Securities and Exchange Commission
PHILIPPINES

SEC Memorandum Circular No. 10
Series of 2022

TO : **ALL CONCERNED CORPORATIONS AND REPORTING PERSONS**

SUBJECT : **AMENDMENTS TO SEC MEMORANDUM CIRCULAR NO. 15, S. 2019 (THE 2019 REVISION OF THE GIS) INCREASING THE PENALTIES AND IMPOSING ADDITIONAL NON-FINANCIAL PENALTIES AND PROVIDING FURTHER GUIDELINES FOR SUBMISSION**

WHEREAS, Section 73 of Republic Act 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, it is well-settled in Philippine jurisprudence that corporations are to 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 authorities 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;

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WHEREAS, the concealment or non-disclosure of the beneficial owner/s of the corporation would be in contravention of the policy embodied in pertinent provisions of the RCCP;

WHEREAS, it has been observed that despite the promulgation of the 2019 Revision on the GIS to include Beneficial Ownership Information, a significant number of corporations have yet to declare their beneficial owners with the Commission;

WHEREAS, there is a need to increase the penalties imposed and include additional non-financial sanctions in MC No. 15, S. 2019 to make them proportional, effective, and dissuasive for non-compliance, in line with the recommendations of the Financial Action Task Force and other international standard setting bodies;

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 amendments to SEC Memorandum Circular No. 15, Series of 2019 (MC No. 15, S. 2019) are hereby promulgated:

SECTION 1. Section 3 of MC No. 15, S. 2019 is hereby amended to be read as follows:

> Section 3. **Disclosure of Beneficial Ownership Information** - To ensure timely access to adequate, accurate, and current information on the beneficial ownership and control of SEC registered corporations by competent authorities, all SEC registered corporations are required to take reasonable measures to obtain and hold up-to-date information on their beneficial owners as defined herein and to disclose the same in a timely manner in the GIS. Accordingly, the GIS is hereby revised to include such information.
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> The following information on the beneficial owner shall be provided, to wit:
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> a. Complete name which shall include the surname, given name, middle name and name extension (i.e., Jr., Sr., III, etc.);
> b. Specific residential address
> c. Date of Birth
> d. Nationality
> e. Tax identification number (TIN) or passport number for foreign individuals who do not have a TIN; and
> f. Percentage of ownership, if applicable.
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> Such information, however, shall not be uploaded to the Commission's publicly accessible electronic database. Said information shall, nonetheless, be made accessible or available in a timely manner to competent authorities for law enforcement and other lawful purposes.

SECTION 2. Section 7 of MC No. 15, S. 2019 is hereby amended to be read as follows:

> **SECTION 7. Updating of Beneficial Ownership Information –** The SEC shall be timely apprised of relevant changes in the submitted beneficial ownership information as they arise. An updated GIS shall be submitted to the SEC within thirty (30) calendar days after such change occurred or became effective.

SECTION 3. Section 11 of MC No. 15, S. 2019 is hereby amended to be read as follows:

> **SECTION 11. Penalties.**
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> **I. Failure to Disclose.** If after due notice and hearing, the Commission finds that the reporting corporation has committed a violation of this Circular by failing to disclose, without any lawful cause, its beneficial ownership in accordance to the provisions thereof, the reporting corporation shall be penalized based on retained earnings (*whether appropriated or unappropriated*) or fund balance, as follows:
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> For Stock Corporations with *retained earnings* of less than Php500,000.00:
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> a. For the first violation.....Php50,000.00
> b. For the second violation.....Php100,000.00
> c. For the third violation.....Php250,000.00
> d. For the fourth and subsequent violations.....Php500,000.00
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> For Non-Stock Corporations with *fund balance* of less than Php500,000.00:
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> a. For the first violation.....Php25,000.00
> b. For the second violation.....Php50,000.00
> c. For the third violation.....Php100,000.00
> d. For the fourth and subsequent violations.....Php250,000.00
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> For Stock Corporations with retained earnings or Non-Stock Corporations with fund balance of Php500,000.00 or more but less than Php5,000,000.00, the penalties shall be twice the amount of the penalties imposed for those with retained earnings or fund balance of less than Php500,000.00.
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> For Stock Corporations with retained earnings or Non-Stock Corporations with fund balance of Php5,000,000.00 or more but less than Php10,000,000.00, the penalties shall be thrice the amount imposed for those with retained earnings or fund balance of less than Php500,000.00.
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> For Stock Corporations with retained earnings or Non-Stock Corporations with fund balance of Php10,000,000.00 or more, the penalties shall be four times the penalties imposed for those with retained earnings or fund balance of less than Php500,000.00.

