



NOTICE

**Subject : REQUEST FOR COMMENTS ON THE PROPOSED
GUIDELINES ON THE CREATION OR INCREASE OF
ADDITIONAL PAID-IN CAPITAL**

The Commission hereby requests comments/and/or inputs on the attached draft of the Proposed Guidelines on the Creation or Increase of Additional Paid-in Capital.

The written comments must be submitted to Atty. Joseph Bar Paulo V. Moises, CPA, via electronic mail at jbpvmoises@sec.gov.ph on or before 31 July 2023.

Issued this 13th of July 2023.



SEC MEMORANDUM CIRCULAR NO. ____
Series of 2023

TO: ALL CONCERNED

SUBJECT: GUIDELINES ON THE CREATION OR INCREASE OF ADDITIONAL PAID-IN CAPITAL

DATE: __ August 2023

WHEREAS, Section 179(a) of Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines (RCC), provides that the Commission shall exercise supervision and jurisdiction over all corporations and persons acting on their behalf;

WHEREAS, Section 5(a) of Republic Act No. 8799, otherwise known as the Securities Regulations Corporation Code (SRC), provides that the Commission shall have jurisdiction and supervision over all corporations who are grantees of primary franchises and/or a license or a permit issued by the Government;

WHEREAS, Section 179(o) of the RCC grants the Commission the power and authority to formulate and enforce standards, guidelines, policies, rules, and regulations, to carry out the provisions of the RCC;

WHEREAS, Section 158 of the RCC empowers the Commission to impose sanctions on corporations after due notice and hearing in the event that any provision of the RCC, rules or regulations, or any of the Commission's orders have been violated;

WHEREAS, Section 61 of the RCC provides that stocks shall not be issued for a consideration less than the par or issued price thereof;

WHEREAS, Section 68 of SRC provides that the Commission shall have the authority to make, amend, and rescind such accounting rules and regulations as may be necessary to carry out the provisions of the Code;

WHEREAS, the Commission sees the need to issue a clear set of guidelines that will supervise, review and monitor the creation of Additional Paid-in Capital to prevent stock watering;

WHEREAS, Section 175 of the RCC authorizes the Commission to collect, retain, and use fees, fines, and other charges pursuant to the RCC and its rules and regulations;

NOW, THEREFORE, the Commission hereby promulgates the following guidelines that shall govern the creation or increase of Additional Paid-in Capital.

SECTION 1. Definition. The following terms are used in this Circular:

- a. Additional Paid-in Capital (APIC) – any amount paid or contributed by stockholder/s over the par value of the shares, or in excess of stated value in the case of no-par shares.
- b. Par Value – the minimum value of a share of stock as stated in a corporation’s Articles of Incorporation.
- c. Stated Value – the issued price of no-par value shares as fixed in the Articles of Incorporation or by the Board of Directors pursuant to the authority conferred by the articles of incorporation or the bylaws, or if not so fixed, by the stockholders representing at least a majority of the outstanding capital stock at a meeting duly called for the purpose.
- d. Watered Stock – stocks that are issued for a consideration less than the par or stated value.

SECTION 2. Scope. This Circular shall cover the following transactions:

- a. Issuance of shares for cash at more than par value or will result in the creation of APIC; and
- b. Creation of APIC - without the corresponding issuance of shares.

SECTION 3. Issuance of Shares for cash that will result in the creation of APIC. – All corporations that will issue shares, in exchange for cash consideration that will result in the recognition or recording of APIC are required to secure the approval of the Commission by filing the following documents to the Financial Analysis and Audit Division (FAAD) of the Company Registration and Monitoring Department (CRMD) or any of the Commission’s Extension Offices (E.O.):

1. Letter addressed to the CRMD Director containing the following details:
 - i. Name/s of subscriber/s, nationality, number, amount, and class of shares subscribed and paid-up and APIC, paid by each; and
 - ii. Mode of payment/consideration.
2. Certification under oath by the Corporate Secretary on the board resolution approving the additional issuance of shares of stock with APIC;
3. List of stockholders with their nationalities, the amount subscribed and paid up as of the date of the meeting approving the issuance of additional shares, certified under oath by the Corporate Secretary;
4. Verification Report issued by a qualified independent auditor on the cash payment for the issuance of shares, in accordance with SEC Memorandum Circular (MC) No. 6, Series of 2008;
5. Secretary’s Certificate on the non-existence of intra-corporate dispute;
6. SEC FIA Form F-101 [if the foreign equity is increased to more than forty percent (40%)];
7. Endorsement Clearance from the respective SEC Department or other regulatory agency; and
8. Monitoring Clearance from the Compliance Monitoring Division (CMD) of the CRMD or FAAD.

