, RA No. 7160.

¹⁷ Sec. 59, RA No. 7160.

