Securities and Exchange Commission
PHILIPPINES

SEC MEMORANDUM CIRCULAR NO. 10
Series of 2019

TO	:	**PUBLICLY-LISTED COMPANIES**
SUBJECT	:	**RULES ON MATERIAL RELATED PARTY TRANSACTIONS FOR PUBLICLY-LISTED COMPANIES**

To promote good corporate governance and the protection of minority investors, the Commission, pursuant to its regulatory power under Section 179(d) of the Revised Corporation Code of the Philippines (Republic Act no. 11232) resolved to issue the Rules on Material Related Party Transactions for Publicly-Listed Companies attached to this Memorandum Circular.

Rules on Material Related Party Transactions

The Rules on Material Related Party Transactions recognizes that transactions between and among related parties may create financial, commercial and economic benefits to individual institutions and to the entire group where said institutions belong. In this regard, related party transactions (RPTs) are generally allowed provided, that when RPTs amount to ten percent (10%) or higher of a company's total assets, it shall be considered as material related party transactions subject to these Rules.

The Rules focuses and regulates **only material RPTs or RPTs amounting to ten percent (10%) or higher of a company's total assets.** Compliance to these Rules shall be mandatory for **ALL** publicly-listed companies (PLCs).

Disclosure/Reportorial Requirements

1. All existing publicly-listed companies shall be required to submit to the Commission a policy on material related party transactions in accordance with these Rules within six (6) months from the effectivity of the Material RPT Rules. Companies listed after the effectivity of these Rules shall be required to submit their Material RPT Policy in accordance with these Rules within six (6) months from listing date. The policy shall be signed by the company's Chairman of the Board and Compliance Officer.

2. The Material RPT Policy with accessible link shall be posted on the company's website within five days (5) from submission to the Commission.

3. The Advisement Report on Material RPTs (Annex A of the Rules) shall be filed within three (3) calendar days after the execution date of the transaction. The Advisement Report shall be signed by the reporting PLC's Corporate Secretary or authorized representative.

4. A summary of material related party transactions entered into during the reporting year shall be disclosed in the company's Integrated Annual Corporate Governance Report (I-ACGR) submitted annually every May 30.

Published:
Manila Bulletin, April 27, 2019
Manila Standard, April 27, 2019

Imposable Penalties

a. Non/late filing of or incomplete/incorrect signature in the Material Related Party Transaction Policy

BASIC PENALTY	Php10,000.00
MONTHLY PENALTY	Php1,000.00

The monthly penalty will continue to accrue until the Material RPT Policy is submitted to the SEC.

b. Non/Late Filing of or Incomplete/Incorrect Advisement Report

		Basic Penalty	Daily Penalty	Basic Penalty	Daily Penalty
Non/Late Filing of Advisement Report	Reprimand	Php30,000.00	Php200.00	Php40,000.00	Php400.00
Incomplete / Incorrect Advisement Report	Reprimand	Php10,000.00	Php200.00	Php20,000.00	Php400.00

Continued non-payment of the assessed fine and/or failure to comply with the requirement within a period of fifteen (15) days after notice and hearing, shall be a sufficient ground for the Commission to take other appropriate action or remedies available under Section 158 of the Revised Corporation Code of the Philippines.

Further, the commission of a fourth offense for the same violation is a ground for the suspension/revocation of the erring company's registration or secondary license, which shall be made after notice and hearing, in accordance with the abovementioned procedures.

This is without prejudice to administrative penalties that may be imposed by the Commission pursuant to the provisions of the Revised Corporation Code of the Philippines, Securities Regulation Code and other related laws.

c. Abusive Material Related Party Transactions

Pursuant to Sections 26 and 27 of the Revised Corporation Code, an interested director or officer of a corporation shall be disqualified from being a director, trustee or officer of any other corporation on the basis of a final judgment rendered by a court of competent jurisdiction against the interested director or officer for abusive material RPTs. The disqualification shall be for a period of at least one (1) year or more, as may be determined by the Commission.