The FAAD or the E.O. shall not receive any application that failed to submit all the required documents. Once the required documents are completed by the applicant corporation, the handling officer shall evaluate the documents submitted and issue the Payment Assessment Form containing the fees to be paid based on the following computations:

- Filing Fee – 1/5 of 1% of the APIC created but not less than PhP2,000.00;
- Legal Research Fee – 1% of the computed filing fee but not less than PhP10.00; and
- Documentary Stamp Tax – PhP30.00.

Within ten (10) working days from the date of payment, the FAAD shall issue a certificate approving the creation of APIC.

A fine which is equivalent to a basic penalty of 1/10 of 1% of the total amount of APIC created or Php10,000.00, whichever is higher, plus any filing fee that should have been paid to the Commission shall be imposed on corporations that failed to comply with this section.

SECTION 4. *Creation of APIC without the corresponding issuance of new shares.* All corporations shall obtain the Commission's approval every time they create or increase APIC, without any issuance of new shares, by filing the following documents to the FAAD or any of the Commission's E.O:

Basic Requirements:

- i. Letter request to create APIC signed by the corporation's President containing the following information:
 - a. Name of the stockholder/s who will contribute;
 - b. Amount of the contribution; and
 - c. Reason for the additional contribution/financing.
- ii. Certification under oath by the Corporate Secretary on the board resolution approving the creation or increase of APIC without any issuance of new shares;
- iii. List of stockholders with their nationalities, the amount subscribed and paid up as of the date of the meeting approving the issuance of additional shares, certified under oath by the Corporate Secretary;
- iv. Secretary's Certificate of non-existence of intra-corporate dispute; and
- v. Monitoring Clearance from the CMD or FAAD.

Additional Requirements will depend upon the consideration received which shall be credited as APIC:

- i. In case cash will be infused as APIC:
 1. Report on the cash infusion, to be rendered by a qualified independent auditor, in accordance with the Guidelines on On-Site Verification, per SEC MC No. 6, Series of 2008.
- ii. In case of bonds, advances or liabilities will be converted into APIC:
 1. Audited Financial Statements (AFS) as of the last fiscal year stamped received by the Bureau of Internal Revenue (BIR) or and the Commission (if the advances are already reflected therein);
 2. Report to be rendered by a qualified independent auditor duly registered and licensed with the Board of Accountancy, on the verification of the advances to be converted, in accordance with the Guidelines on On-Site Verification, per MC No. 6, series of 2008 (if the advances to be converted are not yet reflected in the AFS); and
 3. Deed of Assignment of Liabilities.
- iii. In case land, buildings, or condominium units will be assigned and credited as APIC:
 1. Detailed schedule of the property showing the registered owner, location, area, Original Certificate of Title (OCT)/Transfer Certificate of Title (TCT)/Condominium Certificate of Title (CCT) number tax declaration

- number, and the basis of transfer value (market value, assessed value, or zonal value) certified by the company accountant;
 2. Copy of OCT/TCT/CCT electronically certified and issued by the Registry of Deeds and tax declaration sheet certified by the Assessor's Office;
 3. Latest zonal valuation certified by the BIR, *if transfer value is based on zonal value*;
 4. Appraisal report by a licensed real estate appraiser, *if transfer value is based on appraised value (not more than six [6] months old)*;
 5. Fairness Opinion or Valuation Report rendered by a duly accredited asset valuer, *if the transfer/conversion value is based on Valuation Report (not more than six months old)*;
 6. Deed of Assignment;
 7. If the property is mortgaged, submit the mortgagee/creditor's certification on the outstanding loan balance and his/her written consent to the transfer of the property;
 8. For the assignment of buildings where the assignor is not the owner of the land, submit the lease contract on the land and consent of the land owner to the transfer;
 9. Certification from the transferor stating that the improvements are existing and in good condition; and
 10. Affidavit of Undertaking by an officer of the corporation to submit the required proof of transfer within the prescribed period.
- iv. In case untitled lands shall be assigned and credited as APIC:
1. Detailed Certification of the Barangay Chairman where the property is located, and at least two (2) adjoining property owners or possessors, attesting that the subject land had been in the possessor's open, peaceful, continuous and uninterrupted exclusive possession in the concept of an owner for at least thirty (30) years and the possessor had introduced improvements thereon, if any;
 2. Duplicate original or certified true copies of the tax declaration sheets;
 3. Latest realty tax receipts;
 4. Affidavit by the transferor attesting continuous and open possession of the property and certification that the property is not tenanted;
 5. Affidavit of Non-Tenancy executed by the Barangay Chairman of the place where the property is located;
 6. Duplicate original or certified true copies of the deed of conveyance, mortgage, lease or other voluntary instrument affecting the property recorded in the Registry of Deeds for the province of the city where the land is situated;
 7. Affidavit executed by the transferor attesting: (i) the existence (or non-existence) of easements over the untitled property; (ii) the kind/description of the easement and its location; (iii) and whether the transferor is the dominant estate or the servient estate by virtue of such easements;
 8. Affidavit of Undertaking of the transferor/subscriber to answer for any liability that the corporation might incur by virtue of the acceptance of the said property as paid-up capital;
 9. Clearance or certification from the Department of Agrarian Reform attesting to the following: (i) there is no other claimant to the untitled land; (ii) it has not issued any Certificate of Land Ownership Award over the property to any other party; or (iii) the land is exempt from the coverage of the Comprehensive Agrarian Reform Program;
 10. Blue Print Survey of the plan as approved by the Bureau of Lands;

