Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

SECURITIES AND EXCHANGE COMMISSION
OFFICE OF THE GENERAL COUNSEL
MAY 22 2013
9:59am

SEC MEMORANDUM CIRCULAR NO. 8
Series of 2013

TO : ALL CORPORATIONS ENGAGED IN NATIONALIZED OR PARTLY NATIONALIZED ACTIVITIES

SUBJECT : GUIDELINES ON COMPLIANCE WITH THE FILIPINO-FOREIGN OWNERSHIP REQUIREMENTS PRESCRIBED IN THE CONSTITUTION AND/OR EXISTING LAWS BY CORPORATIONS ENGAGED IN NATIONALIZED AND PARTLY NATIONALIZED ACTIVITIES

WHEREAS, the Constitution, the Foreign Investments Act of 1991, ("FIA") as amended, and other existing laws mandate that a certain percentage of ownership in corporations engaged in identified areas of activities and enterprises be reserved to Philippine Nationals;

WHEREAS, Section 15 of the Corporation Code of the Philippines provides that a corporation which will engage in business or activity reserved for Filipino citizens shall include in its Articles of Incorporation a provision stating that no transfer of stock or interest which shall reduce the ownership of Filipino citizens to less than the required percentage of the capital stock as provided by existing laws, shall be allowed;

WHEREAS, Section 17 of the Corporation Code provides that the Securities & Exchange Commission may reject or disapprove articles of incorporation or amendments thereto if the percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution;

WHEREAS, Section 14 of the FIA empowers the Commission to impose administrative sanctions provided therein for violation of the FIA and its implementing rules and regulations ("IRR");

WHEREAS, the Supreme Court in *Heirs of Gamboa v. Teves et al,*[1] ruled that the term 'capital' in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors;

WHEREAS, Section 1 (b) of the IRR of FIA clearly requires the existence of full beneficial ownership of the stocks and appropriate voting rights in determining whether stocks are owned and held by Philippine nationals;

WHEREAS, it is essential to ensure that full beneficial ownership and effective control of the appropriate voting rights lie with Philippine nationals;

WHEREAS, Section 143 of the Corporation Code and Sections 5 and 72 of the Securities Regulation Code ("SRC") empower the Commission to promulgate guidelines, rules and regulations that will enable it to implement the provisions and purpose of the laws it implements;

NOW, THEREFORE, the Commission hereby issues and promulgates the following guidelines on compliance with the ownership requirements in the Constitution and/or existing laws by corporations engaged in nationalized or partly nationalized activities:

Section 1. This Circular shall apply to all corporations ("covered corporations") engaged in identified areas of activities or enterprises specifically reserved, wholly or partly, to Philippine Nationals by the Constitution, the FIA and other existing laws, amendments thereto and IRRs of said laws, except as may otherwise be provided therein.

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Business Mirror, May 22, 2013

[1] G.R. No. 176579, October 9, 2012.

Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.

Corporations covered by special laws[2] which provide specific citizenship requirements shall comply with the provisions of said law.

Section 3. All Corporate Secretaries of covered corporations are directed to monitor and observe compliance with the provisions on ownership requirements provided in the Constitution, the FIA, its IRR, other applicable laws, rules and regulations and with the provisions of this Circular.

The Corporate Secretary cannot delegate the responsibility of complying with the provisions of this Circular without the express authority from the Board of Directors or Trustees, as the case may be.

Section 4. This Circular shall take effect immediately after its publication in two (2) national newspapers of general circulation, provided: that all existing covered corporations which are non-compliant with Section 2 hereof shall be given a period of one (1) year from the effectivity of this Circular within which to comply with said ownership requirement. The Commission may extend the period of compliance but only in meritorious and exceptional cases, and upon proper petition.

Failure to comply with this Circular shall subject the juridical entity, any person, and the corporate officers responsible, to sanctions provided in Section 14 of the Foreign Investments Act of 1991, as amended.

Signed this 20th day of May 2013, Mandaluyong City, Philippines.

By Authority of the Commission En Banc:

TERESITA J. HERBOSA
Chairperson

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[2] For example, R.A. 9474, also known as the Lending Company Regulation Act of 2007, R.A. 8556, also known as Financing Company Act of 1998 and P.D. 129, also known as the The Investment Houses Law.