



## R.S. BERNALDO & ASSOCIATES

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# QAU

## Alert

### Issue No.

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## IN THIS ISSUE

Strict and faithful COMPLIANCE to rules and regulations is a MUST to avoid PENALTIES. Hence, entities are highly encouraged to UPDATE themselves on the various issuances from their respective regulators.

In this issue readers will learn about SEC opinions on various cases such as revocation and re-registration of a corporation, corporate term of a condominium corporation, and applicability of anti-dummy law to international freight forwarding.

Entities with claims for tax refund/ tax credit certificate will learn certain amendments on the processing of claims.

BSP supervised entities will learn about certain amendments to Manual of Regulations for Banks and Non-bank Financial Institutions, issuances of bonds and commercial papers, and liquidity risk management.

IC supervised entities will learn the guidelines on insurability of damages, fines and penalties.

CDA supervised entities will learn about governance and management report.

## TABLE OF CONTENTS

### SEC UPDATES

Opinion 17-08: Revocation and Re-Registration of a Corporation .....	6
Opinion 17-09: Corporate Term of a Condominium Corporation .....	7
Opinion 17-10: Condominium Corporation; Membership; Proxy Rule; Compensation of Directors and Officers; Hold-Over Capacity; Corporate Term.....	9
Opinion 17-11: Clarification on SEC OGC Opinion No. 11-41 .....	11
Opinion 17-12: Retail Trade; Ticketing Activity .....	12
Opinion 17-13: Applicability of Section 43 of the Corporation Code to Joint Venture Partnership .....	13
Opinion 17-14: International Freight Forwarding; Applicability of Anti-Dummy Law.....	14
Opinion 17-15: Compensation of Trustees; Acquisition of Land by a Non-Stock, Non-Profit Religious Corporation. ....	15

### BIR UPDATES

Revenue Regulations No. 7-2017 Amending Pertinent Provisions of Revenue Regulations (RR) No. 2-98 as amended by RR 17-2013 in Relation to RR 6-2012 .....	19
Revenue Memorandum Circular No. 78-2017 Publishing the Full Text of Republic Act No. 10932 .....	19
Revenue Memorandum Circular No. 89-2017 Circularizes the Amendments to Revenue Memorandum Circular No. 51-2007 on the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) and Revenue Officials Authorized to Approve and/or Issue the Tax Refund/TCC .....	20
Revenue Memorandum Circular No. 93-2017 Circularizing the Letter issued by the Microfinance NGO Regulatory Council in relation to the implementation of Revenue Regulations (RR) No. 3-2017 implementing the tax provisions of Republic Act (RA) No. 10693, otherwise known as the "MICROFINANCE NGOS ACT" .....	21
Revenue Memorandum Circular No. 94-2017 BIR Privacy Policy .....	22
Revenue Memorandum Order No. 25-2017 Prescribing the Guidelines, Policies and Procedures in the Transfer of Data and Records in the Integrated Tax Systems (Its)/ Electronic Tax System (E-Tis), and Other Administrative and Reportorial Requirements for Compliance by Newly-Enlisted/Transferred Large Taxpayers as Approved by the Commissioner of Internal Revenue .....	22

Revenue Memorandum Order No. 28-2017 Amending Certain Provisions of Revenue Memorandum Order (RMO) No. 42- 2016 – Prescribing the Guidelines and Procedures in the Implementation of Republic Act (RA) No. 9505, Otherwise Known as the Personal Equity and Retirement Account (PERA) Act of 2008, dated July 21, 2016 ..... 25

Revenue Memorandum Order No. 28-2017 Amending Certain Provision of Revenue Memorandum Order No. 55-2016. Relative to the Signatories in the Electronic Certificate Authorizing Registration (eCAR) ..... 25

**BSP UPDATES**

Circular Letter No. 974 Amendments to the Manual of Regulations for Banks and Non-Bank Financial Institution ..... 25

Circular Letter No. 975 Issuance of Bonds and Commercial Papers..... 27

Circular Letter No. 976 Amendments to the Expanded Report on Real Estate Exposures (ERREE) and the Submission of the Report on Project Finance Exposures (RPFE) ..... 28

Circular Letter No. 977 Establishing a New Deadline for the Replacement or Exchange of New Design Series (NDS) Banknotes directly with the Bangko Sentral ng Pilipinas (BSP) at par with the New Generation Currency (NGC) banknotes and without charge until December 29, 2017. .... 29

Circular Letter No. 978 Exclusion of Loans and Other Credit Accommodations Covered by Guarantees of International/Regional Institutions/Multilateral Financial Institutions from Ceilings to Subsidiaries and Affiliates ..... 30

Circular Letter No. 979 Risk-Weighting of Bank Loans to the extent guaranteed by Credit Surety Fund (CSF) Cooperatives ..... 30

Circular Letter No. 980 Adoption of National Retail Payment System (NRPS) Framework ..... 31

Circular Letter No. 981 Guidelines on Liquidity Risk Management ..... 31

Circular Letter No. 982 Enhanced Guidelines on Information Security Management..... 32

Circular Letter No. 983 Reduction of Reserve Requirement on Repurchase Transactions ..... 32

Memorandum No. M-2017-033 Transitory Provisions of Circular No. 963 on Bank Responsibility for the Generation and Time Submission of Required Reports to the BSP ..... 32

**IC UPDATES**

Circular Letter No. 2017-49 Guidelines on the Insurability of Damages, Fines and Penalties which are Exemplary in Nature Relative to Liability Insurance..... 34

Circular Letter No. 2017-50 Amendment to Minimum Capitalization and Financial Capacity Requirements for Health Maintenance Organizations ..... 34

[CDA UPDATES](#)

**Circular 05-2017 Governance and Management Audit Report for Cooperatives (Performance Audit Report) ..... 35**



## SEC UPDATES

**Background**

**Prestige Native Arts, Inc. (PNA):**

- a family stock corporation registered with the SEC in 1974
- Certificate of Registration was revoked for failure to comply with the reportorial requirements per SEC Order July 2, 2003.
- Failed to file a Petition to Lift Revocation Order on time, hence said Order has become final
- On September 27, 2010, PNA re-registered and was given a new Company Registration number. While its number of directors and authorized capital stock decreased, its name, primary purpose and principal office address remain the same.

**Issue and Opinion**

1. **Did the Commission's revocation of PNA Certificate of Registration extinguish the corporation's right of dominion over its corporate assets consisting of real and personal properties?**

- ❖ **If in the affirmative, what action may the corporation take to regain and maintain its right of ownership over its corporate assets to enable it to sell and dispose said properties?**
- ❖ **May the corporation continue as a body corporate for three (3) years after dissolution caused by the Commission's revocation to dispose of and convey its properties to trustees and to distribute its assets but not to do business?**

✚ PNAs right to dominion over its corporate assets is not immediately extinguished by the revocation of its Certificate of Registration. Section 122 of the Corporation Code allows an entity to continue as a juridical entity for **three (3) years** for the purpose of prosecution and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property, and to distribute its assets.

Further, corporate liquidation may still be continued even after expiration of the three year period as previously opined by the Commission, in order to complete the process of dissolving the corporation. Hence, the former corporation **retains title to the corporate properties until after the completion of the liquidation process.**

2. Is the original PNA corporation organized in 1974 and the new corporation which was re-registered in 2010, one and the same corporation having the same name, primary purpose and office address? How do the Commission classify the re-registered corporation, is it a newly registered corporation or is it the same old corporation?