11. Detailed schedule of the property showing the registered owner, location, area, tax declaration number, and the basis of transfer value (market value/ assessed value/ zonal value or appraised value);
 12. Latest zonal valuation certified by the BIR, *if transfer value is based on zonal value;*
 13. Appraisal report by a licensed real estate appraiser, *if transfer value is based on appraised value (not more than six [6] months old);*
 14. Fairness Opinion or Valuation Report rendered by a duly accredited asset valuer, *if the transfer/conversion value is based on Valuation Report (not more than six [6] months old);*
 15. Deed of Assignment; and
 16. Affidavit of Undertaking by an officer of the corporation to submit the required proof of transfer within the prescribed period.
- v. In case inventory, furniture, or other personal properties shall be assigned and credited as APIC:
1. Detailed schedule of the property showing the description and the basis of the transfer value (market value or book value) certified by the company accountant;
 2. Special audit report by a qualified independent auditor on the verification and valuation of the property, if transfer value is based on book value; and
 3. Deed of Assignment.
- vi. In case heavy equipment and machinery shall be assigned and credited as APIC;
1. Detailed schedule of the property showing the description and the basis of the transfer value (market value or book value) certified by the company accountant;
 2. Appraisal Report by a licensed appraiser, *if transfer value is based on appraised value (not more than six [6] months old);*
 3. Deed of Assignment; and
 4. Certification from the transferor stating that the properties are existing and in good condition.
- vii. In case shares of stock shall be assigned and credited as APIC:
1. Detailed schedule of the shares of stock showing the stockholder, stock certificate number, number of shares and the basis of the transfer value (market or book value) certified by the company accountant;
 2. AFS of the investee company as of the last fiscal year received by the BIR and the Commission;
 3. Deed of Assignment;
 4. Certification by the Corporate Secretary of the investee company that the shares are outstanding in the name of the assignor;
 5. Photocopy of the stock certificates (back to back) and present original for verification;
 6. Latest market price quotation in the newspaper or certification from the stock exchange/broker as to latest market price of the shares of stock (*if listed in the stock exchange*);
 7. Fairness Opinion or Valuation Report rendered by a duly accredited asset valuer, *if the transfer/conversion value is based on Valuation Report (not more than six [6] months old);* and
 8. Affidavit of Undertaking to submit the required proof of transfer within the prescribed period.
- viii. In case motor vehicle shall be assigned and credited as APIC:

1. Detailed schedule of the motor vehicle showing the registered owner, make/model, plate number, chassis number, motor number, Certificate of Registration Number and market value certified by the company accountant;
 2. Photocopy of the Certificate of Registration and official receipt of annual registration fee (present original for verification);
 3. Appraisal Report by a licensed appraiser, *if the transfer/conversion value is based on appraised value (not more than six [6] months old)*;
 4. Deed of Assignment;
 5. Affidavit of Undertaking by an officer of the corporation to submit the required proof of transfer within the prescribed period; and
 6. Certification from the transferor stating that the motor vehicle(s) is/are existing and in good running condition.
- ix. In case sea vessel or aircraft shall be assigned and credited as APIC:
1. Detailed schedule of the vessel/aircraft showing the registered owner, registry number, technical description, and appraised value certified by the company accountant;
 2. Certified true copy of the Certificate of Ownership;
 3. Appraisal Report by a licensed appraiser, *if the transfer/conversion value is based on appraised value (not more than six [6] months old)*;
 4. Certificate of Seaworthiness/Airworthiness issued by the appropriate government agency;
 5. Deed of Assignment; and
 6. Affidavit of Undertaking by an officer of the corporation to submit the required proof of transfer within the prescribed period.
- x. In case intangible property shall be assigned and credited as APIC:
1. Photocopy of System Purchase Agreement or any proof of ownership (for software);
 2. Copy of Certificate of Registration of Intellectual Property Rights and Mining Permit for mining claims and Mineral Production and Sharing Agreements (for mining rights);
 3. Exploration Report, rendered by an independent Competent Person, in consonance with the Philippine Mineral Reporting Code (for mining rights);
 4. Appraisal Report by an accredited appraisal company or by a licensed Filipino mining engineer for mining claims/rights *(not more than six [6] months old)*;
 5. Fairness Opinion or Valuation Report rendered by a duly accredited asset valuer, *if the transfer/conversion value is based on Valuation Report (not more than six [6] months old)*;
 6. Deed of Assignment; and
 7. Affidavit of Undertaking by an officer of the corporation to submit the required proof of transfer within the prescribed period.
- xi. In case net assets shall be assigned and credited as APIC:
1. AFS of the corporation as of the last fiscal/calendar year received by the BIR and the Commission;
 2. AFS of single proprietorship/partnership/division of corporation (for spin-off) as of the last fiscal/calendar year;
 3. Long-form Audit Report of the single proprietorship/partnership/division of corporation (for spin-off) as of the last fiscal/calendar year;

