

QAU Memo No. 24, s2020



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The Commission issued these guidelines in the implementation of the Revised Corporation Code which allows the conversion from an Ordinary Stock Corporation (OSC) to a One Person Corporation (OPC) and from an OPC to OSC. Also, the Commission issued requirements and guidelines in order to facilitate and expedite the transmission and receipt of official communications as well as enhance the integrity for transactions with the Commission.

R.S. BERNALDO & ASSOCIATES

TAKING YOU FURTHER

SEC Memorandum Circular (MC) No. 27, Series of 2020 Guidelines for the Conversion of Corporations either to One Person Corporation or to Ordinary Stock Corporation

To: All Concerned

The Commission issued these guidelines in the implementation of the Revised Corporation Code which allows the conversion from an Ordinary Stock Corporation (OSC) to a One Person Corporation (OPC) and from an OPC to OSC.

Part I Ordinary Stock Corporation to One Person Corporation

If a natural person of legal age, a trust, or an estate has acquired all of the outstanding capital stocks of an OSC, the OSC may apply for its conversion into an OPC.

Documentary Requirements (Amendment of the Articles of Incorporation)

- a. Cover Sheet
- b. Application for Conversion of an OSC to OPC, signed by the single stockholder who has acquired all of the outstanding shares of an OSC and countersigned by the Corporation's corporate secretary in the form prescribed by the Commission.
- c. Original or certified true copy of the document/s effecting the transfer/s of full title/ownership of shares (i.e., deeds of assignment, or any legal document transferring the shares to the single stockholder) and, if applicable, a certified true copy of proof of authority to act on behalf of the trust/estate;
- d. Certificate Authorizing Registration/ tax clearance from the BIR;
- e. Notarized Secretary's Certificate of No Intra-Corporate Dispute;
- f. Articles of Incorporation of an OPC, filed in accordance with the SEC Guidelines on the Establishment of an OPC or such other Guidelines that the Commission may hereafter issue, in the form prescribed by the Commission, which shall comply with and/or contain the following:
 - i. Must be duly prepared, signed and acknowledged or authenticated by the single stockholder and by the corporation's treasurer;
 - ii. Provision/ article indicating the name/s and address/es of the original incorporator/s of the OSC;
 - iii. Provisions/ articles on the number of directors, their names and addresses, as well as their subscription and payment details shall be modified to reflect the name, address, subscription, and payment details of the single stockholder in the form prescribed by the Commission;
 - iv. Provision/ article on nominee and alternate nominee, their names, nationalities, residence addresses, and the extent, coverage, and limitations of their authorities; and
 - v. Other details particular to an OPC shall likewise be indicated in accordance with MC No. 07, series of 2019 or the SEC Guidelines on the Establishment of OPC, and/or such other guidelines that the Commission may hereafter issue.

The following shall likewise be added as a new Article in the Articles of Incorporation of the One Person Corporation –

“Upon issuance by the Securities and Exchange Commission of the Certificate of Filing of Amended Articles of Incorporation, reflecting its conversion into a One Person Corporation, the attached Articles of Incorporation of the Ordinary Stock Corporation shall be deemed superseded.”

A copy of the latest Articles of Incorporation of the OSC shall be attached to the Articles of Incorporation of the OPC.

- g. Letter of acceptance of appointment by Nominee and Alternate Nominee.
- h. Self-appointed Treasurer’s Bond, if applicable;
- i. Name reservation;
- j. Monitoring clearance from other relevant department of the SEC or from the Compliance Monitoring Division (CMD) of the Company Registration and Monitoring Department (CRMD), whichever is applicable;
- k. Endorsement clearance from appropriate government agencies, if applicable;
- l. Undertaking to Change Corporate Name duly executed under oath by the single stockholder or the sole remaining director, if not yet included in the Articles of Incorporation; and
- m. Undertaking to Assume All Liabilities of the Ordinary Stock Corporation, duly executed under oath by the single stockholder of the OPC, if not yet included in the Articles of Incorporation.

