

## The Securities and Exchange Commission issues guidelines on the number and qualifications of incorporators under the Revised Corporation Code

### Recent Developments

To implement Section 10 of Republic Act No. 11232 or the Revised Corporation Code of the Philippines (**Revised Corporation Code**),<sup>[1]</sup> the Securities and Exchange Commission (**SEC**) has issued Memorandum Circular No. 16 series of 2019 entitled: Guidelines on the Number and Qualifications of Incorporators under the Revised Corporation (**Circular**). The Circular provides for the composition and requirements for incorporators of domestic corporations.

### Implications for applicant-corporations

The Circular amends the previous requirements and policies of the SEC with respect to incorporators. Persons seeking to apply for incorporation of a domestic corporation (stock or non-stock) with the SEC must comply with the requirements in the Circular. The SEC has the power to require submission of the required documents before it approves an application for incorporation.

### What the Circular says

The Circular provides for the following:

1. Two or more persons but not more than 15 may organize themselves and form a domestic corporation, except a one-person corporation, under the Revised Corporation Code.
2. Each incorporator must own or be a subscriber to at least one share of the capital stock of the proposed stock corporation, or must be a member of the proposed non-stock corporation.

The incorporators may be composed of any combination of (i) natural individual persons, (ii) SEC-registered partnership, (iii) SEC-registered domestic corporations, or (iv) foreign corporations.

3. Certain documents are required for each type of incorporator, as follows:

Type of incorporator	Specific requirement
SEC-registered partnership	Partners' Affidavit, duly executed by all partners certifying that they have authorized the partnership to invest in the corporation to be formed and that they have designated one of the partners

	<p>to be the signatory to the incorporation documents.</p> <p>Partnerships under "dissolved" or "expired" status with the SEC shall be authorized to become an incorporator.</p>
SEC-registered domestic corporations	<p>Directors' Certificate or Secretary's Certificate certifying that the incorporator has obtained the approval of majority of its board of directors / trustees, ratified by at least 2/3 of the outstanding capital stock or members, to invest in the proposed corporation and specifically naming its signatory to the incorporation documents.</p> <p>Domestic corporations under "delinquent," "suspended," "revoked," or "expired" status with the SEC shall not be authorized to become an incorporator.</p>
Foreign corporations	<p>Board resolution or Directors' Certificate or Secretary's Certificate or its equivalent, duly authenticated or apostilled by the Philippine Embassy or consulate, certifying that the foreign corporation is authorized to invest in the proposed corporation and specifically naming the signatory to the incorporation documents.</p>
Natural individual persons	<p>Must be of legal age.</p>

4. An individual signing the Articles of Incorporation (**AOI**) and By-Laws must indicate the capacity upon which the signatory is signing the same (i.e., as incorporator, or as representative of XYZ Corp., etc.). An individual designated to sign the AOI and By-Laws on behalf of an incorporator which is not a natural person must also indicate the corporate or partnership name of the entity represented and for whom he/she is executing the same.
5. An individual who signed the AOI on behalf of an incorporator who is not a natural person may not be named as director or trustee in the same AOI unless such individual also owns at least one share or is also a member of the proposed corporation.
6. Processing of applications for incorporation in accordance with the Revised Corporation Code shall be done manually and the SEC has been receiving such applications starting 2 August 2019.

The Circular took effect on 2 August 2019, immediately following its publication in a newspaper of general circulation on 1 August 2019.

### **Actions to Consider**

The Circular amends the previous requirements for incorporators of a domestic corporation, by minimizing the required number of incorporators, and allowing juridical persons as incorporators. Applicants for incorporation should maximize the flexibility provided in the Circular in structuring the arrangements for the incorporation of a domestic corporation in the Philippines.

Quisumbing Torres' Corporate and Commercial Practice Group can assist clients in filing applications for

incorporation with the SEC and ensure compliance with the guidelines and requirements provided in the Circular

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[1] Section 10 of the Revised Corporation Code provides that:

SECTION 10. Number and Qualifications of Incorporators. — Any person, partnership, association or corporation, singly or jointly with others but not more than fifteen (15) in number, may organize a corporation for any lawful purpose or purposes: Provided, That natural persons who are licensed to practice a profession, and partnerships or associations organized for the purpose of practicing a profession, shall not be allowed to organize as a corporation unless otherwise provided under special laws. Incorporators who are natural persons must be of legal age.

Each incorporator of a stock corporation must own or be a subscriber to at least one (1) share of the capital stock.

A corporation with a single stockholder is considered a One Person Corporation as described in Title XIII, Chapter III of this Code.

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