4. List of creditors with the amount due to each creditor as of the date of the AFS, certified by the auditor or certified under oath by the company accountant and with the written consent of creditors, if applicable;
5. Detailed schedule of properties with a Certificate of Registration/Title and their respective book values certified by the company accountant, *if applicable*;
6. Photocopy of the Certificate of Registration of the motor vehicles (present original for verification), *if applicable*;
7. Copy of the OCT/TCT/CCT electronically certified and issued by the Registry of Deeds and tax declaration sheet certified by the Assessor's Office, *if applicable*;
8. Photocopy of the stock certificates (back to back) and present original for verification, *if applicable*;
9. Department of Trade and Industry Certificate of Registration (*for sole proprietorships*); and
10. Affidavit of Undertaking by an officer of the corporation to submit the required proof of transfer within the prescribed period.

The FAAD shall not receive any application that failed to submit all the required documents. Once the required documents are completed by the applicant corporation, the handling officer shall evaluate the documents submitted and issue the Payment Assessment Form containing the fees to be paid based on the following computations:

- Filing Fee – 1/5 of 1% of the value of the consideration received / APIC created, but not less than PhP3,000.00;
- Legal Research Fee – 1% of the computed filing fee but not less than PhP10.00; and
- Documentary Stamp Tax – PhP30.00.

Within ten (10) working days from the date of payment, the FAAD shall issue a certificate approving the creation of APIC.

A fine which is equivalent to a basic penalty of 1/10 of 1% of the total amount of APIC created or Php10,000.00, whichever is higher, plus any filing fee that should have been paid to the Commission shall be imposed on corporations that failed to comply with this section.

SECTION 5. Required Disclosure in the Notes to AFS. To provide an effective and efficient monitoring and review of all issuance of shares with APIC and creation or increase of APIC, all corporations are required to disclose the following information in the notes of their AFS submitted to the Commission:

- a. Nature of the equity transaction [number, amount and class of shares subscribed and paid-in (paid up and APIC), consideration received, or amount of APIC created and consideration received];
- b. Date of the Board of the Directors' approval and stockholders' approval, if applicable;
- c. Date of the filing of the application to the Commission; and
- d. Date of the Commission's approval or the issuance of the certificate.

The required disclosure shall be applied prospectively beginning with financial statements with the fiscal year ending on 31 _____ 2023.

SECTION 6. Application. The following are exempt from the coverage of this Circular:

- a. APIC already recorded in the corporation's books and records prior to the effectivity of this Circular; and

- b. Corporations which filed their applications with the Commission prior to the effectivity of this Circular.

Provided, that all corporations which created APIC by issuing shares for cash or increased their APIC without issuing shares upon the effectivity of this Circular are required to comply with the provisions of Sections 3 or 4 above, whichever is applicable.

Subject to the aforementioned provisions, all APIC which are already recorded in 2023 financial statements after the effectivity of this Circular without seeking approval of the Commission shall be meted with applicable penalties and fees.

SECTION 7. *Repealing Clause.* All resolutions, notices and other previous issuances of the Commission that are contrary to this Circular are hereby repealed.

SECTION 8. *Separation Clause.* If any portion or provision of this Circular is declared unconstitutional or invalid, the other portions or provisions hereof, which are not affected thereby shall continue in full force and effect.

SECTION 9. *Effectivity.* These rules shall take effect immediately subject to its publication in two (2) national newspapers of general circulation and posting on the Commission's website.

Done this ___ August 2023, Makati City, Philippines.

For the Commission:

EMILIO B. AQUINO
Chairperson