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SEC RELEASES DRAFT GUIDELINES ON ONE PERSON CORPORATION

The Securities and Exchange Commission (SEC) has released draft guidelines setting forth the process and documentary requirements for organizing a one person corporation (OPC).

In separate notices to all interested parties on March 15, the Commission requested for comments on the draft Guidelines on the Establishment of a One Person Corporation (OPC) and Guidelines on the Conversion of an Ordinary Stock Corporations into a One Person Corporation (OPC).

The concept of a corporation with a single stockholder was introduced by Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, which took effect on February 23.

Section 10 of the Revised Corporation Code paves the way for the creation of an OPC by removing the minimum number of incorporators that may organize a corporation. It further defined an OPC in Chapter III.

“The provision for a one person corporation should encourage the formation of more businesses in the country by making it easier for entrepreneurs to start a limited liability company,” SEC Chairperson Emilio B. Aquino said.

“This is especially beneficial in an economy where micro, small and medium enterprises comprise more than 99 percent of business establishments and generate around 63 percent of jobs.”

Establishment of an OPC

Among others, the draft guidelines on the establishment of an OPC reiterates that only a natural person, trust or estate may form an OPC. It, however, clarifies the incorporator shall be a natural person of legal age.

The “trust” does not refer to a trust entity but a subject being managed by a trustee. If the single stockholder is a trustee, administrator, executor, guardian, conservator, custodian or other person exercising fiduciary duties, proof of authority to act on behalf of the trust or estate must be submitted at the time of incorporation.

The draft guidelines also clarifies that non-bank financial institutions may not incorporate as OPC aside from banks, quasi-banks, preneed, trust and insurance companies, public and publicly listed companies, and non-chartered government-owned and/or -controlled corporations.

Meanwhile, a foreign natural person may put up an OPC, subject to the applicable constitutional and statutory restrictions on foreign participation in certain investment areas or activities.

To incorporate, an OPC only need to submit its Articles of Incorporation setting forth its primary purpose; principal office address; term of existence; names and details of the single stockholder; the nominee and alternate nominee; and the authorized, subscribed and paid-up capital, among others.

When the single stockholder assumes the position of the treasurer, an OPC must post a surety bond, computed based on its authorized capital stock and subject to renewal every two years or as may be required, upon review of its annual financial statements.

At the minimum, an OPC with an authorized capital stock between P1 and P250,000 shall give a bond of P250,000. The bond shall be equal to the authorized capital stock when the latter breaches P5 million.

Conversion to an OPC

The draft guidelines on the conversion of an ordinary stock corporation into an OPC operationalizes Section 131 of the Revised Corporation Code, in particular.

Under the draft guidelines, only a domestic stock corporation may be converted into an OPC and the single stockholder may only apply for conversion after acquiring all outstanding capital stock of the corporation.

The process is the same as amending Articles of Incorporation to include the suffix OPC in the corporation’s name and remove any suffix indicating an ordinary stock corporation such as Corporation and Incorporation.

The corporation must also amend its Articles of Incorporation to reduce the number of directors, name a nominee and alternate nominee, and amend or remove provisions distinctive to ordinary stock corporations, among others.

In addition, the Commission will require a Secretary's Certificate that the single stockholder acquired all outstanding shares in the corporation and has decided to convert the corporation to OPC, and for that purpose, has decided to amend the articles of incorporation, repeal the by-laws of the corporation and appoint a nominee and alternate nominee for the OPC.

The Secretary's Certificate should also state that all taxes and obligations in favor of the government has been settled, and that the corporation or any of its stockholder, director, or officer is not involved in any intra-corporate dispute.

Other requirements include Proof of Acquisition of all the outstanding shares; Affidavit of Acceptance by the nominee and alternate nominee, name reservation; Monitoring Clearance of the ordinary stock corporation; and Undertaking to Change Corporate Name by the single stockholder.

The conversion of an ordinary stock corporation into an OPC shall take effect upon approval by the Commission of the Amended Articles of Incorporation through the issuance of a Certificate of Filing of Conversion to One Person Corporation.

Upon approval of the conversion, the OPC will retain its SEC Company Registration Number. It shall also maintain legal responsibility for the ordinary stock corporation's outstanding liabilities and obligations as of the date of approval of the conversion.

The draft [Guidelines on the Establishment of a One Person Corporation \(OPC\)](#) and [Guidelines on the Conversion of an Ordinary Stock Corporation into One Person Corporation \(OPC\)](#) are available on the SEC website.

All interested parties, market participants and the investing public may submit their views, comments and inputs to SEC Assistant Director Sampaguita R. Ladrido, through email at srladrido@sec.gov.ph, until March 29.

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