SEC MEMORANDUM CIRCULAR NO. 19
Series of 2023

TO	:	**ALL CONCERNED**
SUBJECT	:	**GUIDELINES ON DECLARATION OF DELINQUENT STATUS AND REVOCATION OF CERTIFICATE OF REGISTRATION OF CORPORATIONS UNDER SECTIONS 21 AND 177 OF THE REVISED CORPORATION CODE**
DATE	:	26 October 2023

WHEREAS, Section 21 of Republic Act No. 11232, otherwise known as the "Revised Corporation Code of the Philippines (RCC)," provides for the effects of non-use of corporate charter and continuous inoperation of corporations, specifically: (a) *in case of non-use of corporate charter, a* corporation's certificate of incorporation shall be deemed revoked as of the day following the end of the five (5)-year period; and (b) *in case of continuous inoperation for five (5) years,* the Commission may, after due notice and hearing, place the corporation under delinquent status.

WHEREAS, Section 177 of the RCC provides that except as otherwise provided in the RCC or in the rules issued by the Commission, every corporation, domestic or foreign, doing business in the Philippines shall submit to the Commission annually and within such period as may be prescribed by the Commission: (a) Annual financial statements audited by an independent certified public accountant: *Provided,* That if the total assets or total liabilities of the corporation are less than Six hundred thousand pesos (₱600,000.00), the financial statements shall be certified under oath by the corporation's treasurer or chief financial officer; (b) A general information sheet; and (c) for corporations vested with public interest: (1) A director or trustee compensation report; and (2) A director or trustee appraisal or performance report and the standards or criteria used to assess each director or trustee.

WHEREAS, Section 177 also provides that the Commission may place the corporation under delinquent status in case of failure to submit the reportorial requirements three (3) times, consecutively or intermittently, within a period of five (5) years.

WHEREAS, Section 179(o) of the RCC grants the Commission the power and authority to formulate and enforce standards, guidelines, policies, rules, and regulations, to carry out the provisions of the RCC.

WHEREAS, Section 158 of the RCC empowers the Commission to impose sanctions on corporations after due notice and hearing in the event that any provision of the RCC, rules or regulations, or any of the Commission's orders have been violated.

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NOW, THEREFORE, the Commission hereby promulgates the following guidelines that shall standardize and govern the declaration of delinquent status and revocation of certificate of registration of corporations pursuant to the grounds stated in Sections 21 and 177 of the RCC.

I. SCOPE AND DEFINITION OF TERMS

SECTION 1. *Scope.* This Circular shall apply to the following:

a. *Non-use of Corporate Charter.* Corporations which have failed to formally organize and commence their business within five (5) years from the date of their incorporation.
b. *Continuous Inoperation for five (5) years.* Corporations which have commenced their business but subsequently became inoperative for a period of at least five (5) consecutive years.
c. *Non-filing of Reportorial Requirements.* Corporations which have failed to file any of the following requirements three (3) times, consecutively or intermittently, within a period of five (5) years:

    i. Financial Statements (FS); or
    ii. General Information Sheet (GIS).

    Aside from the foregoing, for corporations vested with public interest:

    i. A director or trustee compensation report; or
    ii. A director or trustee appraisal or performance report and the standards or criteria used to assess each director or trustee.

SECTION 2. *Definition.* The following terms are used in this Circular:

a. *Formally Organized* – A corporation shall be considered as formally organized if it has accomplished the following:

    i. Adoption of the by-laws and the filing and approval of the same with and by the Commission in the event the same is not adopted and filed simultaneously with the articles of incorporation;
    ii. Election of the Board of Directors/Trustees and of the Officers;
    iii. Establishment of the principal office; and
    iv. Taking of such other steps as are necessary to endow the legal entity with capacity to transact the legitimate business or purpose/s for which it was created.

b. *Commenced the transaction of business* — A corporation shall be considered to have commenced the transaction of its business when it has performed preparatory acts geared toward the fulfillment of the purpose/s for which it was organized such as, but not limited to, the following:

    i. Entering into contracts or negotiations for the lease or sale of property/ies to be used as office, business, or factory site;
    ii. Entering into contracts or negotiations for the sale or purchase of goods, services, properties, or equipment connected with the trade, business, or purpose/s of the corporation;
    iii. Entering into contracts or preparations in pursuit of the purpose/s for which the corporation was organized;
    iv. Entering into contracts or preparations in pursuit of the corporation's projects and/or activities;
    v. Making plans for the construction of the office, business, or factory site; or

vi. Taking steps to process or expedite any of the foregoing enumeration.

c. *Continuous inoperation* – A corporation which has commenced its business, as defined herein, shall be considered to have been in continuous inoperation for at least five (5) consecutive years when it has ceased to perform acts or works or exercise its functions, rights, and/or objectives necessary or incidental to and in progressive pursuit of the purpose/s for which it was organized.

