

QAU Memo No. 2, s2019



In this issue:

The Securities and Exchange Commission has issued the following Memorandum Circulars and Opinion:

- MC No. 14 s.2018 Philippine Interpretation Committee Question and Answer (PIC Q&A) No. 2018-12 Implementation Issues Affecting Real Estate Industry;
- MC No. 15 s.2018 Guidelines for the protection of SEC Registered Non-Profit Organizations from Money Laundering and Terrorist Financing Abuse ("NPO Guidelines");
- MC No. 16 s.2018 2018 Guidelines on Anti-Money Laundering and Combating the Financing of Terrorism for SEC covered Institutions ("2018 AML/CFT Guidelines"); and
- MC No. 17 s.2018 Revision of the General Information Sheet (GIS) to Include Beneficial Ownership Information.

R.S. BERNALDO & ASSOCIATES

TAKING YOU FURTHER

SEC Memorandum Circular No. 14, Series of 2018 Philippine Interpretation Committee Question and Answer (PIC Q&A) No. 2018-12 Implementation Issues Affecting Real Estate Industry

The SEC has given the Real Estate Industry a relief by providing an **option to defer** (i.e. for a period of 3 years) the application of certain provisions of PIC Q&A No. 2018-12 with respect to accounting of the following:

- significant financing component; and
- uninstalled materials and exclusion of land in the calculation of percentage of completion (POC).

Effective January 1, 2021, real estate companies will adopt PIC Q&A No. 2018-12 and any subsequent amendments thereof retrospectively or as the SEC will later prescribe.

SEC Memorandum Circular No. 15, Series of 2018: Guidelines for the protection of SEC Registered Non-Profit Organizations from Money Laundering and Terrorist Financing Abuse (“NPO Guidelines”)

The Commission adopts these Guidelines to protect non-profit organizations from money laundering and terrorist financing abuse. The Commission adopts a risk-based approach in applying focused measures in dealing with threats of terrorist financing in order to ensure that NPOs are not being used by terrorist organizations.

The **risk based approach** for the protection of NPOs shall include the following:

1. Identify threats based on the results of assessment of AMLC.
2. Identify vulnerabilities among NPOs based on their type and features.
3. Identify the consequences of such threats and vulnerabilities on NPOs.

The **levels of risk**, together with their corresponding **compliance requirements** are as follows:

Risk Rating	Compliance Requirements
Low Risk	<ol style="list-style-type: none"> 1. Reportorial Requirements <ul style="list-style-type: none"> • General Information Sheet • Annual Financial Statements 2. Duly filled up membership book to be available for inspection by the Commission; and 3. Other minimum requirements based on current law and SEC rules.
Medium Risk	<ol style="list-style-type: none"> 1. Same compliance requirements as Low Risk except as to Annual Financial Statements which are required to be audited by an independent certified public accountant accredited by the Board of Accountancy; 2. Additional Requirements: <ul style="list-style-type: none"> • Sworn Statement of Sources, Amount, and Application of Funds and Program / Activity Planned and Accomplished (SS) • Certificate of Existence of Program/ Activity (COEP) 3. Establishment of an internal audit system; and 4. Mandatory attendance in sustained outreach program of the Commission.

High Risk	<ol style="list-style-type: none"> 1. Same compliance requirements as Medium Risk; 2. Mandatory background checks of the officers and trustees; and 3. Mandatory audit by the Commission of the NPO concerned.
Blacklisted	<ul style="list-style-type: none"> • Registration will be denied outright. • If the Non-Stock Corporation or NPO is blacklisted subsequent to its registration, the process of revocation of registration will be initiated and publicized, subject to notification and grace period for compliance granted by the Commission to the relevant Non-Stock Corporation or NPO.

Mandatory Disclosures for All SEC Registered Non-stock Corporations

All SEC registered Non-stock Corporations shall, **within 6 months** from effectivity of this guideline, submit an additional disclosure of information listed in Annex A of this guideline to the Commission through the respective Operating Departments having supervision over such Non-Stock Corporations copy furnished the Anti-Money Laundering Division (AMLDD) of the Enforcement and Investor Protection Department (EIPD). Failure to comply with the requirements of this Chapter is a **cause for revocation** of the registration of the non-complying non-Stock Corporation.