- ✚ The original PNA corporation organized in 1974 is separate and distinct from the one registered in 2010, and the former cannot be said to be a continuation of the latter.
- ✚ Dissolution is a condition of law and fact which ends the capacity of the body corporate to act as such, and necessitates a liquidation and extinguishment of all legal relations existing in respect of the corporate enterprise. Hence the re-registered corporation is a **newly registered corporation**.

## OPINION 17-09: CORPORATE TERM OF A CONDOMINIUM CORPORATION

### **Background**

#### **Urdaneta Apartments Condominium Corporation (UACC)**

- Condominium corporation incorporated on May 14, 1971
- The fourth article of its Articles of Incorporation provides that:  
*FOURTH: That the term of the corporation shall be co-terminus with the duration of the Urdaneta Apartment Condominium Corporation*
- Held a special meeting on November 22, 2016 for the purpose of extending the corporate term of UACC for a period of another fifty years in which forty (40) out of fifty-six (56) members representing 71.4% of the total membership voted unanimously to extend.
- However, upon submission of the application for the above mentioned amendment, the Commissioner's examination on duty refused to accept the same stating that there was no need to extend UACC's term, as provided by the Act.
- Stated that while the Fourth Article of UACC's AOI conforms to Section 11 of the Act, the said provision of law pertains to Act No. 1459, otherwise known as the Corporation Law, and not the Code. This is because the Act was enacted on June 18, 1996, when the old Corporation Law of 1906 was still in effect.

Section 11 of the Act states that:

*The term of a condominium corporation shall be **co-terminus with the duration of the condominium project**, the provisions of the Corporation law to the contrary notwithstanding.*

The provisions referred to are those of the Corporation Law, Section 6 of which gives maximum term of fifty (50) years. However, the Code was enacted on May 1, 1980, and thus subsequent to the Act. The Code likewise prescribes a corporate term of fifty (50) years in Section 11.

### ***Issue and Opinion***

1. **Did the enactment of the Code in 1980 impliedly repeal Section 11 of the Act insofar as the term of a condominium corporation is concerned, such that the term of a condominium corporation is no longer coterminous with the project, thereby necessitating an extension of its corporate term?**

❖ The Commission answers this in the **negative**.

A general law is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class, while a special act is one which relates to particular persons or things of a class.

A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general, ***the special must prevail since it evinces the legislative intent more clearly than that of a general statute and must be taken as intended to constitute an exception to the general act.***

Taking into account that the Act is a special law since it relates to a particular class, that is, condominium corporations, while the Code is a general law because it covers private corporations, whether stock or non-stock, the former **remains a good law**.

In view of the foregoing, the Commission opines that Section 11 of the Act is **not repealed by the enactment of the code**.

Thus, Section 11 of the **Act**, which does not limit the term of existence of a condominium corporation for a lifespan of only fifty years, prevails over Section 11 of the **Code**. The condominium corporation's dissolution may be effected under Sections 8 and 13 of the Act, provided all the elements or factors enumerated therein shall occur.

2. **Assuming that the UACC is required to extend its corporate term in accordance with the Code, can the court-appointed Receiver, who is duly authorized to exercise the powers of the Board of UACC, issue the required certificate certifying the approval of the extension of corporate term by the members in lieu of the Trustee's Certificate?**

❖ In view of the foregoing, the Commission finds the second query moot and irrelevant.



***Background and Issue***

**URCI Las Pinas Condominium Corporation (ULPCC) requested an opinion regarding several topics, namely:**

1. Alleged violations of the by-laws by the Officers/Board of Directors specifically those concerning Board election, implementation of increase in association dues and other contestable actions;
2. Imposition of sanctions on the members of the Board of Directors for their alleged mismanagement, overspending and other contestable actions;
3. What government agency will govern your community if you choose to be a plain Homeowners Association, as well as the requirements needed for the transition, and the compensation of its management;
4. Scope of work and compensation of the employees of ULPCC;
5. The definition of “members” in relation to the ULPCC by-laws and the Governing Guidelines for the Election of New Members of the Board of Directors;
6. Validity and duration of proxy voting documents in relation to the election of the members of the Board;
7. Validity and limitation of compensation of the Directors and the Officers of ULPCC;
8. Hold over capacity of the incumbent Board of Directors;
9. Questions on corporate term of the corporation; and
10. The list of documents that should be submitted regularly to the Commission.

***Opinion***

- ❖ The Commission advised that, as a matter of its policy, it refrains from rendering opinion on matters which:
  - 1) Require determination of factual issues
  - 2) Involve the exercise of business judgment or discretion that properly falls within the competence of management of entities concerned
  - 3) Require interpretation of administrative rules and issuances of other government agencies considering that it is the promulgating agencies which are competent to

undertake such construction by reason of their knowledge of the specific intent and extent of application of the subject issuances

- 4) Involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court in an intra-corporate or civil case, if the opinion turns out to be adverse to their interest.

Considering that queries involve intra –corporate matters (Questions 1 and 2), interpretation of administrative rules and issuances of other government agencies (Questions 3 and 4), and substantive and contractual rights of private parties which are litigious in nature (Questions 4 to 9), the Commission shall thus refrain from categorically answering the same.

However, for purposes of information only, the Commission imparted the following:

As to the **first** and **second** queries, they are considered as intra-corporate partnership disputes which are **beyond the jurisdiction of the Commission.**

As to the **third** query, a Homeowner’s Association is now under the exclusive jurisdiction of the **Housing and Land Use Regulatory Board.**

With regard to the **fourth** query, issues involving work and compensation of employees are matters subject to business judgment and are governed by the Labor Code and other pertinent special labor laws, which are enforced by, and hence, within the competence of the Department of Labor and Employment.

As to the **fifth** query, in ULPCC’s separate letter to the Commission, “**members**” as defined in its by-laws as:

- one who is a duly registered owner of a condominium unit at URCI as evidenced by Condominium Certificate of Title.
- However, the Board of Directors revised such definition by adding Absolute Deed of Sale as additional evidence for one to be considered a member, but have been abused by the incumbent directors as to be qualified as candidates of the Board.

Under Section 48 of the Corporation Code, amendment of by-laws must be made by a **majority vote of the Board of Directors or Trustees**, and **at least a majority of the outstanding capital stock**, or at least **a majority of the members of a non-stock corporation**, at a regular or special meeting duly called for the purpose. Whenever any amendments are adopted, such amendments must be filed with the Commission to be attached to the original by-laws. The amended by-laws **shall only be effective upon issuance by the Commission of a certification** that the same are not inconsistent with the Corporation Code.

As to the **sixth** query, Section 58 of the Corporation Code provides that “Unless otherwise provided in the proxy, it shall be valid only for the meeting. No proxy shall be valid and effective for a period longer than five (5) years at any one time.”

With regard to the duration of the proxy, the proxy may fix the period during which it may be used, but it cannot exceed five (5) years, renewable for not more than 5 years for each renewal.

As to the **seventh** query, Section 30 of the Code, there are two requisites before members of the board of directors can be granted compensation aside from reasonable per diems:

- 1) When there is a provision in the by-laws fixing their compensation or when the stockholders representing a majority of the outstanding capital stock at a regular or special meeting agree to give the directors compensation;
- 2) Such compensation shall not exceed 10% of the net income before income tax for the preceding year.

