Securities and Exchange Commission
PHILIPPINES

SEC Memorandum Circular No. 16
Series of 2019

TO : **ALL CONCERNED**

SUBJECT : **GUIDELINES ON THE NUMBER AND QUALIFICATIONS OF INCORPORATORS UNDER THE REVISED CORPORATION CODE**

WHEREAS, Section 10 of Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, allows any person, partnership, association or corporation, singly or jointly with others but not more than fifteen (15) in number, to organize a corporation for any lawful purpose or purposes;

WHEREAS, the Securities and Exchange Commission (SEC) deems it necessary to issue guidelines for the clear and proper implementation of the foregoing provision of law;

WHEREFORE, the SEC adopts the following guidelines on the composition of incorporators for the registration of domestic corporations under the Revised Corporation Code:

Section 1. Number of Incorporators

For the purpose of forming a new domestic corporation under the Revised Corporation Code, two (2) or more persons, but not more than fifteen (15), may organize themselves and form a corporation.

Only a One Person Corporation (OPC) may have a single stockholder, as well as a sole director. Accordingly, its registration must comply with the corresponding separate guidelines on the establishment of an OPC.

Section 2. Definition of Incorporators

Incorporators are those stockholders or members mentioned in the Articles of Incorporation as originally forming and composing the corporation, and who are signatories thereof.

Published:
Philippine Daily Inquirer, August 1, 2019
Manila Times, August 1, 2019

Section 3. Qualifications of Incorporators

Each incorporator of a stock corporation must own, or be a subscriber to, at least one (1) share of the capital stock. Each incorporator of a nonstock corporation must be a member of the corporation.

The incorporators may be composed of any combination of natural person/s, SEC-registered partnership/s, SEC-registered domestic corporation/s or association/s, as well as foreign corporation/s.

Incorporators who are natural persons must be of legal age, and must sign the Articles of Incorporation/ Bylaws.

Section 4. Partnerships as Incorporators

In the event that an SEC-recorded partnership is made an incorporator, the application for registration must be accompanied by a Partners' Affidavit, duly executed by all the partners, to the effect that they have authorized the partnership to invest in the corporation about to be formed and that they have designated one of the partners to become a signatory to the incorporation documents.

Partnerships under "dissolved" or "expired" status with the SEC shall not be authorized to become an incorporator.

Section 5. Domestic Corporations or Associations as Incorporators

In the event that an SEC-registered domestic corporation or association is made an incorporator, its investment in the new corporation must be approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or by at least two thirds (2/3) of the members in the case of nonstock corporations, at a meeting duly called for the purpose.

A Directors'/Trustees' Certificate or a Secretary's Certificate, indicating the necessary approvals, as well as the authorized signatory to the incorporation documents, shall be executed under oath and submitted by the applicant.

Domestic corporations under "delinquent", "suspended", "revoked" or "expired" status with the SEC shall not be authorized to become an incorporator.

Section 6. Foreign Corporations as Incorporators

In the event that a foreign corporation is made an incorporator, the application for registration must be accompanied by a copy of a document *(i.e. Board Resolution, Directors' Certificate, Secretary's Certificate, or its equivalent)*, duly

authenticated[1] by a Philippine Consulate or with an apostille[2] affixed thereto, authorizing the foreign corporation to invest in the corporation being formed and specifically naming the designated signatory on behalf of the foreign corporation.

Section 7. Signatories of the Articles of Incorporation

Each individual signing the Articles of Incorporation/ Bylaws must indicate the capacity upon which he/she is affixing his/her signature thereto. *(i.e. Incorporator or Representative of XYZ Corp.)*

An individual designated to sign the Articles of Incorporation/ Bylaws on behalf of an incorporator, which is not a natural person, must also indicate the corporate or partnership name of the entity being represented and for whom he/she is executing the Articles of Incorporation/ Bylaws.

The Taxpayer Identification Number (TIN) of the principal, as well as the designated signatory, should both be indicated in the Articles of Incorporation.