The imposition of the foregoing penalties shall be without prejudice to any other administrative penalties that may be imposed by the Commission, and/or civil or criminal penalties, as may be provided by the Revised Corporation Code of the Philippines, Securities Regulation Code, and other related laws.

Effectivity

This Memorandum Circular shall take effect upon its publication in two (2) newspapers of general circulation.

Pasay City, Philippines, 25 April 2019.

For the Commission:

EMILIO B. AQUINO
Chairperson

RULES ON MATERIAL RELATED PARTY TRANSACTIONS FOR PUBLICLY-LISTED COMPANIES

Policy Statement

The Securities and Exchange Commission (SEC), in the fulfillment of its mandate to protect the corporate sector, the capital market participants, the securities and investment instruments market, and the investing public from insider trading, and other manipulative devices and practices which create distortions in the free market, hereby adopts the following Rules on Material Related Party Transactions (Material RPT Rules).

SEC recognizes that transactions between and among related parties may create financial, commercial and economic benefits to individual institutions and to the entire group where said institutions belong. In this regard, related party transactions (RPTs) are generally allowed provided, that when RPTs amount to ten percent (10%) or higher of a company's total assets, it shall be considered as material related party transactions subject to these Rules.

Transactions covering ten percent (10%) or more of a publicly-listed company's (PLCs) total assets involve, on average, an amount of **Three Billion, Four Hundred Ninety-Eight Million, One Hundred Twenty-One Thousand, Fifty-Nine and 28/100 Pesos (PhP3,498,121,059.28)** taking into account the total assets of all PLCs for the year 2017. Further, the 10% materiality threshold is significantly higher compared to the **0.09 percent (0.09%) average threshold** set by PLCs. Considering the magnitude and impact of these transactions to the financial position of the company and to the interest of its stakeholders, SEC considers 10% of the total assets of the PLC as the materiality threshold for related party transactions covered under the Material RPT Rules. Ten percent (10%) of the company's total assets is likewise acknowledged by World Bank as an acceptable threshold in determining materiality for related party transactions based on international best practices.

Compliance to the Material RPT Rules shall be mandatory for **ALL** PLCs pursuant to the SEC's authority under Section 179 (d) of Republic Act No. 11232 otherwise known as the Revised Corporation Code of the Philippines.

Section 1. Definition of Terms

For purposes of this Material RPT Rules, the following definitions shall apply:

Related parties - covers the reporting PLC's directors, officers, substantial shareholders and their spouses and relatives within the fourth civil degree of consanguinity or affinity, legitimate or common-law, if these persons have control, joint control or significant influence over the reporting PLC. It also covers the reporting PLC's parent, subsidiary, fellow subsidiary, associate, affiliate, joint venture or an entity that is controlled, jointly controlled or significantly influenced or managed by a person who is a related party.

Substantial Shareholder - any person who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of its equity security.

Affiliate - refers to an entity linked directly or indirectly to the reporting PLC through any one or a combination of any of the following:

- Ownership, control or power to vote, whether by permanent or temporary proxy or voting trust, or other similar contracts, by a company of at least ten percent (10%) or more of the outstanding voting stock of the PLC, or vice-versa;
- Interlocking directorship or officership, except in cases involving independent directors as defined under existing regulations;
- Common stockholders owning at least ten percent (10%) of the outstanding voting stock of the reporting PLC and the entity; or
- Management contract or any arrangement granting power to the reporting PLC to direct or cause the direction of management and policies of the entity, or vice-versa.

Associate - An entity over which the reporting PLC holds twenty percent (20%) or more of the voting power, directly or indirectly, or which the reporting PLC has significant influence.

Significant Influence - The power to participate in the financial and operating policy decisions of the company but has no control or joint control of those policies.

Control - A person or an entity controls a reporting PLC if and only if the person or entity has all of the following:

- Power over the reporting PLC;
- Exposure, or rights, to variable returns from its involvement with the reporting PLC; and
- The ability to use its power over the reporting PLC to affect the amount of the reporting PLC's returns.