Date of Approval of Conversion

It is the date of issuance of Certificate of Filing of Amended Articles of Incorporation and it supersedes the Article of Incorporation and By-laws of the OSC. The OPC shall be legally responsible for all the OSC’s outstanding liabilities as of the date of approval of conversion.

SEC Registration Number and Name of Corporation

The Certificate of filing of Amended Articles of Incorporation shall bear and retain the corporation’s original SEC Registration Number and the name of the corporation shall have an “OPC” suffix in order to reflect its nature as a One Person Corporation.

Fees

The amount of fees for the Amendment of Articles of Incorporation, Name Reservation and Legal Research shall be based on the Consolidated Schedule of Fees and Charges (SEC MC No. 3, series of 2017).

Provisions

The provisions of Title XIII, Chapter III of the Revised Corporation Code shall apply primarily to OPCs, while other provisions of the Code apply suppletorily.

Part II One Person Corporation to Ordinary Stock Corporation

If the shares in an OPC ceases to be held solely by a single stockholder, the OPC may be converted in to an OSC after due notice to the Commission of such fact/s and of such circumstance/s leading to the conversion, and after compliance with all the requirements.

Documentary Requirements (Amendment of the Articles of Incorporation)

- a. Cover Sheet
- b. Notice of Conversion of an OPC into an OSC, signed by all holders of shares of the outstanding capital stock, countersigned by the corporate secretary in the form prescribed by the Commission.
- c. Original or certified true copy of the document/s effecting the transfer/s of full title/ ownership of shares (i.e., subscription contracts, deeds of assignment, or any legal document declaring the legal heirs of the stockholder);
- d. Certificate Authorizing Registration/ tax clearance from the BIR;
- e. Articles of Incorporation and Bylaws of an OSC filed in accordance with the requirements provided under Section 14 of the RCC, which shall comply with and/or contain the following:
 - i. Duly prepared, signed and acknowledged or authenticated by the stockholders who voted for their adoption, and by the corporation's treasurer;
 - ii. Provision/article indicating the name and address of the original incorporator of the OPC;
 - iii. Provisions / articles reflecting the number of directors, their names and addresses, as well as their subscription and payment details, and;
 - iv. Other details particular to an OSC shall likewise be indicated in accordance with the provisions of the RCC and guidelines that the Commission has issued and/or may hereafter issue.

The following shall likewise be added as a new Article in the Articles of Incorporation of the Ordinary Stock Corporation –

“Upon issuance by the Securities and Exchange Commission of the Certificate of Filing of Amended Articles of Incorporation and of Bylaws of this corporation, reflecting its conversion into an Ordinary Stock Corporation, the attached Articles of Incorporation of the One Person Corporation shall be deemed superseded.”

A copy of the latest Articles of Incorporation of the OPC shall be attached to the Articles of Incorporation of the OSC.

- f. Name reservation;
- g. Monitoring clearance from other relevant department of the SEC or from the CMD of the CRMD, whichever is applicable;

- h. Endorsement clearance from appropriate government agencies, if applicable;
- i. Undertaking to Change Corporate Name duly executed under oath by the authorized representative or director of the OSC, if not yet included in the Articles of Incorporation, and;
- j. Undertaking to Assume All Liabilities of the One Person Corporation, duly executed under oath by all the stockholders of the OSC, if not yet included in the Articles of Incorporation.

Notice of Conversion

It shall be filed with the Commission within sixty (60) days from such transfer/s of shares. The period for filing the Notice shall be observed even though the conversion will be applied for, or will take place, afterwards.

If the Notice of Conversion is filed with the Commission beyond sixty (60) days from the transfer of shares, the OPC may still be approved for conversion into an OSC subject to prior payment of penalty if found liable from violation of Section 132, in relation to Section 158 of the RCC.

Date of Transfer of Shares

It shall be the date of the corresponding Certificate Authorizing Registration/ tax clearance is issued by the BIR.

Date of Approval of Conversion

It is the date of issuance of Certificate of Filing of Amended Articles of Incorporation and of Bylaws and it supersedes the Article of Incorporation of the OPC. The OSC shall be legally responsible for all the OPC's outstanding liabilities as of the date of approval of conversion.

