

Tightening up of Beneficial Ownership Disclosure Requirements

The Securities and Exchange Commission (“**SEC**”) has recently issued SEC Memorandum Circular (“**MC**”) No. 10, Series of 2022 (“**MC No. 10**”) amending SEC MC No. 15, Series of 2019 (the “**Beneficial Ownership Guidelines**”) which mandated disclosure of information on beneficial ownership and control over SEC registered corporations – both foreign and domestic, in the General Information Sheet (“**GIS**”).

MC No. 10 increased the penalties imposable for failure to comply with the Beneficial Ownership Guidelines, such as failure to disclose beneficial ownership information (“**Failure to Disclose**”) and false declaration of beneficial ownership information (“**False Declaration**”).

Upon due notice and hearing, findings of Failure to Disclose are now penalized as follows:

	Stock Corporations				Non-Stock Corporations			
RETAINED EARNINGS/ FUND BALANCE	PENALTIES (in PhP)							
	First Violation	Second Violation	Third Violation	Fourth and Subsequent Violations	First Violation	Second Violation	Third Violation	Fourth and Subsequent Violations
Less than PhP500,000	50,000	100,000	250,000	500,000	25,000	50,000	100,000	250,000
PhP500,000 or more but less than PhP5,000,000	100,000	200,000	500,000	1,000,000	50,000	100,000	200,000	500,000
PhP5,000,000 or more but less than PhP10,000,000	150,000	300,000	750,000	1,500,000	75,000	150,000	300,000	750,000
PhP10,000,000 or more	200,000	400,000	1,000,000	2,000,000	100,000	200,000	400,000	1,000,000
	Additional fine of PhP1,000 for each day of delay in the submission of beneficial ownership information as a continuing violation, but not shall not exceed PhP2,000,000.							

For False Declaration, a fine of up to Two Million Pesos (PhP2,000,000.00) and dissolution, may be imposed. Other non-financial sanctions, such as suspension or revocation of the certificate of incorporation may be imposed for (i) willful violation of the Beneficial Ownership Guidelines or related orders of the SEC; or (ii) refusal to permit lawful examination into the corporation's affairs.

Directors/trustees and officers found to have failed to exercise the due diligence required in ensuring compliance with the requirement to disclose beneficial ownership information may also be subject to a fine of PhP10,000.00 to PhP100,000.00. Moreover, directors/trustees and officers responsible for False Declaration may be subject to a fine of up to PhP2,000,000.00 and shall be disqualified from being directors, trustees, and officers of any corporation for a period of five (5) years. Criminal charges against persons responsible may also be imposed in accordance with Republic Act No. 11232 (or the "**Revised Corporation Code**").

Finally, under MC No. 10, the following are considered as *prima facie* proof of the directors/trustees/officers' failure to exercise the due diligence required: (i) the absence of written procedures and policies for obtaining, updating, and recording beneficial ownership information or the lack of board or senior management oversight to ensure compliance with beneficial ownership policies; (ii) submission of the GIS without the required beneficial ownership information; and (iii) every instance of non-submission or late submission of the GIS, arising from the failure to exercise the due diligence required.

The SEC, in a Notice posted on 9 February 2023 (the "**SEC Notice**"), warned that the Beneficial Ownership Guidelines will be strictly implemented.