



10 July 2019

SEC REFINING AMENDMENTS ON NUMBER, QUALIFICATIONS OF INCORPORATORS

The Securities and Exchange Commission (SEC) is drawing guidelines that will allow less than five incorporators as well as partnerships, corporations and associations to organize a corporation, pursuant to Republic Act No. 11232, or the Revised Corporation Code of the Philippines.

Section 10 of the Revised Corporation Code states that “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.”

Batas Pambansa Blg. 68, or the Corporation Code of the Philippines, previously required “any number of natural persons not less than five but not more than fifteen (15)” to come together and form a corporation.

On July 9, the Commission released the draft Guidelines on the Number and Qualifications of Incorporators under the Revised Corporation Code for public comment.

Under the proposed guidelines, the SEC will allow two or more persons, but not more than 15, to form a corporation. It earlier issued guidelines on the establishment of a One Person Corporation, which is considered as a special corporation under the Revised Corporation Code.

The incorporators may be composed of any combination of natural persons, SEC-registered partnerships, SEC-registered domestic corporations or associations in good standing as well as foreign corporations. Partnerships, corporations or associations, however, will have to appoint natural persons who shall sign the articles of incorporation of the corporation being formed.

In the event that an SEC-registered partnership is made an incorporator, the application for registration must be accompanied by a partners’ affidavit, duly executed by all the partners, to the effect that they have authorized the partnership to invest in the corporation about to be formed and that they have designated one of the partners to become a signatory to the incorporation documents.

Meanwhile, an investment by an SEC-registered domestic corporation or association must be approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds of the outstanding capital stock, or at

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least two thirds of the members in the case of nonstock corporations, at a meeting duly called for the purpose.

A directors'/trustees' certificate or a secretary's certificate, indicating the necessary approvals as well as the authorized signatory of the corporation or association, shall be executed under oath and submitted by the applicant.

In the case of a foreign corporation, the application for registration must be accompanied by a copy of a board resolution, authorizing the investment and specifically naming the designated signatory. The resolution must be duly authenticated by a Philippine consulate or with an apostille.

Each individual signing the articles of incorporation/ bylaws must indicate the capacity upon which he/she is affixing his/her signature thereto. An individual designated to sign the articles of incorporation/ bylaws on behalf of an incorporator, which is not a natural person, must also disclose the name of his/her principal/s for whom he/she is executing the articles of incorporation/ bylaws.

An individual who signs the articles of incorporation on behalf of an incorporator, which is not a natural person, may not be named as a director or trustee in the articles of incorporation, unless he/she is also an owner of at least one share of stock or a member of the corporation being formed.

The inclusion of foreign nationals in the articles of incorporation shall be subject to the applicable constitutional, statutory, and regulatory restrictions, as well as conditions, with respect to foreign participation in certain investment areas or activities.

The SEC also intends to require banks, banking and quasi-banking institutions, preneed, insurance and trust companies, nonstock savings and loan associations, pawnshops, and other financial intermediaries to secure favorable recommendations from the appropriate government agency before they could incorporate.

In the meantime, applications for registration in accordance with the new provisions of the Revised Corporation Code shall be processed manually by the Commission's Company Registration and Monitoring Department and Extension Offices.

The [draft Guidelines on the Number and Qualifications of Incorporators Under the Revised Corporation Code](#) is available on the SEC website.

All interested parties may submit their comments using the prescribed form no later than 17 July 2019 to Atty. Darwin C. Sotto at dcsotto@sec.gov.ph.

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