SEC Registration Number and Name of Corporation

The Certificate of filing of Amended Articles of Incorporation and Bylaws shall bear and retain the corporation's original SEC Registration Number and the name of the corporation shall not have an "OPC" suffix as part of its corporate name.

Fees

The amount of fees for the Amendment of Articles of Incorporation, Name Reservation and Legal Research shall be based on the Consolidated Schedule of Fees and Charges (SEC MC No. 3, series of 2017).

Part III Provisions Common to Both Kinds of Conversion

- ❖ In the Articles of Incorporation of the converted corporation, the signatory/ies thereto must clearly state that they voluntarily agreed to convert the Ordinary Stock Corporation into a One Person Corporation, or the One Person Corporation into an Ordinary Stock Corporation, as the case may be, in the following or similar manner-

"KNOW ALL MEN BY THESE PRESENTS:

The undersigned stockholder/s, of legal age, voluntarily agreed to convert a stock corporation under the laws of the Republic of the Philippines and certify the following".

- ❖ By reason of the nature of these corporations the conversion from an OSC to OPC shall be deemed as **optional**. On the other hand, the conversion from an **OPC to OSC** shall be deemed as **mandatory**, *unless when winding-up and dissolution is appropriate.*
- ❖ Processing of applications for conversion of corporations shall commence only upon receipt by the CRMD, or by any of the SEC Extension Offices nationwide, of the complete documentary requirements enumerated in these guidelines including the proof of payment of the applicable fees. This shall be done manually by the Commission until further notice.
- ❖ In case an opposition or dispute arises from the conversions discussed in these guidelines, the aggrieved party may file before the CRMD a verified Petition for Cancellation of the certificate thus issued, on the ground of fraud in the procurement thereof in accordance with the applicable laws and other rules or issuances by the Commission.

SEC Memorandum Circular (MC) No. 28, Series of 2020 Requirement for Corporations, Partnerships, Associations, and Individuals to Create and/or Designate E-mail Account Address and Cellphone Number for Transactions with the Commission

To: All Concerned

The Commission issued these requirements and guidelines in order to facilitate and expedite the transmission and receipt of official communications as well as enhance the integrity for transactions with the Commission.

Scope

- ✓ Corporations;
- ✓ Associations;
- ✓ Partnerships; and
- ✓ Persons under the jurisdiction and supervision of the Commission

Official E-mail Address and Cellphone Number

Submission of a valid official electronic mail ("e-mail") address and a valid official cellular phone number shall be made within sixty (60) days from the effectivity of these rules. For future applications and those applications which are still pending primary registration with the Company Registration and Monitoring Department (CRMD), such information should be either indicated during the filling up of the registration forms or submitted within thirty (30) days from the issuance of the certificate of registration, license or authority.

Alternate E-mail Address and Cellphone Number

Submission of a valid alternate e-mail address and valid alternate cellular phone number is also required in addition to the valid official e-mail address and official cellular phone number.

Person in Control

The e-mail addresses and cellular phone numbers shall be under the control of the **corporate secretary, the person charged with the administration and management of the corporation sole, the resident agent of the foreign corporation, the managing partner, the individual, or the duly authorized representative.**

Provided, that the corporation, association, partnership or individual shall also submit proof of the authorized representative's authority (i.e. special power of attorney or secretary's certificate) to control the e-mail addresses and cellular phone numbers, and to sign and file the Submission (described in paragraph 6), Authorization/Certification of Authorization (described in paragraph 9) and/or Certification (described in paragraph 11).

Submission of Email Addresses and Cellular Phone Numbers

It shall include the following:

- ✓ Complete name of the corporation, association, partnership, or person;
- ✓ The SEC registration number or identification number;
- ✓ Official electronic mail address;
- ✓ Official cellular phone number;
- ✓ Alternate electronic mail address;
- ✓ Alternate cellular phone number;
- ✓ For corporations, the complete name and signature of the corporate secretary, the person charged with the administration and management of the corporation sole, or the duly authorized representative;
- ✓ For partnerships, the complete name and signature of the managing-partner or the duly authorized representative; and
- ✓ For natural persons, his/her signature or his/her duly authorized representative's signature.