On the **eight** query, Section 23 of the Code provides the hold-over capacity of the incumbent Board of Directors shall be one (1) year until the successors are elected and qualified.

As to the **ninth** query, Section 11 of the Act provides: "The term of a condominium Corporation shall be co-terminus with the duration of the condominium project, the provisions of the Corporation Law to the contrary notwithstanding."

Lastly, with regard to the **tenth** query, the list of documents that should be submitted regularly to the Commission is the General Information Sheet and Audited Financial Statements. Complete information is on the SEC Website ([sec.gov.ph](http://sec.gov.ph)).

#### OPINION 17-11: CLARIFICATION ON SEC OGC OPINION NO. 11-41

##### **Background**

The Philippine Stock Exchange, Inc. (PSE) requested a clarification on matters relevant to SEC-OGC Opinion No. 11-41 ("Subject Opinion"), dated October 5, 2011, in connection with shareholders of the PSE.

In the subject Opinion, the SEC held that "the pre-emptive right may not be exercised by PSE shareholders who have already exceeded the ownership threshold laid down by the SRC."

PSE's understanding of the Subject Opinion:

1. Broker shareholders of the PSE, who at the time of request, own approximately 32% of the outstanding capital stock of the PSE, which is in excess of the 20% industry limit under Section 33.2(c) of the SRC are **no longer entitled to pre-emptive rights**.
2. The existing strategic investors of the PSE, namely the Government Service Insurance System (GSIS), San Miguel Corporation Retirement Plan (SMCRP), PLDT Beneficial Trust (PLDT-BT) and Premiere Capital Venture Corp. (PCVC) are likewise no longer allowed to exercise pre-emptive rights, considering that they presently own 9.1%, 10.3%, 9.1% and 9.7% respectively, of the outstanding capital stock of the PSE, which are also in excess of the 5% cap imposed on each person or entity under Section 33.2 (c) of the SRC. However, they are granted by the SEC exemptive relief from the ownership limits.

### ***Issue and Opinion***

- ❖ PSE seeks confirmation on their position that GSIS, SMCRP, PLDT-BT, and PCVC are already prohibited from exercising pre-emptive rights despite the grant to them of exemptive reliefs from the ownership limits since they already exceeded the ownership limits under Section 33.2(c) of the SRC.
  - ✚ The Commission confirms the position of PSE that their strategic investors are prohibited from exercising pre-emptive rights notwithstanding the previous grant to them of exemptive relief, on the basis of the general rule that shareholders may not own PSE Shares above the percentage limits laid down under Section 33.2(c) of the SRC.
  - ✚ Bearing in mind that the exemptive reliefs are granted on a **case-to-case basis**, and in this particular case, should not be construed as continuing authority to exceed the limitation imposed on single block or industry ownership of the PSE.

## **OPINION 17-12: RETAIL TRADE; TICKETING ACTIVITY**

### ***Background***

#### **Phil Co.**

- Domestic Corporation engaged in providing ticketing services to venues across Manila through a variety of sales channels that includes venue box offices, physical outlets in shopping malls and on line.
- Sells tickets on behalf of event producers and venue owners, to the general public to events such as concerts, sports events etc. In return, Phil Co receives commission for its services and remits to event producers revenues collected from ticket sales less its commission.
- At no time does it purchase or own the tickets that it sells to the general public.
- Requests confirmation that its ticketing activity, as described, does not constitute “retail trade” under R.A. 8762, otherwise known as Retail Liberalization Act of 2000 RTLA.

## ***Issue and Opinion***

Phil Co. seeks confirmation of its position that:

1. **The Ticketing Activity of Phil Co, as well as**
2. **The selling of ticket printers and paper ticket stock to other ticketing companies, do not constitute “retail trade”, thus, not covered by any limitation on foreign equity ownership imposed by RTLA.**

✚ Section 3 of the RTLA defines “retail trade” as “any act, occupation or calling of habitually selling direct to general public merchandise, commodities or good for consumption.

✚ The Supreme Court, in *Marsman & Company Inc. v. First Coconut Central Company, Inc.*, provided also the above elements of trade, however giving emphasis on the object of the sale which must be limited to merchandise, commodities or goods for consumption – **goods which are used or bought for use primarily for personal, family or household purposes.**

✚ Applying the foregoing, the **(1) Ticketing Activity of Phil Co should not be considered as retail trade under the RTLA because the “ticket” being sold is not a merchandise or good for consumption.**

✚ With respect to the **(2) selling of ticket printers and paper ticket stock to other ticketing companies in the Philippines, these activities are not retail trade as provided under the Rules and Regulations Implementing RTLA. Accordingly, the foreign ownership restriction imposed there finds no application in the case of Phil Co.**

## **OPINION 17-13: APPLICABILITY OF SECTION 43 OF THE CORPORATION CODE TO JOINT VENTURE PARTNERSHIP**

### ***Background***

#### **Concepcion-Carrier Airconditioning Company (CCAC):**

- A joint venture partnership between Concepcion Industrial Corporation (CIC) and Carrier Air Conditioning Philippines, Inc. (CACPI)
- It is engaged in the manufacture, sale, distribution, installation and service of heating, ventilating, air conditioning and refrigeration (HVACR) products and the provision of HVACR services.
- As a partnership, CCAC does not have a Board of Directors that has the exclusive power to control the assets of the corporation, or the absolute power to declare dividends out of the unrestricted earnings of the company.

### ***Issue and Opinion***

1. CCAC requests confirmation to the Commission regarding their position that Section 43 of the Code does not apply to CCAC, on the grounds that:
  - It is not stock corporation
  - It does not have the power to declare dividends out of its net profits
  - Its profits are deemed distributed to its partners at the end of the year without need of dividend declaration under Section 73 (D) of the Tax Code
  - Its partners are directly entitled to its net profits.

The Commission **confirms** CCAC's position.

The provision on Section 43 pertaining to the power to declare dividends **applies only to stock corporations**. A partnership has neither shares of stocks or capital stock, nor does it have a board of directors that can declare dividends out of its unrestricted retained earnings. Furthermore, dividends are property of the corporation and is payable only when the board of directors declares them as dividends.

Therefore, CCAC, being a joint venture partnership, is **not governed by Section 43 of the Code** but by the pertinent provisions of the Civil Code of Partnerships.

## **OPINION 17-14: INTERNATIONAL FREIGHT FORWARDING; APPLICABILITY OF ANTI-DUMMY LAW**

### ***Background***

#### **MOL Logistics:**

- A domestic corporation engaged in the business of international freight forwarding with the purpose to, among others, engage in and carry on the business of international ocean and air freight forwarding and/or operate as an international non-vessel operating common carrier.
- Currently 60% owned by Filipino shareholders and 40% by foreign shareholders.

### ***Issue and Opinion***

1. Whether a corporation doing business as an international freight forwarder can increase its foreign equity to more than 40% without violating the Constitution and other laws.
2. Whether the said corporation can elect a foreign citizen as its president.

✚ In SEC-OGC Opinion 08-21, it was opined that air freight forwarding is tantamount to engaging in domestic air commerce and /or air transportation. **However**, this foreign ownership restriction finds **no application** in cases where the public utility is engaged **exclusively in international commerce**.

In a recent related opinion, SEC-OGC Opinion 16-08, the Commission opined that utility firms such as international freight forwarders engaged exclusively in international commerce are beyond the Constitutional prohibition limiting foreign ownership to 40% of the capital of a corporation.