Penalties

If, after due notice and hearing, the Commission finds that:

- a) There is wilful violation of these Guidelines or related orders of the Commission;
- b) Any person has, in applications, accounts, records or documents required under these Guidelines to be filed with the Commission, made any untrue statement of a material fact required to be stated or necessary to make the statements therein not misleading; or
- c) Any person has refused to permit any lawful examinations into its affairs,

The Commission may, in its discretion, and subject to existing laws and regulations, impose any or all of the following sanctions as may be appropriate in light of facts and circumstances:

- Fine of no less than Ten Thousand Pesos (Php 10,000) nor more than One Million Pesos (Php1,000,000) plus not more than Two Thousand Pesos (Php 2,000) for each day of continuing violation;
- Revocation of registration of a Non-stock Corporation or NPO if there is a high risk of money laundering or terrorist financing abuse within such non-stock corporation or NPO; and
- Other penalties within the power of the Commission to impose.

SEC Memorandum Circular No. 16, Series of 2018: 2018 Guidelines on Anti-Money Laundering and Combating the Financing of Terrorism for SEC covered Institutions (“2018 AML/CFT Guidelines”)

All Covered institutions as defined in the 2018 AML/CFT Guidelines are required to amend their MLPP (Money Laundering and Terrorist Financing Prevention Program) to conform to 2018 AML/CFT Guidelines.

- They should submit their revised MLPP **within 6 months from effectivity** to the Commission through the Operating Departments having supervision over such covered institutions copy furnished the Anti-Money Laundering Division of the Enforcement and Investor Protection Department (EIPD).
- A covered institution which fails to submit a revised MLPP within the prescribed period shall be subject to a **penalty of 500 per day** of delay until the submission of it.

Money Laundering and Terrorist Financing Prevention Program

All Covered institutions are required to adopt a comprehensive and risk-based Money Laundering and Terrorist Financing Prevention Program (MLPP) geared toward the promotion of high ethical and professional standards and the prevention of the Covered Institutions from being used, intentionally or unintentionally, for money laundering and terrorism financing.

The program shall embody the following **at a minimum**:

- 1) Detailed procedures of the covered institution’s compliance and implementation of the following major requirements of the AMLA, as amended, its RIRR, other applicable guidelines issued by the AMLC and these guidelines, to wit:
 - a) Customer Identification Process;
 - b) Record keeping and retention;
 - c) Covered Transaction Reporting; and
 - d) Suspicious transactions reporting
- 2) An effective and continuous AML/CFT training program for all directors, and responsible officers and employees
- 3) An adequate screening and recruitment process
- 4) An internal audit system
- 5) An independent audit program with written scope of audit
- 6) A mechanism that ensures all deficiencies noted during the audit and/or SEC regular or special examination or other applicable regulator’s examination are immediately corrected and acted upon;
- 7) Cooperation with the AMLC;
- 8) Designation of an AML Compliance Officer
- 9) A mechanism where information required for customer due diligence and ML/TF risk management are accessible by the parent covered institution

- 10) Policies and control procedures and monitoring mechanism for prevention or mitigation of ML/TF risks.

Sanctions and Penalties

Any violation of the requirements set forth in these guidelines shall be considered as a violation of the Rules, Regulations or Orders promulgated by the Commission, and shall be penalized in accordance with Section 54.1 (a) in relation to Section 54.1 (a)(i),(ii) and (v) of the Securities Regulations Code without prejudice to the penalties that may be imposed by the AMLC RIRR. Accordingly, the Commission may impose any or all of the following sanctions as may be appropriate in the light of facts and circumstances:

- Suspension or revocation of any registration for the offering of securities;
- A fine of no less than Ten Thousand Pesos (Php10,000.00) nor more than One Million Pesos (Php1,000,000.00) plus not more than Two Thousand Pesos (Php2,000.00) for each day of continuing violation;
- Other penalties within the power of the Commission to impose.

SEC Memorandum Circular No. 17, Series of 2018: Revision of the General Information Sheet (GIS) to Include Beneficial Ownership Information

The SEC issued this Circular to assist in the implementation of the Anti-Money Laundering Act, as amended; ensure timely access to adequate, accurate and current information on the beneficial ownership and control of SEC registered corporations; and prevent their misuse for money laundering and terrorist financing purposes.