Related party transactions - a transfer of resources, services or obligations between a reporting PLC and a related party, regardless of whether a price is charged. It should be interpreted broadly to include not only transactions that are entered into with related parties, but also outstanding transactions that are entered into with an unrelated party that subsequently becomes a related party.

Material Related Party Transactions – Any related party transaction/s, either individually, or in aggregate over a twelve (12)-month period with the same related party, amounting to ten percent (10%) or higher of a company's total assets based on its latest audited financial statement.

Materiality Threshold – Ten percent (10%) of the company's total assets based on its latest audited financial statement. If the reporting PLC is a parent company, the total assets shall pertain to its total consolidated assets.

Related Party Registry – A record of the organizational and structural composition, including any change thereon, of the company and its related parties.

Section 2. DUTIES AND RESPONSIBILITIES

A. Board of Directors

The board of directors shall have the overall responsibility in ensuring that transactions with related parties are handled in a sound and prudent manner, with integrity, and in compliance with applicable laws and regulations to protect the interest of the company's shareholders and other stakeholders. Towards this end, the board of directors shall carry out the following duties and responsibilities:

1. To institutionalize an overarching policy on the management of material RPTs to ensure effective compliance with existing laws, rules and regulations at all times and that material RPTs are conducted on an arm's length basis, and that no shareholder or stakeholder is unduly disadvantaged.

2. To approve all material RPTs that cross the materiality threshold and write-off of material exposures to related parties, as well as any renewal or material changes in the terms and conditions of material RPTs previously approved in accordance with Section 3 (f) of these Rules.

   Material changes in the terms and conditions of the material RPT include, but are not limited to, changes in the price, interest rate, maturity date, payment terms, commissions, fees, tenor and collateral requirement of the material RPT.

3. To establish an effective audit, risk and compliance system to:

   - Determine, identify and monitor related parties and material RPTs;
   - Continuously review and evaluate existing relationships between and among businesses and counterparties; and
   - Identify, measure, monitor and control risks arising from material RPTs.

The system shall be able to define the related parties' extent of relationship with the company; assess situations in which a non-related party (with whom a company has entered into a transaction) subsequently becomes a related party and vice versa; and generate information on the nature and amount of exposures of the company to a particular related party. The said system will facilitate submission of accurate reports to the regulators/supervisors. The system as well as the overarching policies shall be subject to periodic assessment by the internal audit and compliance officers and shall be updated regularly for their sound implementation. The overarching policy and the system shall be made available to the SEC and audit functions for review. Any change in the policy and procedure shall be approved by majority of the board of directors and approved by majority of the stockholders constituting a quorum.

4. To oversee the integrity, independence, and effectiveness of the policies and procedures for whistleblowing. The board should ensure that senior management addresses legitimate issues on material RPTs that are raised. The board should take responsibility for ensuring that stakeholders who raise concerns are protected from detrimental treatment or reprisals.

B. Senior Management

Senior management shall implement appropriate controls to effectively manage and monitor material RPTs on a per transaction and aggregate basis. Exposures to related parties shall also be monitored on an ongoing basis to ensure compliance with the company's policy and SEC's regulations.

Section 3: MATERIAL RELATED PARTY TRANSACTIONS POLICY

The board of directors shall adopt a group-wide material RPT policy encompassing all entities within the conglomerate, taking into account its size, structure, risk profile and complexity of operations.

At a minimum, material RPT policies shall include, but not be limited to the following:

a. **Identification of related parties.** The policy shall clearly identify persons and companies that are considered as the company's related parties. The policy shall require Management/Board of Directors to quarterly review and update the Related Party Registry to capture organizational and structural changes in the company and its related parties.

b. **Coverage of Material RPT policy.** The material RPT policy shall cover all transactions meeting the materiality threshold.