The reporting corporation shall also be imposed an additional fine of Php 1,000.00 for each day of delay in the submission of beneficial ownership information as a continuing violation, but the additional fine for the continuing violation shall in no case exceed Php 2,000,000.00.

I-A. False Declaration. The Commission, upon its finding *motu proprio* or upon referral by a competent authority that a corporation submitted false beneficial ownership information, shall send a Notice and Order to the reporting corporation stating that:

1. The fact of false disclosure of beneficial ownership information; and
2. Giving the corporation fifteen (15) calendar days to comply and submit complete and accurate beneficial ownership information and a written explanation for the false disclosure.

If after fifteen (15) days from receipt by the Corporation of the Notice and Order from the Commission has lapsed without compliance with the abovementioned, or after a finding by the Commission through its Resolution that the corporation indeed submitted false Beneficial Ownership Information, the reporting corporation shall be penalized with a fine of up to Two Million Pesos (Php 2,000,000.00), and shall subsequently be dissolved.

II. Liability of Directors/Trustees and Officers of the Corporation. If the Commission, after due notice and hearing, finds that the directors/trustees and/or officers of the reporting corporation, without any lawful cause, failed to exercise the due diligence required in ensuring compliance with the requirement to disclose beneficial ownership information in accordance with Section 8 hereof resulting in no beneficial owner(s) as defined herein being timely disclosed in the GIS or in the non-submission of the GIS containing such information within the prescribed period, the following penalties shall be imposed upon such directors, trustees and/or officers:

a. For the first violation.....Php10,000.00
b. For the second violation.....Php20,000.00
c. For the third violation.....Php50,000.00
d. For the fourth and subsequent violation.....Php100,000.00

Provided, that if the violation pertains to False Declaration under Section 11 (I-A) of this Circular, the directors, trustees, and officers, found responsible in the commission thereof or in the non-compliance of the related Notice and Order issued therefor shall, after due notice and hearing, each be penalized with a fine of up to Two Hundred Thousand Pesos (Php 200,000.00) and shall be disqualified to be directors, trustees, and officers of any corporation for a period of five (5) years.

The absence of written procedures and policies for obtaining, updating and recording beneficial ownership information and for the timely

disclosure thereof to the Commission, as provided in Section 8 hereof, or the lack of Board or Senior Management Oversight to ensure compliance with such policies and procedures, shall be prima facie proof of failure to exercise the due diligence required. Every submission of the GIS without the required beneficial ownership information or every instance of non-submission or late submission of the GIS, arising from the failure to exercise the due diligence required, shall be considered as a prima facie violation of the duty to exercise the due diligence required by said directors/trustees and/or officers.

III. Other imposable penalties. If, after due notice and hearing, the Commission finds that there is a willful violation of this Circular or related orders of the Commission, or that 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 the penalty of suspension or revocation of the certificate of incorporation of the reporting corporation along with other penalties that is 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.

The foregoing penalties are without prejudice to the imposition of other applicable penalties as provided under the Revised Corporation Code of the Philippines, the Securities Regulation Code, and other rules and regulations of the Commission.

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

SECTION 4. *Application to Foreign Corporations.* Pursuant to SEC MC No. 30, S. 2020, the pertinent provisions of MC No. 15, S. 2019 and the amendments thereto shall remain applicable to Foreign Corporations. The penalties as provided in the preceding section shall be applicable to foreign corporations.

SECTION 5. *Submission of the GIS in the Electronic Filing and Submission Tool (eFAST).* All Corporations are required to file their annual reportorial requirement through the Commission's Electronic Filing and Submission Tool (eFAST).

Submission of reports Over-the-Counter (OTC) and/or through mail/courier via SENS shall no longer be accepted.

SECTION 6. *Amendment/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 7. *Separability Clause.* If any portion or provision of this Circular is declared unconstitutional or invalid, the other portions or provisions hereof, which are not affected thereby shall continue in full force and effect.

SECTION 8. *Effectivity.* This Memorandum Circular shall take effect on January 01, 2023 subject to its publication in two (2) national newspapers of general circulation and posting on the Commission's website.

Makati City, Philippines, 06 December 2022.

FOR THE COMMISSION:

EMILIO B. AQUINO
Chairperson