Inclusion in GIS or NUF

Beginning February 23, 2021 onwards, the e-mail addresses and cellular phone numbers shall be included in the GIS or NUF regularly filed with the Commission.

*If the corporation **fails** to include it, such GIS or NUF shall be considered **incomplete**.*

Purpose of E-mail Addresses

Both the official and alternate e-mail addresses shall be where transactions, applications, letters, requests, papers and pleadings under the jurisdiction of, or for consideration by, the Commission may be processed, submitted and/or filed online. The Commission may likewise send notices, letter-replies, orders, decisions and/or other documents through said e-mail addresses, and the corporations, associations, partnerships and individuals are deemed to have received those notices, letter-replies, orders, decisions and/or other documents on the date so sent by the Commission. Service of notice through this process shall be considered compliance with the notice requirement of administrative due process.

Purpose of Cellphone Numbers

The provision for designating an official cellphone number to be provided by all entities registered with the SEC is an additional security measure to ensure that the person accessing the e-mails sent by the Commission is the authorized person of the corporation or partnership to receive and retrieve the same. For every transmittal, Multi-Factor Authentication (MFA) utilizing mechanisms such as One-Time Personal Identification Number (OTP) scheme or Two-Step Verification by a Software-Based Authenticator will be performed by SEC to said cell phone number which the authorized person will have to input before the e-mail message can be retrieved.

Authorization

The Submission of the e-mail addresses and cellular phone numbers shall be accompanied by a duly signed Authorization or Certification of Authorization, which shall state that the corporation, partnership, association, or person allows the Commission to send notices, letter-replies, orders, decisions, and/or other documents through the e-mail addresses and cellular phone numbers provided, for the purpose of complying with the notice requirement of administrative due process.

The Authorization shall be signed by the individual (if individual), managing partner (if partnership), resident agent (if foreign corporation), corporate secretary (if sole corporation or other types of domestic corporations), or duly authorized representative.

No Internet Access

If an entity or person is unable to create an e-mail account due to the fact that the area where the principal office address is located has no internet access, only the official and alternate cellular phone numbers shall be required to be submitted to the Commission and shall be accompanied by a Certification stating such fact. Certification shall be executed and file by the person, the corporate secretary, the managing partner, the person charged with the administration and management of the corporation sole, or the authorized representative.

If within thirty (30) days from the time the area where the principal office is located gains access to the internet, the corporation, partnership, association, or person shall submit to the Commission the official e-mail address and alternate e-mail address.

Change of E-mail Address or Cellphone Number

It shall be filed within five (5) days from the date they decided to change the e-mail address and/or cellular phone number. The Notice shall also be accompanied by an Authorization or Certification of Authorization allowing the Commission to send notices, letter-replies, orders, decisions, and/or other documents through the new e-mail address and/or cellular phone number, for the purpose complying with the notice requirement of administrative due process.

Double-Filing

In case of double filing of e-mail addresses and cellular phone numbers, the Commission may summon the parties involved to determine the cause for the double filing, and to determine whether an intra-corporate dispute exists. If the Commission finds that an intra-corporate dispute exists and there is double filing, the Submissions of E-mail Addresses and Cellular Phone Numbers, and/or the Notices to Change E-mail Address and/or Cellular Phone Number, as well as the General Information Sheets, shall be marked "DISPUTED". The said Submissions, Notices and/or General Information Sheets may be unmarked by an order from the appropriate Court.

Penalty

Beginning February 23, 2021, anyone who fails to submit the e-mail addresses and cellular phone numbers within the period provided under these rules shall be administratively penalized with a penalty on the corporation, partnership, association, or person in the amount of Ten Thousand Pesos (P10,000.00).

Confidentiality of Information

Any information obtained by the Commission shall be treated as confidential and proprietary in nature, and shall not be made available to the public, subject to the exceptions provided under the Data Privacy Act of 2012, its implementing Rules and Regulations, and applicable issuances of the National Privacy Commission.

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