II. NON-USE OF CORPORATE CHARTER

SECTION 3. *Revocation of Certificate of Incorporation for Non-Use of Corporate Charter.* If a corporation does not formally organize and commence its business within five (5) years from the date of its incorporation, its certificate of incorporation shall be ***deemed revoked*** as of the day following the end of the five (5)-year period, subject to monitoring of the Commission. The Commission (through its Company Registration and Monitoring Department [CRMD] or SEC Extension Offices) shall, on the day following end of the five (5)- year period, enter a "Revoked Status" in said corporation's records in the Commission's database and issue the corresponding order of revocation by registered mail to its President, Corporate Secretary, Treasurer, Compliance Officer, In-house counsel, director or trustee, incorporator, or such other officer identified in the latest available records filed with the Commission. In case of a foreign corporation doing business in the Philippines, the order of revocation may be issued by registered mail to its resident agent designated in accordance with existing laws for that purpose, or, if there is no such agent, the Commission shall transmit a copy of the same to the home office of said foreign entity by registered mail, by facsimile, by any other electronic means in accordance with existing laws, or by such other means as the Commission may, in its discretion, direct.

In cases where the Commission may deem practicable, such as, but not limited to, when there is a great number of involved corporations that are non-compliant or with unknown addresses of its principal office or those of its officers and/or directors or trustees, the order of revocation shall be published in a newspaper of general circulation and in the manner and in such places, including the Commission's website, as the existing rules prescribe.

III. CONTINUOUS INOPERATION

SECTION 4. *Show Cause Order; Delinquent Status.* A show cause order shall be sent by registered mail to the President, Corporate Secretary, Treasurer, Compliance Officer, In-house counsel, director or trustee, incorporator, resident agent, or such other officer identified in the latest available records filed with the Commissions of the respondent corporations in Section 1(b) hereof at their last known address directing them:

a. To appear before the Commission at a hearing on the date, time, and at the place stated in the order. If respondent corporation fails to appear at the hearing and within thirty (30) days thereof, fails to submit any justification why its status should not be delinquent, the Commission (through its CRMD or SEC Extension Offices) shall, after the lapse of the above-mentioned period, enter a "Delinquent Status" in said corporation's records in the Commission's database and issue the corresponding order in the manner specified in Section 3 hereof; or

b. To show cause within thirty (30) days from receipt of the show cause order why its status should not be delinquent. If respondent corporation fails to submit any valid justification, the Commission (through its CRMD or SEC Extension Offices) shall, after the lapse of the above-mentioned period, enter a "Delinquent Status" in said corporation's records in the Commission's database and issue the corresponding order in the manner specified in Section 3 hereof.

SECTION 5. ***Effect of Delinquent Status.*** A corporation with "Delinquent Status" already entered in the Commission's records shall cause the following:

a. It shall not be issued a Certificate of No Derogatory Information by the Commission;
b. Any application for Amendment of Articles of Incorporation and/or By-Laws filed by such corporation shall not be accepted or approved by the Commission;
c. Any application for Amendment of License filed by a Foreign or Multinational Corporation shall not be accepted or approved by the Commission;
d. Any application for Conversion of One Person Corporation (OPC) to Ordinary Stock Corporation (OSC) filed by such corporation shall not be accepted or approved by the Commission;
e. Any application for Conversion of OSC to OPC filed by such corporation shall not be accepted or approved by the Commission;
f. Any Petition for Correction of Entries of Company Registration Documents filed by such corporation shall not be accepted or approved by the Commission;
g. Any Petition for Cancellation or Substitution of Payment in relation to the Use of Properties that Require Ownership Registration as Paid Up Capital shall not be accepted or approved by the Commission;
h. Any application for Confirmation of Valuation of Shares under Section 61 of the RCC shall not be accepted or approved by the Commission;
i. The corresponding fines and surcharges shall be imposed, as applicable; and
j. Other analogous instances as the Commission may determine.

SECTION 6. ***Two (2) years to Resume Operations.*** Subject to the provisions of Sections 11 and 13 hereof, a corporation with a "Delinquent Status" already entered in the Commission's records shall have a period of two (2) years from receipt of the Order of Delinquency to resume operations and submit any two (2) of, but not limited to, the following documents as proof of its operations:

a. Income Tax Returns;
b. Mayor's or Business Permits;
c. Contracts;
d. Receipts showing payment of Real Estate Tax;
e. Certifications/Recognitions/Annual Conventions; or
f. Any similar or related documents.

SECTION 7. ***Failure to Resume Operations: Revocation of Certificate of Incorporation.*** If a corporation fails to comply with the requirements specified in Section 6 hereof, the Commission (through its CRMD or SEC Extension Offices) shall enter a "Revoked Status" in said corporation's records in the Commission's database and issue an order of revocation in the manner specified in Section 3 hereof.

IV. NON-FILING OF REPORTORIAL REQUIREMENTS

SECTION 8. ***Non-Filing of Reportorial Requirements; Delinquent Status.*** If a corporation fails to file its FS and/or GIS for three (3) times, consecutively or intermittently, within a period of five (5) years, the Commission (through its CRMD or SEC Extension Offices) shall enter a "Delinquent Status" in said corporation's records in the Commission's database and issue the corresponding order in the manner specified in Section 3 hereof.