Thus, corporations engaged exclusively in international freight forwarding are considered **beyond the purview of nationality requirement** for the operation of **public utilities** and therefore, **may be owned up to 100% by foreigners**.

Consequently, the prohibition under the Anti-Dummy Law, specifically as to electing foreign citizen as President, **does not apply** since they are not engaged in any nationalized or partly nationalized activity.

## OPINION 17-15: COMPENSATION OF TRUSTEES; ACQUISITION OF LAND BY A NON-STOCK, NON-PROFIT RELIGIOUS CORPORATION

### *Background*

#### **Sokka Gakkai International Philippines:**

- Non-stock, non-profit (NSNP) **religious** corporation
- Majority of Board of Trustees (BOT) is currently composed of Japanese Citizens.
  - ❖ They were advised that as trustees, they cannot be given compensation as employees.
- Members of the BOT were formerly serving the corporation as employees and officers concurrently with their position on the Board.
  - ❖ They were advised that this may affect the religious corporation's right to own and acquire land which they actually, directly and exclusively use for religious purposes.

### *Issue and Opinion*

1. **Whether or not SEC OGC Opinion No. 15-12, particularly the prohibition on giving trustees an employee's compensation, applies to a NSNP religious corporation.**

✚ SEC-OGC Opinion No. 15-12 discusses the limitations on compensation of trustees, to wit:

“Under the Section 30 of the Corporation Code, there are two requisites before members of the board of directors can be granted compensation aside from reasonable per diems:

- (1) **When there is a provision in the by-laws fixing their compensation; and**

**When the stockholders representing a majority of the outstanding capital stock at a regular or special meeting agree to give the directors compensation, which shall not exceed 10% of the net income before income tax for the preceding year.**

Since Section 30 is likewise applicable to NSNP corporations, it is reasonable to conclude that, in general, the trustees of NSNP corporations can be given compensation based on the provisions stated above.”

The foregoing opinion also applies to a NSNP **religious** corporation. Section 109, Chapter 2, Title XIII of the Corporation Code provides that “Religious corporations shall be governed by this Chapter and by the **general provisions on non-stock corporations** insofar as they may be applicable.”

The prohibition on Section 30 against granting compensation to directors/trustees of a corporation is **not absolute**. The phrase **as such directors** is not without significance for it delimits the scope of the prohibition to compensation given to them for services performed purely in their capacity as directors or trustees.

Therefore, **members of the board may receive compensation, in addition to reasonable per diems, when they render services to the corporation in a capacity other than as directors or trustees.**

**2. Whether or not Section 22 and 23 of Commonwealth Act No. 141, also referred to as Public Land Act, apply to a NSNP religious corporation.**

✚ The 1987 Constitution restricts the ability of a corporation to acquire land in the Philippines, to wit:

“Sec. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations or associations qualified to acquire or hold lands of public domain.

The determination of whether a corporation may acquire real estate is laid down in Sections 22 and 23 of Commonwealth Act No.141.

The purpose of the sixty per centum (60%) requirement is obviously to ensure that corporations or associations allowed to acquire agricultural land or to exploit natural resources shall be controlled by Filipinos; and the spirit of the Constitution demands that in the absence of capital stock, the controlling membership should be composed of Filipino Citizens.

In a previous opinion, the Commission held:

“The nationality of a non-stock corporation, in relation to the constitutional provision on land acquisition, is computed on the **basis of the nationality of its members** and not premised on the membership contribution.

In computing the above required ratio, the extent of voting power of the members should also be taken into consideration, not only the number of members. This is because it is the power to vote that determines **control** in a corporation.

Thus, in a non-stock corporation, the general rule is that each member shall be entitled to one vote, regardless of the amount of contribution. The exception is when the right of members of any class to vote is limited, broadened, or denied to the extent specified in the articles of incorporation or the by-laws.”

Therefore, **60% of the members must be Filipinos in order for the corporation to**



**acquire land. However, if the voting right of each member is limited, broadened, or denied, 60% of the total voting rights must belong to Filipino members.**



## BIR UPDATES

**REVENUE REGULATIONS NO. 7-2017 AMENDING PERTINENT PROVISIONS OF REVENUE REGULATIONS (RR) NO. 2-98 AS AMENDED BY RR 17-2013 IN RELATION TO RR 6-2012**

These Regulations amend certain provisions of previously issued Revenue Regulations on Creditable Withholding Taxes (CWT), particularly for Bangko Sentral ng Pilipinas (BSP). The summary is as follows:

Subject	As Stated in Previous Regulations	As Amended in the Current Regulations
Income payments on purchases of minerals, mineral products, and quarry resources, such as but not limited to silver, gold, marble, granite, sand, boulders and other materials/products	<p><i>Per RR No. 17-2003</i></p> <ul style="list-style-type: none"> <li>• <b>All</b> are required to withhold <b>One percent (1%)</b></li> </ul>	<ul style="list-style-type: none"> <li>• Required to withhold <b>Five percent (5%)</b></li> <li>• <b>BSP</b> is required to withhold <b>One percent (1%)</b></li> </ul>
All buyers of metallic minerals are hereby constituted as agents for the collection of excise tax on metallic minerals and CWT thereon.	<p><i>Per RR No. 6-2012</i></p> <ul style="list-style-type: none"> <li>• <b>All</b> are required to collect <b>two percent (2%) excise tax</b> on metallic minerals and the <b>five percent (5%) CWT</b> thereon.</li> </ul>	<ul style="list-style-type: none"> <li>• Required to collect <b>two percent (2%) excise tax</b> and the <b>five percent (5%) CWT</b> thereon.</li> <li>• <b>BSP</b> shall only collect the <b>two percent (2%) excise tax and the one percent (1%) CWT</b> thereon.</li> </ul>

**REVENUE MEMORANDUM CIRCULAR NO. 78-2017 PUBLISHING THE FULL TEXT OF REPUBLIC ACT NO. 10932**

This circular is issued to inform everyone of the provisions of Republic Act (RA) No. 10932, entitled, **“An Act Strengthening the Anti-Hospital Deposit Law by Increasing the Penalties for the Refusal of Hospitals and Medical Clinics to Administer Appropriate Initial Medical Treatment and Support in Emergency or Serious Cases, Amending for the Purpose Batas Pambansa Bilang 702, Otherwise Known as , “An Act Prohibiting the Demand of Deposits or Advance Payments for the Confinement or Treatment of Patients in Hospitals and Medical Clinics in Certain Cases”, as Amended by Republic Act No. 8344, and for Other Purposes.”**

In RA No. 10932, which was signed into law by the President on August 3, 2017, hospital personnel and executives who violate the provisions of the law are now punished by “*imprisonment of not less than six (6) months and one (1) day but not more than two (2) years and four (4) months, or a fine of not less than ₱100,000 but not more than ₱300,000 or both at the discretion of the court*”. Previously, under RA 8344, the fine is only for an amount between **₱20,000 to ₱100,000**.