Transactions amounting to ten percent (10%) or more of the total assets that were entered into with an unrelated party that subsequently becomes a related party may be excluded from the limits and approval process required in the policy. However, any alteration to the terms and conditions, or increase in exposure level, related to these transactions after the non-related party becomes a related party shall subject the material RPT to the requirements of this Material RPT Rules. The prospective treatment should, however, be without prejudice to regulatory actions that may be enforced for transactions noted to have not been conducted on an arm's length basis.

c. **Adjusted Thresholds.** The company shall be allowed to set a threshold lower than the materiality threshold provided under these Rules upon determination by the board of directors of the risk of the RPT to cause damage to the company and its shareholders. The adjusted threshold, when applicable, shall be contained in the company's material RPT policy.

d. **Identification and prevention or management of potential or actual conflicts of interest which may arise out of or in connection with material RPTs.** The policy shall cover the identification and prevention or management of potential or actual conflicts of interest which may arise out of or in connection with the material RPTs. Directors and officers with personal interest in the transaction shall fully and timely disclose any and all material facts, including their respective interests in the material RPT and abstain from the discussion, approval and management of such transaction or matter affecting the company. In case they refuse to abstain, their attendance shall not be counted for purposes of

assessing the quorum and their votes shall not be counted for purposes of determining majority approval.

e. **Guidelines in ensuring arm's length terms.** The policy shall have clear guidelines in ensuring that no preferential treatment shall be given to related parties that are not extended to non-related parties under similar circumstances.

Before the execution of the material RPT, the Board of Directors should appoint an external independent party to evaluate the fairness of the terms of the material RPTs. An external independent party may include, but is not limited to, auditing/accounting firms and third party consultants and appraisers. The independent evaluation of the fairness of the transparent price ensures the protection of the rights of shareholders and other stakeholders.

The policy shall also include guidance for an effective price discovery mechanism to ensure that transactions are engaged into at terms that promote the best interest of the company and its shareholders. The price discovery mechanism may include, but is not limited to, acquiring the services of an external expert, opening the transaction to a bidding process, or publication of available property for sale.

f. **Approval of material RPTs.** All individual material RPTs shall be approved by at least two-thirds (2/3) vote of the board of directors, with at least a majority of the independent directors voting to approve the material RPT. In case that a majority of the independent directors' vote is not secured, the material RPT may be ratified by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock. For aggregate RPT transactions within a twelve (12)-month period that breaches the materiality threshold of ten percent (10%) of the company's total assets, the same board approval would be required for the transaction/s that meets and exceeds the materiality threshold covering the same related party.

Directors with personal interest in the transaction should abstain from participating in discussions and voting on the same. In case they refuse to abstain, their attendance shall not be counted for the purposes of assessing the quorum and their votes shall not be counted for purposes of determining approval.

g. **Self-assessment and periodic review of policy** - The internal audit shall conduct a periodic review of the effectiveness of the company's system and internal controls governing material RPTs to assess consistency with the board-approved policies and procedures. The resulting audit reports, including exceptions or breaches in limits, shall be communicated directly to the Audit Committee.

The company's Compliance Officer shall ensure that the company complies with relevant rules and regulations and is informed of regulatory developments in areas affecting related parties. He/she shall aid in the review of the company's transactions and identify any potential material RPT that would require review by the Board. He/she shall ensure that the company's material RPT policy is kept updated and is properly implemented throughout the company.

h. **Disclosure requirement of material RPTs.** The members of the board, substantial shareholders, and officers shall fully disclose to the Board of Directors all material facts related to material RPTs as well as their direct and indirect financial interest in any transaction or matter that may affect or is affecting the company. Such disclosure shall be made at the board meeting where the material RPT will be presented for approval and before the completion or execution of the material RPT.

i. **Whistle blowing mechanisms.** The policy shall include effective whistleblowing mechanisms consistent with the corporate values and codes of conduct set by the board of directors. The policy shall encourage all stakeholders to communicate, confidentially and without the risk of reprisal, legitimate concerns about illegal, unethical or questionable material RPTs. It shall include guidance on how legitimate material concerns should be reported, investigated and addressed by an objective independent internal or external body, senior management and/or the board itself.

j. **Remedies for abusive material RPTs.** The policy shall include measures that would cut losses and allow recovery of losses or opportunity costs incurred by the company arising out of or in connection with abusive material RPTs. The policy shall also include the penalties and the manner of imposing the same on personnel, officers or directors, who have been remiss in their duties in handling material RPTs in accordance with company policies.

