Securities and Exchange Commission
PHILIPPINES

SEC Memorandum Circular No. 1
Series of 2021

TO : **ALL CONCERNED**

SUBJECT : **GUIDELINES IN PREVENTING THE MISUSE OF CORPORATIONS FOR ILLICIT ACTIVITIES THROUGH MEASURES DESIGNED TO PROMOTE TRANSPARENCY OF BENEFICIAL OWNERSHIP *("BO TRANSPARENCY GUIDELINES")***

Whereas, Section 73 of Republic Act No. 11232 otherwise known as the Revised Corporation Code of the Philippines (RCCP) requires all corporations to keep and carefully preserve all information relating to the corporation including but not limited to the current ownership structure and voting rights of the corporation, lists of stockholders or members, group structures, intra-group relations, ownership data, and beneficial ownership;

Whereas, the law mandates that corporations be organized and used only for legal purposes and should not be used to defeat public convenience, justify wrong, protect fraud, or defend crime, or confuse legitimate issues;

Whereas, it is well established that the risk of misuse of corporate vehicles for purposes contrary to law such as money laundering and terrorist financing arises from the lack of transparency of beneficial ownership of such corporate vehicles;

Whereas, to effectively guard against the misuse of such corporate vehicles, competent authority must have access to adequate, accurate, and timely information on their beneficial ownership and control;

Whereas, it is a declared policy of the State to ensure that the Philippines shall not be used as a money laundering site for unlawful activities;

Whereas, promoting the transparency of beneficial ownership of legal persons such as corporations is consistent with the country's commitment to implement international standards and best practices in combating money laundering and terrorist financing as recommended by the Financial Action Task Force and other international standard-setting bodies;

Published:
Manila Bulletin, 29 January 2021
Manila Standard, 29 January 2021

Filed with UP Law Center: 28 January 2021

Whereas, nominee arrangements whereby individuals assume a management or ownership position on behalf of their principals, and the use of nominee shareholders and nominee directors under such arrangements, can hide the identity of beneficial owners of corporate vehicles and thus increase the risk of misuse of such corporate entities for illegal activities;

Whereas, the issuance of bearer shares and bearer share warrants similarly hides the identity of such beneficial owners and thereby increase the risk of misuse of the corporation;

Whereas, the issuance of bearer shares and bearer share warrants are by implication not allowed under the RCCP;

Whereas, the RCCP requires the disclosure of the incorporators, first directors/trustees, and subscribers to the authorized capital stock of the corporation in the Articles of Incorporation;

Whereas, the RCCP likewise requires corporations to keep a Stock and Transfer Book which shall contain a record, among others, of all stocks in the names of the stockholders alphabetically arranged, a statement of every alienation, sale, or transfer of stock made, the date thereof, by whom and to whom made;

Whereas, the concealment or non-disclosure of the beneficial owner/s of the corporation and the identity of the nominators and principals of its incorporators, directors/trustees and shareholders, would be in contravention of the policy embodied in pertinent provisions of the RCCP;

WHEREFORE, by the authority vested in the Commission as Supervising Authority by the Anti-Money Laundering Act (AMLA), as amended, and its Implementing Rules and Regulations (IRR), the Securities Regulation Code (SRC) and the Revised Corporation Code of the Philippines (RCCP), and as approved by the Commission *En Banc*, the following guidelines are hereby promulgated:

SECTION 1. *Scope* - This Circular shall apply to nominee directors/trustees and nominee shareholders as herein defined, incorporators/applicants for incorporation, and all concerned corporations subject to the supervision and jurisdiction of the Commission.

SECTION 2. *Definition of Terms* –

a. **"Bearer shares"** – shall refer to equity securities owned by the person or entity that holds the physical certificate which enables the transfer of ownership of shares of stock by mere delivery of such certificate. It shall likewise refer to instruments that accord ownership in a juridical person to the person or entity who possesses or is the holder of the bearer share certificate.

b. **"Bearer share warrant"** – shall refer to a document certifying that the bearer is entitled to a certain amount of the fully paid shares of stock of a corporation.

c. **"Beneficial owner"** – shall refer to the natural person or persons who ultimately owns or controls or exercises ultimate effective control over the corporation as defined and required to be disclosed in the General Information Sheet (GIS) pursuant to SEC Memorandum Circular No. 15, Series of 2019 or any amendment thereto.

d. **"Commission"** – shall refer to the Securities and Exchange Commission.

e. **"Nominee Incorporator/ Director/ Trustee/ Shareholder"** – shall refer to any natural person who acts for and on behalf of another person as incorporator/director/ trustee or shareholder.

f. **"Nominator/Principal"** – shall refer to any person or entity for and on whose behalf another person acts as incorporator/ applicant/director/trustee/shareholder.