**REVENUE MEMORANDUM CIRCULAR NO. 85-2017 VALUE-ADDED TAX (VAT) RATE TO BE USED IN THE PREPARATION OF THE APPROVED BUDGET FOR THE CONTRACT (ABC) FOR GOVERNMENT PROJECTS**

This Circular aims to provide guidance on the rate to be used in the preparation of the ABC for government projects. Accordingly, the appropriate VAT rate to be used is **12%**. “*This is to allow seller of goods/services to have the 7% as their standard input VAT which is in lieu of the actual input VAT directly attributable or ratably apportioned to their sales to the government.*”

In addition, the following shall be noted:

- ✓ Sellers of goods/services are **not allowed** to deduct the actual input VAT attributable to such sales against the output VAT on their regular sales because the 7% standard input VAT is supposed to take the place of the actual input VAT; and
- ✓ The actual input VAT attributable to sales to government **cannot** be claimed for refund or tax credit (see Section 4.114-2(a) of RR No. 16-2005.)

**REVENUE MEMORANDUM CIRCULAR NO. 89-2017 CIRCULARIZES THE AMENDMENTS TO REVENUE MEMORANDUM CIRCULAR NO. 51-2007 ON THE PROCESSING OF CLAIMS FOR ISSUANCE OF TAX REFUND/TAX CREDIT CERTIFICATE (TCC) AND REVENUE OFFICIALS AUTHORIZED TO APPROVE AND/OR ISSUE THE TAX REFUND/TCC**

This Circular is issued to amend the provisions in RMC No. 51-2007 on the processing of claims for issuance of tax refund/TCC except claims processed under the jurisdiction of the Large Taxpayers Service (LTS) and the Legal Service.

- I. All claims for VAT refund/TCC by **direct exporters** shall be filed with and processed by VAT Credit Audit Division (VCAD) (except for taxpayers under LTS who have the option to file either at their concerned LT Division or with the VCAD), reviewed by Tax Audit Review Division (TARD) and approved by authorized revenue officials as enumerated:

<b>Amount Claimed</b>	<b>And/or</b>	<b>Amount Granted</b>	<b>Approving Revenue Official</b>
Not more than ₱75,000,000		Below ₱50,000,000	ACIR – AS
More than ₱75,000,000 up to ₱150,000,000		₱50,000,000 up to ₱100,000,000	Deputy Commissioner – Operations Group (DCIR – OG)
More than ₱150,000,000		More than ₱100,000,000	Commissioner of Internal Revenue (CIR)

Electronic Letters of Authority (eLAs) involving claims filed with VCAD shall be approved and signed by the Assistant Commissioner – Assessment Service (ACIR – AS).

- II. Claims for issuance of tax refund/TCC on income and other taxes filed by taxpayers registered with the Revenue District Offices (RDOs), including VAT refund/TCC claims of **indirect exporters** shall be reviewed by concerned Assessment Division and approved by the Regional Director for claims amounting to Ten Million (10M) Pesos and below.

For claims exceeding 10M Pesos, the reports on said claims shall be reviewed first by TARD before approval by authorized revenue officials within the threshold mentioned in item I. Moreover, before approval by the DCIR – OG/CIR, memorandum reports shall be signed first by the ACIR – AS.

- III. Existing claims from Regional Offices exceeding P 1,000,000 (1M Pesos) in the possession of the National Office shall be approved by authorized revenue officials in the same threshold mentioned in item I.

- IV. Time frame to process claims for VAT refund/TCC, as amended:

- The 120-day period prescribed under 112 (C) of the Tax Code, as amended, shall start from the actual date of filing the application.
- For claims processed by the RDOs amounting to P10,000,000 and those processed by the VCAD, the docket of the claim shall be indorsed/forwarded to the TARD for review within eighty (80) calendar days.
- TARD shall transmit the docket of the claim to the approving official not later than one hundred (100) days from the filing of the application for VAT refund/TCC.
- The approving official shall act on the recommended claims for VAT refund/TCC not later than the 120<sup>th</sup> day from receipt of application by the processing offices.

In the absence of a duly appointed DCIR – OG, claims for tax refund/TCC for approval of the said official shall be approved by the CIR.

**REVENUE MEMORANDUM CIRCULAR NO. 93-2017 CIRCULARIZING THE LETTER ISSUED BY THE MICROFINANCE NGO REGULATORY COUNCIL IN RELATION TO THE IMPLEMENTATION OF REVENUE REGULATIONS (RR) NO. 3-2017 IMPLEMENTING THE TAX PROVISIONS OF REPUBLIC ACT (RA) NO. 10693, OTHERWISE KNOWN AS THE "MICROFINANCE NGOS ACT"**

This issuance circularizes the letter from the Microfinance NGO Regulatory Council in relation to the implementation of the RR No. 3-2017.

Accordingly, Section 5 of RR No.3-2017 states that *“Microfinance NGOs which have been certified by the Securities and Exchange Commission (SEC) to have no derogatory information and are deemed accredited in accordance with Section 2, Rule 11 of the Implementing Rules and Regulations (IRR), as Microfinance NGOs for a period of one (1) year from the effectivity of RA No. 10693, unless sooner revoked, shall be entitled to avail of the 2% tax gross receipt on its income from microfinance operations.”*

Kindly see Annex A for updated list of Microfinance NGOs which were issued a certificate of no derogatory information from the SEC covering the F.Y. 2016.

## REVENUE MEMORANDUM CIRCULAR NO. 94-2017 BIR PRIVACY POLICY

In this issuance, all Bureau offices are directed to adopt the **BIR Privacy Policy** in collecting and processing personal information of the data subject.

## REVENUE MEMORANDUM ORDER NO. 25-2017 PRESCRIBING THE GUIDELINES, POLICIES AND PROCEDURES IN THE TRANSFER OF DATA AND RECORDS IN THE INTEGRATED TAX SYSTEMS (ITS)/ ELECTRONIC TAX SYSTEM (E-TIS), AND OTHER ADMINISTRATIVE AND REPORTORIAL REQUIREMENTS FOR COMPLIANCE BY NEWLY-ENLISTED/TRANSFERRED LARGE TAXPAYERS AS APPROVED BY THE COMMISSIONER OF INTERNAL REVENUE

This RMO is issued to prescribe the guidelines, policies and procedures in the transfer of data and records in the ITS/e-TIS, and other administrative and reportorial requirements for compliance by newly enlisted/transferred large taxpayers (LTs) as approved by the commissioner of internal revenue.

### **Policies, Guidelines and Procedures:**

#### A. Registration Records

- The transfer of the ITS/eTIS registration records of enlisted/transferred taxpayers shall be handled by the Information Systems Development and Operations Service (ISDOS) upon receipt of the List of Taxpayers for Enlisting/Transferred as approved by the CIR.
- Said taxpayers are required to accomplish and submit BIR Form No. 1905. All newly-enlisted LTs are also required to enroll with the Electronic Filing and Payment System (eFPS) within thirty (30) days from receipt of the notification as LT.
- Once the transfer has been effected, the Large Taxpayers Assistance Division (LTAD)/Excise LT Regulatory Division (ELTRD)/LT Divisions (LTDs) Cebu and Davao shall generate the new Certificate of Registration (COR) and ensure receipt of the same by the taxpayers upon presentation of the previously issued COR.
- Upon effective date of transfer, all Books of Accounts and other accounting files or information required shall be registered/submitted to LTAD/ELTRD/LTDs Cebu or Davao. However, if the concerned taxpayers have already registered/submitted these records/reports to the "old" Revenue District Office (RDO)/Large Taxpayers Service (LTS) Office, such shall be considered substantial compliance. These shall be transmitted by the "old" to the "new" RDO/LTS Office within sixty (60) days from the effective date of the transfer. All concerns/issues and queries of newly-enlisted taxpayers shall also be addressed by the new LTS Office/LTD.