A corporation with a "Delinquent Status" already entered in the Commission's records shall have the same effect as those enumerated in Section 5 hereof.

SECTION 9. ***Submission of Reportorial Requirements.*** Subject to the provision of Sections 11 and 13 hereof, a corporation with a "Delinquent Status" already entered in the Commission's

records shall have a period of six (6) months from receipt of the Order of Delinquency to submit, as applicable, its: (a) Audited FS; (b) GIS; (c) director or trustee compensation report; and (d) director or trustee appraisal or performance report and the standards or criteria used to assess each director or trustee.

SECTION 10 ***Failure to Submit Reportorial Requirements: Revocation of Certificate of Incorporation.*** If a corporation fails to comply with the requirements within the period specified in Section 9 hereof, the Commission (through its CRMD or SEC Extension Offices) shall enter a "Revoked Status" in said corporation's records in the Commission's database and issue an order of revocation in the manner specified in Section 3 hereof.

V. PETITION TO LIFT THE ORDER OF DELIQUENCY OR REVOCATION

SECTION 11. ***Period to File the Petition to Lift the Order of Delinquency.*** A corporation with a delinquent status by reason of its continuous inoperation for five (5) years may, within two (2) years from receipt of the Order of Delinquency, file a Petition to Lift the Order of Delinquency.

A corporation with delinquent status by reason of its non-filing of reportorial requirements may, within six (6) months from receipt of the Order of Delinquency, file a Petition to Lift the Order of Delinquency.

SECTION 12. ***Period to File the Petition to Lift the Order of Revocation.*** A corporation with a revoked status may, at any time, file a Petition to Lift the Order of Revocation, subject to existing rules and regulations.

SECTION 13. ***Documentary Requirements: Petition to Lift the Order of Delinquency or Revocation.*** The following requirements must be submitted to the Commission (through its CRMD or SEC Extension Offices):

a. A verified Petition to Lift the Order of Delinquency or Revocation which shall include the following certification:

> "The company, through its authorized representative, hereby certifies that the latest financial statements that are submitted with this Petition are accurate and compliant with applicable financial reporting framework and are supported by sufficient and valid source documents and schedules. This sworn certification extends to all beginning balances of the accounts from previous years during which the company failed to submit audited financial statements. In relation to this, attached to the Petition is a sworn certification from the company's external auditor."

b. Director's or Trustee's Certificate;
c. Latest due Audited FS;
d. Latest due GIS;
e. Copies of the Certificate of Incorporation and latest Certificate of Filing of Amended Articles of Incorporation and/or By-Laws (if any), together with the latest Articles of Incorporation and/or By-Laws;
f. Copy of registration of stock and transfer book or membership book;
g. Sworn certification by the external auditor;[1]
h. *For corporations covered under Section 1 (b) hereof,* proofs of operation within two (2) years from the issuance of the Order of Delinquency, up to the time of the filing of the petition, the documents enumerated in Section 6 hereof, as applicable; and

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[1] "I, _____, the external auditor of _____ hereby certify that the beginning balances of the company's financial statements as of _____ are based on valid and sufficient source documents and schedules of the company, and I have conducted adequate audit procedures to attest to the correctness and accuracy of the said balances."

i. *For corporations vested with public interest under Section 1 (c) hereof,* a director or trustee compensation report or a director or trustee appraisal or performance report and the standards or criteria used to assess each director or trustee.

The corporation shall simultaneously undergo monitoring and will be required to pay the corresponding fines and filing fees before its petition will be received.

If the petition is meritorious, the Commission shall issue an order lifting the delinquent or revoked status of the corporation in the manner specified in Section 3 hereof.

With regard to covered corporations with pending intra-corporate dispute between two (2) or more groups claiming ownership or right over the same, their petition shall only be accepted upon the finality of a court decision, resolving the said intra-corporate controversy as to which group has a valid right and claim over the corporation.

SECTION 14. ***Reasonable notice to appropriate regulatory agency.*** The Commission shall give reasonable notice to, and coordinate with the appropriate regulatory agency prior to the declaration of delinquent status or revocation, as applicable, of companies under their special regulatory jurisdiction.

SECTION 15. ***Application of the 2016 Rules of Procedure of the SEC.*** The pertinent provisions of the 2016 Rules of Procedure of the SEC may, in the interest of expeditious dispensation of justice and whenever practicable, be applied in a suppletory character and effect.

SECTION 16. ***Repealing Clause.*** All resolutions, notices, and other previous issuances of the Commission that are contrary to this Circular are hereby repealed.

SECTION 17. ***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 18. ***Effectivity.*** This Circular shall take effect immediately after its publication in the Official Gazette or in a newspaper of general circulation in the Philippines.
Done this 26 October 2023, Makati City, Philippines.

For the Commission:

Jayvey Paul D. Francisco
Commissioner