SECTION 3. *Prohibition Against the Issuance/Sale/Public Offering of Bearer Shares/Bearer Share Warrants* – No person or entity shall issue, sell or offer for sale or distribution bearer shares and bearer share warrants.

SECTION 4. *Disclosure and Recording of the Alienation, Sale, or Transfer of Shares.* – Except as provided for under any of the rules of the Commission, the alienation, sale, or transfer of shares of stock, the date thereof, by whom and to whom made, shall be disclosed and recorded in the Stock and Transfer Book of the issuing corporation within thirty (30) days from date of such alienation, sale, or transfer, subject to compliance with the requirements for the recording or registration of transfers under applicable regulations. Unless thus disclosed and recorded, the same shall not be binding on the issuer. No transfer or assignment of ownership or rights over shares of stock shall be effective unless the name of the transferee/purchaser/assignee is properly indicated and said transferee/purchaser/assignee is properly identified and the transaction is recorded in the Stock and Transfer Book or the appropriate registry book of the issuing corporation in accordance with these Guidelines.

Sales or transfers of shares of publicly listed companies through the facilities of the Philippine Stock Exchange are not covered by this Section 4, without prejudice to the requirement to disclose beneficial ownership information in the GIS which shall remain applicable to all registered corporations as well as the disclosure of beneficial ownership of shares in accordance with pertinent provisions of the 2015 IRR of the SRC.

SECTION 5. *Payment of Dividends* – Except for dividend payments made by publicly listed companies to the PCD Nominee or any similar entity authorized to act as depository and custodian of shares for purposes of trading in the stock exchange and operating under the same rules, no dividends shall be paid to any person or entity unless his/her/its name appears in the records of the corporation as the owner of the shares of stock for which dividends are being paid.

SECTION 6. *Mandatory Disclosure of the Person on Whose Behalf the Corporation is Registered and the Nominators/Principals of Nominee Incorporators/First Directors/Trustees and Shareholders of Corporations Applying for Registration*- Except as otherwise provided under existing laws, rules, and regulations, the incorporators of a corporation shall disclose to the Commission, within thirty (30) days from the issuance of the company's Certificate of Registration, the person or persons on whose behalf the registration of the corporation was applied for. Nominee incorporators or applicants for registration, as well as the nominee directors/trustees and nominee shareholders of the applicant corporation shall in the same manner disclose to the Commission their respective principals or nominators. The disclosure shall include the full names, country of residence, nationality, and tax identification numbers (TIN), or in the absence of such TIN, the passport numbers of their nominators or principals and the person on whose behalf the corporation was registered. Otherwise, they shall submit to the Commission a declaration within the same period that they are not nominee incorporators/nominee applicants/nominee directors/nominee subscribers, if such be the fact, and that they are not acting as such for and on behalf of another person.

SECTION 7. *Mandatory Disclosure of Nominators/ Principals/Persons on Whose Behalf One Acts as Director/Trustee/Shareholder of Existing Corporations.* – Except as otherwise provided by law, rules, and regulations, nominee shareholders as well as nominee directors/trustees of registered corporations shall disclose to the Commission their nominators and principals or persons on whose behalf they act as such shareholders/directors/trustees. Such information shall likewise be disclosed to the corporation in which they are or act as nominee shareholders or directors/trustees. The disclosure shall include the full names, country of residence, nationality, and tax identification numbers, or in the absence of such TIN, the passport numbers of their nominators or principals. If the nominator or principal is a corporation, the registered name of the corporation, its country of registration, names of its incorporators and directors, its beneficial owner, its TIN, if any, shall in the same manner be disclosed. If the nominator or principal is a trust, the names, nationality and country of residence, and TIN or passport number of the trustor/s, trustee/s and beneficiary/ies of the trust shall in like manner be disclosed.

The requirement prescribed in this section shall not apply to the PCD Nominee.

SECTION 8. *Period to Submit Disclosure Statement Under Section 7 Hereof.* – All persons who are nominee shareholders/directors/trustees of existing corporations before the effective date of this Circular shall submit to the Commission the said disclosure within thirty (30) days from the date this Circular became effective. Those who become nominee shareholders, directors/trustees on or after the effectivity of this Circular, shall submit the same within thirty (30) days from the time they became or assumed the role of or started acting as nominee directors/trustees or shareholders.