#### B. Filing of Returns and Payment of Taxes

- All returns of the newly-enlisted/transferred LTs shall be filed with the “new” LTS Office having jurisdiction over the said taxpayers using the eFPS facility. During the transition period, those who are not yet enrolled in the eFPS shall be allowed to manually file their tax returns and pay the taxes due thereon at the Authorized Agent Banks (AABs) near the LT’s head office address, until such time that they are enrolled in the eFPS.
- In case of technical problem in the system during deadlines, the newly-enlisted LTs shall accomplish applicable eBIR Form and pay manually/over-the-counter thru AABs, or on its absence near the LT, thru the Revenue Collection Officer (RCO) assigned at the municipality.
- After receiving payments, AABs and RCOs shall prepare Batch Control Sheet (BCS) for LTs and submit the same to the RDO concerned, which shall then transmit the same, together with the tax returns to the Large Taxpayers Document Processing and Quality Assurance Division (LTDPQAD).

#### C. Audit Cases

- Taxpayers under investigation, including refund claims, pursuant to Letters of Authority (LAs)/Letter Notices (LNs) issued prior to the effective date of transfer shall be continued by the issuing office. Collection from such audit shall be credited to the office that conducted/concluded the audit. Thereafter, all LAs/LNs, regardless of taxable year, shall be issued by the “new” LTS Office/LTD.
- All deficiency tax assessments issued against transferred/newly-enlisted taxpayers shall be handled by the “old” RDO/LTS Office that issued such assessment until settlement/termination of the case. Any collection therefrom shall be credited to the “old” RDO/LTS Office/LTD.

#### D. Stop-Filer Cases

- The open Returns Compliance System (RCS) cases shall be transferred to the “new” LTS Office from the “old” RDO/LTS Office/LTD.
- Suspended RCS open cases pending completion of audit shall be closed by the Assessment Section of the old RDO/LTS Office/LTD after termination of the audit.
- A list of open of RCS cases pending completion of audit shall be generated by the RDC/NO-DC and endorsed to the “new” LTS Office concerned within thirty (30) days from the effective date of transfer of taxpayer registration.
- Reminder Letters shall be prepared and issued by the “new” LTS Office/LTD/LT Collection Enforcement Division (LTCED) for the valid stop-filer cases.
- The “new” LTS Office/LTD/LTCED shall pursue contact with taxpayers who have not complied with the Reminder Letter until full compliance is effected.

#### E. Accounts Receivable (AR) Cases

- All dockets bearing outstanding AR cases of transferred taxpayers as well as applications for compromise settlement / abatement that are not yet evaluated/recommended by the evaluators as of effective date of the transfer shall be turned over to the new LTS Office/LTD.
- Each AR docket shall be covered by a status report to serve as reference for the Revenue Officer tasked to handle the case.

#### F. TCC Utilization

- All applications and documentary requirements for TCC utilization including TCCs with outstanding balances, as of effective date of the transfer of newly-enlisted and transferred LTs shall be filed with “new” LTS Office having jurisdiction over such taxpayer.
- Suspended TDM payments on TCC utilization processed by the “new” LTS Office/LTD shall be resolved by the error handlers of the “new” LTS Office/LTD.

#### **Transitory Provisions:**

- Collection from tax payments of newly-enlisted LTs shall be credited to the LTS upon effectivity of enlisting.
- All LTs are mandated to adopt Computerized Accounting System (CAS) and all Books of Accounts and accounting records shall be kept in electronic format, as required under Revenue Regulations (RR) No. 9-2009. Newly-enlisted large taxpayers must have adopted and secured the Permit to Use CAS and/or components thereof within six (6) months after having been officially notified, in writing, of their status as “Large Taxpayer”. Those that will not be able to comply within the prescribed deadline may submit a letter request for extension to comply with said requirement stating therein the reason(s) for not being able to comply therewith. Such request shall be evaluated by the concerned LTS Office, subject to the approval/disapproval of the Assistant Commissioner-LTS. Otherwise, penalty provision for non-compliance to this requirement pursuant to RR No. 9-2009 shall apply.
- All applications for Authority to Print (ATP), Permit to Adopt/Use CAS and/or Components thereof and other secondary registration received by the “old” RDO/LTS Office/LTD shall be processed by the “new” LTS Office/LTD concerned. However, the docket/documents must be endorsed to the “new” LTS Office/LTD with a memorandum stating the status of the application. As regards the application for Permit to Use/Adopt CAS and components thereof/accreditation of CRM/POS systems, where a complete systems walkthrough has already been undertaken by the “old” RDO/LTS Office concerned, the permit/certificate for accreditation shall be issued by the “old” RDO/LTS Office concerned.



- With respect to the applications for certification on inventory destruction filed by the enlisted/transferred taxpayers that were filed and/or where the physical destruction of inventory was already witnessed by the RDO/LTS Office/LTD concerned but the processing of Certificate of Deductibility thereof was held in abeyance pending the determination for deductibility of inventory destructed shall be issued by the “new” LTS Office/LTD concerned. However, the docket together with a status report shall be endorsed by the “old” RDO/LTS Office/LTD to the “new” LTS Office/LTD concerned.

REVENUE MEMORANDUM ORDER NO. 28-2017 AMENDING CERTAIN PROVISIONS OF REVENUE MEMORANDUM ORDER (RMO) NO. 42- 2016 – PRESCRIBING THE GUIDELINES AND PROCEDURES IN THE IMPLEMENTATION OF REPUBLIC ACT (RA) NO. 9505, OTHERWISE KNOWN AS THE PERSONAL EQUITY AND RETIREMENT ACCOUNT (PERA) ACT OF 2008, DATED JULY 21, 2016

This Order seeks to streamline the implementation of RA No. 9505 by revising the reportorial requirements under RMO No. 42-2016. The reports being required under RMO No. 2016 are reduced from fifteen (15) to (3) under this issuance to make the processing thereof easier for both the PERA administrators and the PERA processing office. Moreover, certain fields in BIR Form No. 2338 and 2339 are also revised.

Kindly refer to Annex B for the details of the discontinued and revised reports as well as the revised BIR forms.

There are no changes in the policies and guidelines in accomplishing and submitting the reports as mentioned in RMO No. 42-2016.

REVENUE MEMORANDUM ORDER NO. 28-2017 AMENDING CERTAIN PROVISION OF REVENUE MEMORANDUM ORDER NO. 55-2016. RELATIVE TO THE SIGNATORIES IN THE ELECTRONIC CERTIFICATE AUTHORIZING REGISTRATION (ECAR)

This issuance aims to amend the signatories in the eCAR provided in RMO No. 55-2016.

Last paragraph of Item No. 3, Section II is hereby amended to read as follows:

*"In the spirit of expedient taxpayer service, either the RDO or the ARDO may sign an eCAR in cases where either one of the signatories is absent. **However, in the absence of both the RDO and the ARDO, the Chief, Assessment Section may sign the eCAR on their behalf.**"*



# BSP UPDATES

## **CIRCULAR LETTER NO. 974 AMENDMENTS TO THE MANUAL OF REGULATIONS FOR BANKS AND NON-BANK FINANCIAL INSTITUTION**

### **CICS Standard**

The new check clearing process known as “Check Image Clearing Systems” (CICS) has been strictly implemented on January 20, 2017. This is added as a footnote in Section X206 of MORB.