Abusive material RPTs refer to material RPTs that are not entered at arm's length and unduly favor a related party.

Section 4. DISCLOSURE AND REGULATORY REPORTING

The reporting PLC shall submit the following to the SEC:

1. A summary of material related party transactions entered into during the reporting year which shall be disclosed in the company's Integrated Annual Corporate Governance Report (I-ACGR) to be submitted annually every May 30;

2. Advisement Report (attached as Annex "A") of any material RPT filed within three (3) calendar days from the execution date of the transaction. The Advisement Report shall be signed by the reporting PLC's Corporate Secretary or authorized representative.

At a minimum, the disclosures in both (1) and (2) above shall include the following information:

i. complete name of the related party;
ii. relationship of the parties;
iii. execution date of the material RPT;
iv. financial or non-financial interest of the related parties;
v. type and nature of transaction as well as a description of the assets involved;
vi. total assets (consolidated assets, if reporting PLC is a parent company);
vii. amount or contract price;
viii. percentage of the contract price to the total assets of the reporting PLC;
ix. carrying amount of collateral, if any;
x. terms and conditions;
xi. rationale for entering into the transaction; and
xii. the approval obtained (i.e., names of directors present, name of directors who approved the material RPT and the corresponding voting percentage obtained).

3. All existing publicly-listed companies shall be required to submit to the Commission a policy on material related party transactions in accordance with these Rules within six (6) months from the effectivity of the Material RPT Rules. Companies listed after the effectivity of these Rules shall be required to submit their Material RPT Policy in accordance with these Rules within six (6) months from listing date. The policy shall be signed by the company's Chairman of the Board and Compliance Officer.

   The Material RPT Policy with accessible link shall be posted on the company's website within five days (5) from its submission to the SEC.

Section 5. PENALTIES

The penalties below shall be imposed for the following violations:

a. Non/Late Filing of or Incomplete/Incorrect Signature in the Material Related Party Transaction Policy

BASIC PENALTY	Php10,000.00
MONTHLY PENALTY	Php1,000.00

The monthly penalty will continue to accrue until the Material RPT Policy is submitted to the SEC.

b. Non/Late Filing of or Incomplete/Incorrect Advisement Report

Violation	First Offense	Second Offense		Third Offense	
		Basic Penalty	Daily Penalty	Basic Penalty	Daily Penalty
Non/Late Filing of Advisement Report	Reprimand	Php30,000.00	Php200.00	Php40,000.00	Php400.00
Incomplete / Incorrect Advisement Report	Reprimand	Php10,000.00	Php200.00	Php20,000.00	Php400.00

Continued non-payment of the assessed fine and/or failure to comply with the requirement within a period of fifteen (15) days after notice and hearing, shall be a sufficient ground for the Commission to take other appropriate action or remedies available under Section 158 of the Revised Corporation Code of the Philippines.

Further, the commission of a fourth offense for the same violation is a ground for the suspension/revocation of the erring company's registration or secondary license, which shall be made after notice and hearing, in accordance with the abovementioned procedures.

This is without prejudice to administrative penalties that may be imposed by the Commission pursuant to the provisions of the Revised Corporation Code of the Philippines, Securities Regulation Code and other related laws.

c. Abusive Material Related Party Transactions

Pursuant to Sections 26 and 27 of the Revised Corporation Code, an interested director or officer of a corporation shall be disqualified from being a director, trustee or officer of any other corporation on the basis of a final judgment rendered by a court of competent jurisdiction against the interested director or officer for abusive material RPTs. The disqualification shall be for a period of at least one (1) year or more, as may be determined by the Commission.

The imposition of the foregoing penalties shall be without prejudice to any other administrative penalties that may be imposed by the Commission, and/or civil or criminal penalties, as may be provided by the Revised Corporation Code of the Philippines, Securities Regulation Code, and other related laws.