SECTION 9. *Exemption from Disclosure Requirements* – As a general rule, the disclosure requirement prescribed in Section 7 of these Guidelines shall not apply to all Covered Institutions as enumerated under Section 3(a) of the AMLA, as amended, and SEC Memorandum Circular No. 16, Series of 2018 or any amendments thereof. *Provided,* that the exemption from the said disclosure requirement only applies to nominee/trustee arrangements related to products and services offered by Covered Institutions/Persons

that are already subject to Customer Identification Requirements and Record Keeping by Supervising Authorities under the AMLA and its applicable Rules and Regulations.

SEC Covered Persons having an overall rating of 1 in the Commission's Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Risk Rating System (ARRS) may nonetheless be directed to comply with the disclosure requirements in Section 7 of these Guidelines as part of its close monitoring measures pursuant to SEC Memorandum Circular No. 26, Series of 2020.

SECTION 10. *Compliance* – The submission to the Commission of the required information under Sections 6 and 7 of this Circular shall be done online in such form and manner as the Commission deems practicable.

SECTION 11. *Data Handling and Management of Information and Communication Technology (ICT)*– The Information and Communications Technology Department (ICTD) of the Commission shall electronically acknowledge receipt of the disclosures required to be submitted online under these Guidelines noting the date they were actually submitted and shall provide access to such disclosures to designated personnel of the Anti-Money Laundering Division of the Enforcement and Investor Protection Department (AMLD-EIPD). The ICTD shall likewise maintain an updated database of corporations with the information required to be submitted under Sections 6 and 7 of these Guidelines. The said information shall be kept confidential and will not be uploaded to the Commission's publicly accessible database. The information shall nonetheless be made readily available upon request to competent authorities for law enforcement and other lawful purposes as may be necessary in carrying out the functions of public authority.

SECTION 12. *Beneficial Ownership as Part of Corporate Records* - All Corporations registered with the Commission shall keep and preserve in its principal office adequate, timely, and accurate information relating to its beneficial owner or owners to be identified in the manner provided for in SEC Memorandum Circular No. 15, Series of 2019 or any amendments thereof. For the purposes of this Circular, the information on Beneficial Ownership is adequate when the Corporation has the complete names, specific residential addresses, dates of birth, nationalities, tax identification numbers, if any, and percentage of ownership, if applicable, of all its Beneficial Owners. It is timely if the beneficial ownership information or any change thereto is promptly reflected on record within three (3) days from the time the information becomes available or is reasonably expected to be available to the Corporation with the exercise of due diligence. Further, it is accurate if the information is correct in all its details.

This is without prejudice to the requirement to disclose beneficial ownership information in the GIS which shall remain in full force and effect.

SECTION 13. *Administrative Sanctions* – The penalties and sanctions under current laws and other issuances of the Commission are hereby adopted and incorporated into these Guidelines insofar as they are applicable.

If, after due notice and hearing, the Commission finds that:

a. There is a willful violation of these Guidelines or related orders of the Commission; or
b. Any person has, in applications, records, declarations, disclosures, or documents required under these Guidelines to be filed with the Commission, made any untrue statement of any material fact required to be stated or necessary to make the statements therein not misleading; or
c. Any person has refused to permit any lawful examination into its affairs,

the Commission may, in its discretion, and subject to existing laws and regulations, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstance:

I. Fine of no less than Five thousand pesos (P5,000.00) nor more than Two million pesos (P2,000,000.00) plus not more than One thousand pesos (P1,000.00) for each day of continuing violation but in no case to exceed Two million pesos (P2,000,000.00);
II. Suspension or revocation of the certificate of incorporation; and
III. Other penalties within the power of the Commission to impose.

In imposing the foregoing penalties, the Commission shall be guided by the principles of effectiveness, dissuasiveness, and proportionality.

SECTION 14. *Criminal Actions and Criminal Liability* – The imposition of administrative sanctions shall be without prejudice to the filing of criminal charges against persons responsible for the violation of Title XVI of the Revised Corporation Code of the Philippines as well as other applicable laws, rules, and regulations.

SECTION 15. *Monitoring of Compliance and Enforcement* - The Enforcement and Investor Protection Department shall enforce and monitor compliance with this Circular in coordination with the other Operating Departments of the Commission and impose the applicable sanctions for any violation thereof as may be warranted.

SECTION 16. *Repealing Clause* - All rules, regulations, orders, circulars, and issuances of the Commission that are inconsistent with this Memorandum Circular, unless otherwise herein indicated, are hereby amended and/or repealed accordingly.

SECTION 17. *Effectivity* - This Memorandum Circular shall take effect immediately after its publication in two (2) national newspapers of general circulation and its posting on the Commission's website.

Pasay City, Philippines, 27 January 2021.

FOR THE COMMISSION:

EMILIO B. AQUINO
Chairperson