### **Grant of Regulatory Relief**

The Annex A of Appendix 89 of the MORB and Annex A of Appendix Q-67 of the MORNBFI are amended to add the grant of regulatory relief to cover areas affected by typhoon “Niña” pursuant to previous Memorandum No. M-2017-002 dated January 18, 2017.

## **CIRCULAR LETTER NO. 975 ISSUANCE OF BONDS AND COMMERCIAL PAPERS**

### **Compliance with R.A. 8799**

All banks and quasi-banking authority/quasi-banks issuing bonds and commercial shall comply with Securities Regulation Code (R.A. 8799) and ensure that adequate control system and effective liquidity risk management in accordance with Section X176/4176Q of the Manual of Regulation of banks and Non-Banks Financial Institution.

### **Notice to Bangko Sentral ng Pilipinas (BSP)**

The bank shall notify the appropriate department for the approval of the bond issue within (five) 5 banking days from the approval by the bank’s/QB’s board of directors, in accordance with appendix 6/Appendix Q-3.

- a. Renaming the required report in Subsection 4239Q.3 from “Notice to Bangko Sentral on SEC’s approval of bond issue together with the documents required by the SEC for the creation and registration of the bond issue” to “Notice to Bangko Sentral on BOD’s approval of the bond issue”
- b. Submission deadline from 3<sup>rd</sup> business day from SEC approval to 5 (five) banking days from the approval by the QB’s board of directors.

CIRCULAR LETTER NO. 976 AMENDMENTS TO THE EXPANDED REPORT ON REAL ESTATE EXPOSURES (ERREE) AND THE SUBMISSION OF THE REPORT ON PROJECT FINANCE EXPOSURES (RPFE)

### Limit on Real Estate Exposures

- a. Total real estate loans of UB/KBs shall not exceed twenty percent (20%) of the total loan portfolio, net of interbank loans. It does not include loans to finance infrastructure projects for public use such as but not limited to the construction, rehabilitation and improvement of highways, streets, bridges, tunnels, railways, railroads, transport systems, ports, airports, power plants, hydropower project, canals, dams, and water supply irrigation.
- b. **Commercial Real Estate Loans.** The contract to sell (CTS) shall be executed between the real estate developers and home buyers on a with recourse basis through purchase of receivables by banks.
- c. **Real Estate Stress Test (REST) Limits.** It consist of residential and commercial real estate loans to individual households and business, land developers, and other corporate borrowers such as real estate brokers, lessors, property management companies, and holding companies for purposes of occupancy and or financing real estate activities.
- d. An assumed write-off of twenty-five percent (25%) that will be undertaken to stress test on universal and commercial banks for real estate exposures and other real estate property.

**Report on Real Estate Exposure of Banks.** The report aims to provide BSP with a comprehensive view of the quality and type of real estate loans/investments financed by banks designed to measure and monitor the aggregate real estate exposures.

- Expanded Report on Real Estate Exposures (**ERREE**) shall be in accordance with the guidelines on the preparation of solo and consolidated financial statements of the statement policy of BSP. This report is classified as Category A-1 and shall be submitted within fifteen (15) banking days from measurement date if the frequency of report is monthly or solo, otherwise, within 30 banking days from measurement date if the frequency of report is quarterly or consolidated.
- Report on Project Finance Exposures shall be in accordance in subsection 1192.19 of the MORB. This is to measure and monitor the exposure of banking system to project finance under subsection X191.3. All universal and commercial banks shall prepare and submit solo or consolidated financial statements prescribed under Appendix 121b of the MORB.

a. Bank Report

A rural bank (subsidiary of universal and commercial bank) including head office and branches is required to submit ERREE. The report must also cover real estate exposures of their trust department beginning March 31, 2018. All universal, commercial, and thrift banks including trust departments must comply with this.

b. Banking group report

A revised guideline shall take effect starting the quarter ending June 30, 2018. The new submission deadline for EREE template will be within 30 banking days after end of the reference quarter ending as of March 31, 2018 and revised ERREE template will be within 45 banking days of the same date. A dry run will be conducted for the quarter ending March 31, 2018, in which covered banks and their trust departments shall submit both original and revised ERREE. In addition, it requires banks to submit within 45 banking days after the reference quarter starting June 30, 2018 for the template of the Report on Project Finance Exposures. All parent of universal, commercial and thrift banks must comply with this.

- The amended Financial Reporting Package (FRP) for Rural and Cooperative banks of line item instruction or schedules shown as "Schedules 11d (Total Amount), 11d1 (Peso Accounts), 11d2 (Foreign Regular), 11d3 (FCDU/EFCDU) and 11d4 (Foreign Offices) gross loans and receivables. The amortized cost of loans and receivables – others would be classified as current, past due, non-performing, and items in litigation.

**CIRCULAR LETTER NO. 977 ESTABLISHING A NEW DEADLINE FOR THE REPLACEMENT OR EXCHANGE OF NEW DESIGN SERIES (NDS) BANKNOTES DIRECTLY WITH THE BANGKO SENTRAL NG PILIPINAS (BSP) AT PAR WITH THE NEW GENERATION CURRENCY (NGC) BANKNOTES AND WITHOUT CHARGE UNTIL DECEMBER 29, 2017.**

#### **Deadline for New Design Series (NDS) Bank Notes**

The Monetary Board extended its deadline on December 29, 2017 for the replacement or exchange of NDS banknotes from general public at any of BSP Cash Department, Regional Offices, and Branches and allow the exchange of demonetized NDS for a maximum of ₱100,000 per transaction in cash, otherwise, it would only be payable by check or direct credit to bank.

**CIRCULAR LETTER NO. 978 EXCLUSION OF LOANS AND OTHER CREDIT ACCOMMODATIONS COVERED BY GUARANTEES OF INTERNATIONAL/REGIONAL INSTITUTIONS/MULTILATERAL FINANCIAL INSTITUTIONS FROM CEILINGS TO SUBSIDIARIES AND AFFILIATES**

**Exclusion of Loans and Other Credit Accommodations**

The Monetary Board approved the exclusion of the portion of loans and other credit accommodations covered by guarantees of international/regional financial institutions provided that the Philippine Government is a member, from the ceilings on total outstanding loans and other credit accommodation granted to banks subsidiaries and affiliates except loans secured by assets considered as non-risk, interbank call loans, and portion of loans covered by institutions where the Philippine Government is a member, and other procedural requirements such as approval of the board and determination of majority of all the members of the board of directors.

**CIRCULAR LETTER NO. 979 RISK-WEIGHTING OF BANK LOANS TO THE EXTENT GUARANTEED BY CREDIT SURETY FUND (CSF) COOPERATIVES**

The Monetary Board approved the assignment of a preferential 20 percent (20%) risk weight on bank loans to micro, small, and medium enterprises (MSME) to the extent guaranteed by a qualified Credit Surety Fund Cooperative as an eligible guarantors under risk based capital adequacy frameworks for universal and commercial bank. The extent of claim is determined by the amount of current market value of securities pledged coverage in comparison with the carrying amount of the on-balance sheet claim or the notional principal amount.

