

## SEC MC No. 10-2022 Bulletin

**T**he Securities and Exchange Commission issued Memorandum Circular No. 10, series of 2022, entitled “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” (SEC MC No.10-2022 or the “Circular”). The Circular took effect on January 1, 2023. It increased the penalties imposed under the 2019 Circular and imposed additional non-financial penalties.

### DISCLOSURE OF BENEFICIAL OWNERSHIP INFORMATION

All corporations registered with the SEC are required to take reasonable measures to obtain and hold up-to-date information on their beneficial owners and to disclose the same in a timely manner in the GIS. Failure to comply with this disclosure requirement is subject to penalties as prescribed by the SEC, which will be discussed further below.

### 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.

The 2019 Circular has been amended to prescribe a uniform period for the updating of beneficial ownership information. The “30 calendar days” now applies even to corporations that do not have multiple layers of corporate stockholders.

### INCREASED PENALTIES

#### Failure to Disclose

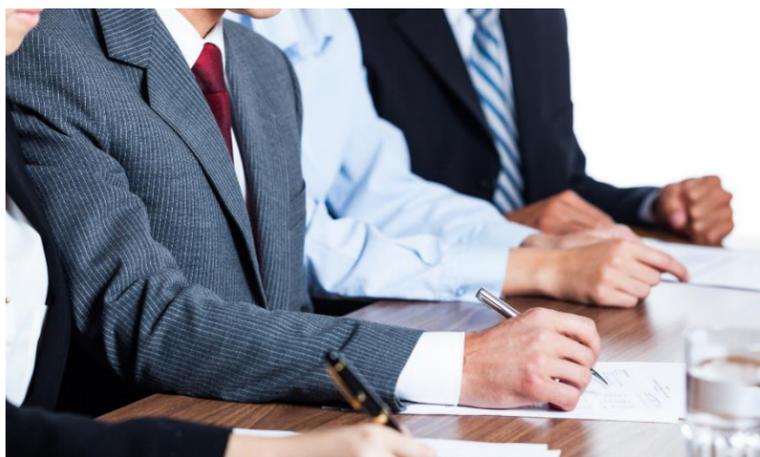
The penalties for failure to disclose, without any lawful cause, beneficial ownership information shall be based on the retained earnings (whether appropriated or unappropriated) or fund balance of the reporting corporation. The penalties have been increased to the following:



#### For Stock Corporations

Retained earnings	Penalties	
Less than PHP500,000.00	First Violation	PHP50,000.00
	Second Violation	PHP100,000.00
	Third Violation	PHP250,000.00
	Fourth and Subsequent Violations	PHP500,000.00
PHP500,000.00 or more but less than PHP5,000,000.00	First Violation	PHP100,000.00
	Second Violation	PHP200,000.00
	Third Violation	PHP500,000.00
	Fourth and Subsequent Violations	PHP1,000,000.00
PHP5,000,000.00 or more but less than PHP10,000,000.00	First Violation	PHP150,000.00
	Second Violation	PHP300,000.00
	Third Violation	PHP750,000.00
	Fourth and Subsequent Violations	PHP1,500,000.00
PHP10,000,000.00 or more	First Violation	PHP200,000.00
	Second Violation	PHP400,000.00
	Third Violation	PHP1,000,000.00

	Fourth and Subsequent Violations	PHP2,000,000.00
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#### For Non-Stock Corporations

Retained earnings	Penalties	
Less than PHP500,000.00	First Violation	PHP25,000.00
	Second Violation	PHP50,000.00
	Third Violation	PHP100,000.00
	Fourth and Subsequent Violations	PHP250,000.00
PHP500,000.00 or more but less than PHP5,000,000.00	First Violation	PHP50,000.00
	Second Violation	PHP100,000.00
	Third Violation	PHP200,000.00
	Fourth and Subsequent Violations	PHP500,000.00
PHP5,000,000.00 or more but less than PHP10,000,000.00	First Violation	PHP75,000.00
	Second Violation	PHP150,000.00
	Third Violation	PHP300,000.00
	Fourth and Subsequent Violations	PHP750,000.00
PHP10,000,000.00 or more	First Violation	PHP100,000.00
	Second Violation	PHP200,000.00
	Third Violation	PHP400,000.00
	Fourth and Subsequent Violations	PHP1,000,000.00

Each day of delay in the submission of beneficial ownership information shall be considered a continuing violation. An additional fine of PHP1,000.00 for each day of delay shall be imposed, but in no case shall the additional fine for the continuing violation exceed PHP2,000,000.00.

#### False Declaration

If the SEC finds *motu proprio* or upon referral by a competent authority that a corporation submitted false beneficial ownership information, the SEC shall send a Notice and Order to the corporation, stating:

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 the corporation fails to comply with the Notice and Order after the fifteen (15)-day period has lapsed, or after a finding by the SEC through its Resolution that the corporation indeed submitted false beneficial ownership information, the corporation shall be penalized with a fine of up to PHP2,000,000.00 and shall be subsequently dissolved.

The directors, trustees, and officers found responsible for the submission of the False Declaration or for the non-compliance with the Notice and Order shall each be penalized with a fine of up to PHP200,000.00 and shall be disqualified from being directors, trustees, and officers of any corporation for a period of five (5) years.

#### Liability of Directors/Trustees and Officers of the Corporation

The directors/trustees and officers of the reporting corporation shall exercise the due diligence required in ensuring that the requirement to disclose its beneficial owner in the GIS is complied with. This due diligence requirement is deemed complied with if reasonable measures are undertaken to obtain and hold updated information on the beneficial owners of the corporation and to ensure that such information is timely disclosed in the GIS. Such reasonable measures include the adoption of written procedures for obtaining, updating, and recording beneficial ownership information and timely disclosing the same in the GIS submitted to the SEC by the Corporate Secretary. Board and Senior Management Oversight in ensuring that such procedures are observed shall likewise be required as part of the due diligence measures.

If the SEC finds that the directors/trustees and/or officers of the reporting corporation, without lawful cause, failed to exercise the due diligence required in ensuring compliance with the requirement to disclose beneficial ownership information, resulting in no beneficial owner 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. First violation – PHP10,000.00
- b. Second violation – PHP20,000.00
- c. Third violation – PHP50,000.00
- d. Fourth and subsequent violations – PHP100,000.00

The absence of written procedures and policies for obtaining, updating, and recording beneficial ownership information and for the timely disclosure thereof to SEC 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.

#### **Other Imposable Penalties**

The SEC 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 are within the power of SEC to impose, in the following cases:

1. Willful violation of this Circular or related orders of SEC; or
2. Refusal to permit any lawful examination into its affairs.

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

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#### **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 RCC as well as other applicable laws, rules, and regulations.

## **APPLICATION TO FOREIGN CORPORATIONS**

Pursuant to SEC MC No. 30, S. 2020, the pertinent provisions and amendments of MC No. 15, S. 2019 remain applicable to Foreign Corporations. The penalties as provided in this Circular shall be applicable to foreign corporations.

## **SUBMISSION OF THE GIS IN THE EFAST**

All Corporations are required to file their annual reportorial requirement through SEC'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.

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This bulletin contains a summary of the legal issuances discussed above. It was prepared by SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) to update its clients about recent legal developments.

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