No application for incorporation shall be accepted unless the registration documents reflect the TIN or passport number of all its foreign investors other than foreign corporations which have not yet been issued a Taxpayer Identification Number.

After incorporation, all the foreign investors, natural or juridical, shall secure a Taxpayer Identification Number. All documents to be filed with the SEC after incorporation *(e.g. General Information Sheets)* shall not be accepted unless the TIN of all its foreign investors, natural or juridical, resident or non-resident, are indicated therein.

Section 8. Designation of Incorporators as Directors or Trustees

An individual who signs the Articles of Incorporation on behalf of an incorporator, which is not a natural person, may not be named as a director or trustee in the same Articles of Incorporation, unless when the said individual is also the owner of at least one (1) share of stock, or is also a member, of the corporation being formed.

Section 9. Foreign Nationals in the Articles of Incorporation

The inclusion of foreign nationals in the Articles of Incorporation shall be subject to the applicable constitutional, statutory, and regulatory restrictions, as well as conditions, with respect to foreign participation in certain investment areas or activities.

---

[1] For documents executed in countries and territories which are not Apostille-contracting parties.
[2] For documents executed in countries and territories which are Apostille-contracting parties.

Section 10. Additional Requirements for Certain Corporations

No Articles of Incorporation of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, NSSLAS, pawnshops, and other financial intermediaries shall be approved unless accompanied by a favorable recommendation of the appropriate government agency to the effect that the Articles of Incorporation are in accordance with law.

Section 11. Processing of Applications

The processing of applications for registration in accordance with the new provisions of the Revised Corporation Code shall be done manually by the Company Registration and Monitoring Department and the Extension Offices of the SEC, until further notice.

Section 12. Repealing Clause

This Memorandum Circular shall amend all issuances, orders, rules and regulations of the Commission that may be inconsistent with it.

Section 13. Effectivity

This Memorandum Circular shall take effect immediately upon its publication in a newspaper of general circulation.

30 July 2019 Pasay City, Philippines.

EMILIO B. AQUINO
Chairperson

SEC Memorandum Circular No. 16
Series of 2019

TO : **ALL CONCERNED**

SUBJECT : **GUIDELINES ON THE NUMBER AND QUALIFICATIONS OF INCORPORATORS UNDER THE REVISED CORPORATION CODE**

WHEREAS, Section 10 of Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, allows any person, partnership, association or corporation, singly or jointly with others but not more than fifteen (15) in number, to organize a corporation for any lawful purpose or purposes;

WHEREAS, the Securities and Exchange Commission (SEC) deems it necessary to issue guidelines for the clear and proper implementation of the foregoing provision of law;

WHEREFORE, the SEC adopts the following guidelines on the composition of incorporators for the registration of domestic corporations under the Revised Corporation Code:

Section 1. Number of Incorporators

For the purpose of forming a new domestic corporation under the Revised Corporation Code, two (2) or more persons, but not more than fifteen (15), may organize themselves and form a corporation.

Only a One Person Corporation (OPC) may have a single stockholder, as well as a sole director. Accordingly, its registration must comply with the corresponding separate guidelines on the establishment of an OPC.

Section 2. Definition of Incorporators

Incorporators are those stockholders or members mentioned in the Articles of Incorporation as originally forming and composing the corporation, and who are signatories thereof.

Published:
Philippine Daily Inquirer, August 1, 2019
Manila Times, August 1, 2019

Section 3. Qualifications of Incorporators

Each incorporator of a stock corporation must own, or be a subscriber to, at least one (1) share of the capital stock. Each incorporator of a nonstock corporation must be a member of the corporation.

The incorporators may be composed of any combination of natural person/s, SEC-registered partnership/s, SEC-registered domestic corporation/s or association/s, as well as foreign corporation/s.

Incorporators who are natural persons must be of legal age, and must sign the Articles of Incorporation/ Bylaws.