The risk weighting of others assets include bank premises, furniture and fixtures, and equipment except loans to small farmers engaged in *palay* or food production activities provided that a separate fund is maintained to guarantee loans originated by bank for a maximum of three times of the loan guarantee and must be invested in assets that a zero percent risk weighted, and *loans to MSMEs* provided that maximum allowable leveraging ratio up to 3x but not to exceed 5x of the CSF Cooperative Restricted Capital for surety. The risk weighted will be at 100% for investments in equity issued by banks or other financial or non-financial institution

## CIRCULAR LETTER NO. 980 ADOPTION OF NATIONAL RETAIL PAYMENT SYSTEM (NRPS) FRAMEWORK

The Monetary Board approved the adoption of the framework to ensure that the retail payments systems that banks participate in demonstrate sound risk management, and effective and efficient interoperability. The framework covers all retail payment related activities, mechanisms, institutions, and users which may be in form of payment of goods and services, domestic remittances or fund transfers. It must meet ***at least one*** of the following characteristics:

- a. Payment is not directly related to a financial market transaction
- b. Settlement is not time critical
- c. The payee, payor, or both are individuals or non-financial organizations
- d. The payee, payor or both are direct participants in the payment system that is processing the payment

Furthermore, the Payment System Management Body shall provide the function of sound governance to the retail payment system, otherwise, BSP shall discharge its function. All clearing activities must be within the NRPS governance and does not allow clearing switch operators to intervene. In order to meet the rules in accordance with the NRPS System, minimum requirements to offer Electronic Financial and Payment Service (EFPS), fees on transactions, it shall also disclose to the Bangko Sentral the details of all fees that will be charged to the client, and observance of anti-money laundering requirements. Any violation shall subject its directors, officers, and or employees to monetary and non-monetary sanctions under section 37 such as but not limited to the suspension of offering and authority to provide new or existing electronic financial products or services including settlement through Philippine Payments and Settlements System. Please note that the domestic remittance transaction is a transfer of fund within the Philippines, and is not covered by electronic payment transaction under NRPS framework.

## CIRCULAR LETTER NO. 981 GUIDELINES ON LIQUIDITY RISK MANAGEMENT

The Monetary Board approved the amendment on the guidelines on liquidity risk management specifically the definition of liquidity risk under part 3 of appendix 72/Q-42 of the MORB or MORNBF1 which include the types and definition of risk of credit, market, interest rate, liquidity, operational, strategic, reputation, and compliance. In addition, the reference to sections 4176Q and 4195N of the MORNBF1 in the subtitle of appendix Q-44 shall be deleted.

Banks shall have until September 1, 2018 to develop or make appropriate changes to their policies and procedures, provided that they complete a gap analysis of the circular from their existing system by March 31, 2018. All must be documented and made available for review to BSP including the result of the gap analysis.

#### **CIRCULAR LETTER NO. 982 ENHANCED GUIDELINES ON INFORMATION SECURITY MANAGEMENT**

The Monetary Board approved the revised guidelines on information security management of BSP supervised financial institutions due to rapid changes in technology including advancement and cyber threats. The growing dependence and usage of technology requires an established robust and effective technology risk management process to provide stability, resilience, and protect consumer interest.

#### **CIRCULAR LETTER NO. 983 REDUCTION OF RESERVE REQUIREMENT ON REPURCHASE TRANSACTIONS**

The Monetary Board approved the amendment to reflect the reduction in the reserve requirement rate on repurchase transactions, as well as the features to be eligible for the zero rate reserve requirement. It shall, however, maintain required reserves equivalent to 20% of deposit substitute liabilities except those that are under repo agreements covering government securities. The Repo program shall be subject to the reserve requirement of zero percent starting first week of December 2017.

#### **MEMORANDUM NO. 2017-033 TRANSITORY PROVISIONS OF CIRCULAR NO. 963 ON BANK RESPONSIBILITY FOR THE GENERATION AND TIME SUBMISSION OF REQUIRED REPORTS TO THE BSP**

A new monetary penalty structure will apply for the violation classified as erroneous, delayed, and unsubmitted. Furthermore, non-monetary sanction will also be imposed for violations that are considered habitual in which case when a bank accumulates more than 100 demerit points within a calendar period.





## IC UPDATES

**CIRCULAR LETTER NO. 2017-49 GUIDELINES ON THE INSURABILITY OF DAMAGES, FINES AND PENALTIES WHICH ARE EXEMPLARY IN NATURE RELATIVE TO LIABILITY INSURANCE**

This circular clarifies the question on the insurability of exemplary damages wherein the IC confirmed that damages which are exemplary and punitive in nature, regardless of the nature of the proceedings where the same is awarded, are ***not*** insurable under Philippine laws on the ground that the same is against public policy.

In line with this, the IC will take the necessary steps as follows:

- 1) All non-life insurance companies with existing liability insurance policies which insures exemplary damages are required to re-apply for the approval of their revised policies; and
- 2) All liability insurance policies which covers damages, fines and penalties which are exemplary in nature issued prior to the effectivity of the CL shall remain valid and effective until its expiration but shall not be subject to renewal.

**CIRCULAR LETTER NO. 2017-50 AMENDMENT TO MINIMUM CAPITALIZATION AND FINANCIAL CAPACITY REQUIREMENTS FOR HEALTH MAINTENANCE ORGANIZATIONS**

This circular amends the provision of Section 1.3 of CL No. 2016-41, Risk-Based Capitalization, adding a paragraph that the additional deposit in lieu of cash infusion as paid-up capital shall be considered as an interim measure only until the process of increasing the authorized Paid-Up Capital of concerned HMO is completed.



# CDA UPDATE

This issuance aims to determine the presence of the documents needed to be maintained by every cooperative in the management of its business.

The Guideline shall cover all registered cooperatives, regardless of types and categories, except for micro cooperatives which have the option to use and/or submit the report.

The aforementioned document shall serve as the working paper in the conduct of performance audit which shall be kept and maintained by the cooperative, which must be filled up by the Internal Auditor or the Audit Committee in coordination with the responsible person/s in the key units of the cooperative signifying the presence of the documents being asked.

The working paper consists of two major parts namely:

- Governance reports
- Management Reports

The following are the minimum requirements to be disclosed in the Governance and Management Audit Report:

- a. **Basic Information** – presents the general information about the cooperative.
- b. **Executive Summary** - presents the overview of the objectives and scope of the audit, over-all rating and rating per component, and the summary of the key observations and conclusions together with the key recommendations identifying the strong points and main areas which need to be addressed by the cooperative.
- c. **Objectives and Scope of the Audit** - presents the objectives set and brief scope of audit including the actions chosen for audit and broad details of the procedures carried out.
- d. **Observations /Findings** – presents a clear and logical analysis of the identified strong points or problems confronted by the cooperative within the auditing period. The report should provide sufficient details of the observations and findings to substantiate the points given
- e. **Recommendation and Conclusion** – This part should be clear and precise on the need for appropriate action to address the issue. The recommendation shall form as basis for any follow-up audit, evaluation or examination

The said report shall be submitted by the cooperative to the CDA not later than 120 days from the end of each Calendar Year as attachment to the CAPR. Failure to submit will result to non-issuance of Certificate of Non-Compliance or may also be subjected to procedural process of cancellation.

This memorandum repeals Memorandum Circular No. 2013-15, Series of 2013 dated February 25, 2013 Re: Performance Report Standards for Cooperatives is hereby repealed accordingly.

### What to do?

All affected institutions must be aware of the changes set by the regulatory bodies to comply with the requirements and to provide better services to its stakeholders, investors, and general public, as well, in order to minimize fraud and misconduct in the operation itself. Entities must observe their company policies to confirm if the issuances are in line with their current practice.

**...XXX...**

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Comments and suggestions are welcome.

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