Beneficial Owner refers to any natural person who ultimately owns and controls the corporation or has ultimate effective control over the corporation.

Ultimate Effective Control refers to any situation in which ownership/control is exercised through actual or through a chain of ownership.

All SEC registered corporations are required to disclose their beneficial owners. Accordingly, the GIS shall be revised to include the following information of the beneficial owners.

- a) Complete name which shall include the surname, given name, middle name and name extension;
- b) Specific residential address;
- c) Nationality;
- d) Tax identification number; and
- e) Percentage of ownership, if applicable.

This requirement shall be initially complied with beginning January 1, 2019.

The SEC shall be timely apprised of all relevant changes in the submitted beneficial ownership information contained in the GIS as they arise. An updated GIS shall be submitted to the SEC **within seven (7) days** after such change occurred or became effective.

SEC Opinion No. 18-24: Nationality Requirement of Third Telco

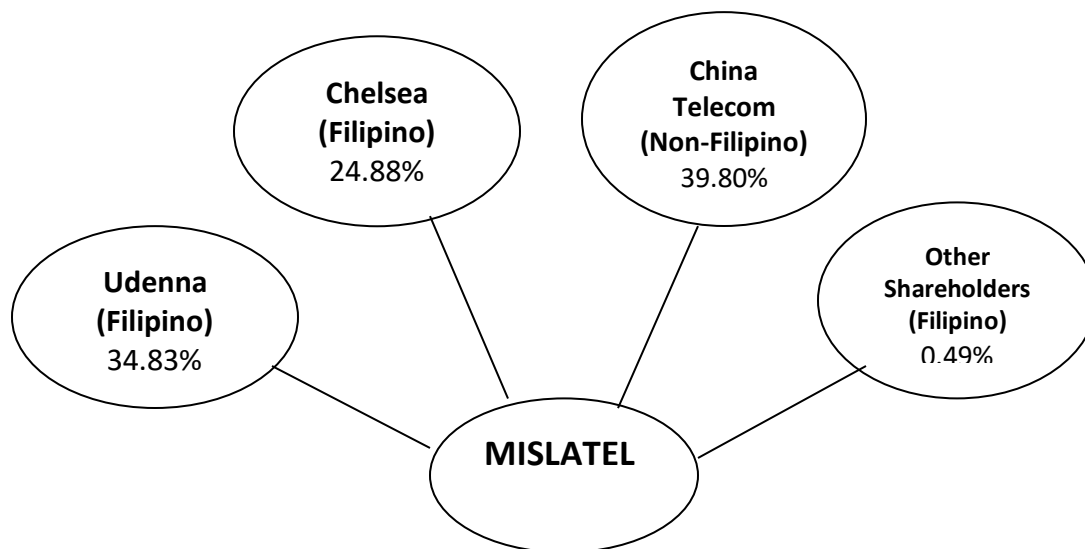
The SEC rendered an opinion on whether the binding Bidding Agreement dated November 6, 2018 entered into by Udenna Corporation, Chelsea Logistics Holdings Corp., China Telecommunications Corporation and Mindanao Islamic Telephone Company, Inc. comply with the relevant rules on foreign ownership applicable to the telecommunications business.

This is in connection with the requirement under Section 10.1 (b) of NTC Memorandum Circular 09-09-2018 or the Rules and Regulations on the Selection Process for a New Major Player (NMP) in the Philippine Telecommunications Market (NTC Bidding Rules) which states that Compliance by NMP of Paid Capital of at least ₱10 Billion and implementation of the relevant provisions of the Bidding Agreement, if applicable to a Participant which has been selected as NMP, accompanied by an SEC Clearance that the terms of the Bidding Agreement comply with the relevant rules on the limitation of foreign equity ownership.

It was further disclosed that Mislattel was recently declared and confirmed by the National Telecommunications Commission (NTC) as the NMP of the Philippine Telecommunications Market.

Upon the increase in MISLATEL'S capitalization, MISLATEL will be compliant with the capitalization requirements of NMP, which is currently set at PESOS : TEN BILLION (Php 10,000,000,000.00)

Public Utilities were placed under List A, Item 18 of the 11th Foreign Investment Negative List, where in only up to 40% foreign equity is allowed. Upon assessment, Mislattel also complied with the relevant rules on the limitation of Foreign equity ownership.



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