Section 4. Partnerships as Incorporators

In the event that an SEC-recorded partnership is made an incorporator, the application for registration must be accompanied by a Partners' Affidavit, duly executed by all the partners, to the effect that they have authorized the partnership to invest in the corporation about to be formed and that they have designated one of the partners to become a signatory to the incorporation documents.

Partnerships under "dissolved" or "expired" status with the SEC shall not be authorized to become an incorporator.

Section 5. Domestic Corporations or Associations as Incorporators

In the event that an SEC-registered domestic corporation or association is made an incorporator, its investment in the new corporation must be approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or by at least two thirds (2/3) of the members in the case of nonstock corporations, at a meeting duly called for the purpose.

A Directors'/Trustees' Certificate or a Secretary's Certificate, indicating the necessary approvals, as well as the authorized signatory to the incorporation documents, shall be executed under oath and submitted by the applicant.

Domestic corporations under "delinquent", "suspended", "revoked" or "expired" status with the SEC shall not be authorized to become an incorporator.

Section 6. Foreign Corporations as Incorporators

In the event that a foreign corporation is made an incorporator, the application for registration must be accompanied by a copy of a document *(i.e. Board Resolution, Directors' Certificate, Secretary's Certificate, or its equivalent)*, duly

authenticated[1] by a Philippine Consulate or with an apostille[2] affixed thereto, authorizing the foreign corporation to invest in the corporation being formed and specifically naming the designated signatory on behalf of the foreign corporation.

Section 7. Signatories of the Articles of Incorporation

Each individual signing the Articles of Incorporation/ Bylaws must indicate the capacity upon which he/she is affixing his/her signature thereto. *(i.e. Incorporator or Representative of XYZ Corp.)*

An individual designated to sign the Articles of Incorporation/ Bylaws on behalf of an incorporator, which is not a natural person, must also indicate the corporate or partnership name of the entity being represented and for whom he/she is executing the Articles of Incorporation/ Bylaws.

The Taxpayer Identification Number (TIN) of the principal, as well as the designated signatory, should both be indicated in the Articles of Incorporation.

No application for incorporation shall be accepted unless the registration documents reflect the TIN or passport number of all its foreign investors other than foreign corporations which have not yet been issued a Taxpayer Identification Number.

After incorporation, all the foreign investors, natural or juridical, shall secure a Taxpayer Identification Number. All documents to be filed with the SEC after incorporation *(e.g. General Information Sheets)* shall not be accepted unless the TIN of all its foreign investors, natural or juridical, resident or non-resident, are indicated therein.

Section 8. Designation of Incorporators as Directors or Trustees

An individual who signs the Articles of Incorporation on behalf of an incorporator, which is not a natural person, may not be named as a director or trustee in the same Articles of Incorporation, unless when the said individual is also the owner of at least one (1) share of stock, or is also a member, of the corporation being formed.

Section 9. Foreign Nationals in the Articles of Incorporation

The inclusion of foreign nationals in the Articles of Incorporation shall be subject to the applicable constitutional, statutory, and regulatory restrictions, as well as conditions, with respect to foreign participation in certain investment areas or activities.

---

[1] For documents executed in countries and territories which are not Apostille-contracting parties.
[2] For documents executed in countries and territories which are Apostille-contracting parties.

Section 10. Additional Requirements for Certain Corporations

No Articles of Incorporation of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, NSSLAS, pawnshops, and other financial intermediaries shall be approved unless accompanied by a favorable recommendation of the appropriate government agency to the effect that the Articles of Incorporation are in accordance with law.

Section 11. Processing of Applications

The processing of applications for registration in accordance with the new provisions of the Revised Corporation Code shall be done manually by the Company Registration and Monitoring Department and the Extension Offices of the SEC, until further notice.

Section 12. Repealing Clause

This Memorandum Circular shall amend all issuances, orders, rules and regulations of the Commission that may be inconsistent with it.

Section 13. Effectivity

This Memorandum Circular shall take effect immediately upon its publication in a newspaper of general circulation.

30 July 2019 Pasay City, Philippines.

EMILIO B. AQUINO
Chairperson