Securities and Exchange Commission PHILIPPINES

SEC MEMORANDUM CIRCULAR NO. 16
Series of 2023

TO	:	**ALL CONCERNED**
SUBJECT	:	**REVISED GUIDELINES ON THE DETERMINATION OF RETAINED EARNINGS AVAILABLE FOR DIVIDEND DECLARATION**
DATE	:	19 September 2023

WHEREAS, the Commission issued the Memorandum Circular (MC) No. 11, Series of 2008, pursuant to Sec. 43 and Sec. 143 of the Corporation Code of the Philippines (now, Sec. 42 and Sec. 179 of the Revised Corporation Code (RCC) of the Philippines), to provide guidelines on the determination of the availability of retained earnings for dividend declarations by taking into account the unrealized gains and other items affecting the Unrestricted Retained Earnings following the effective financial reporting standards;

WHEREAS, pursuant to Sec. 42 of the Revised Corporation Code, stock corporations are prohibited from retaining surplus profits in excess of one hundred percent (100%) of their paid-in capital stock, and has the power to declare dividends out of its unrestricted retained earnings;

WHEREAS, pursuant to its commitment to align its rules with global standards and practices, new and revised accounting standards have been adopted by the Commission as part of its financial reporting rules;

WHEREAS, in view of the said new and revised accounting standards, the guidelines on the determination of retained earnings available for dividends set forth in SEC MC No. 11, Series of 2008 should be updated;

NOW THEREFORE, pursuant to Sec. 179 of the RCC which vests upon the Commission the authority to prepare, approve, amend, or repeal rules, regulations, and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations, and orders, the Commission hereby promulgates the following revised guidelines:

SECTION 1. Scope and applicability. These guidelines shall cover the determination of availability of retained earnings for the following dividend declarations of stock corporations pursuant to the Revised Corporation Code of the Philippines, to wit:

a) Cash dividend;
b) Property dividend; and
c) Stock dividend.

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The Reconciliation of Retained Earnings under Annex "A" of this Circular shall apply to the following:

a. Issuers of securities to the public;
b. Stock corporation with unappropriated/ unrestricted retained earnings in excess of 100% of its paid-in capital; or
c. A company that applies for an acknowledgement from the Commission of its dividend declaration, i.e., cash, stock or property dividends.

SECTION 2. Definition of Terms.

a) Board – Board of Directors (BOD).

b) Dividend – refers to corporate profits allocated, lawfully declared by the corporation to be paid to the stockholders on demand or at a fixed time.

c) Paid-in Capital – the sum of the amount paid for shares of stock issued, including the additional paid-in capital (APIC) or premium paid over the par value of such shares.

d) Retained Earnings – the accumulated profits realized out of normal and continuous operations of the corporation after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts. For purposes of this Circular, the amount of Retained Earnings of a corporation shall be based on its separate ("stand-alone") audited financial statements.

e) Unappropriated/ Unrestricted Retained Earnings – the amount of accumulated profits and gains realized out of the normal and continuous operations of the corporation after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts, and which is: (1) not appropriated by the Board of Directors for definite corporate expansion projects or programs; (2) not covered by a restriction for dividend declaration under a loan agreement; and (3) not required to be retained under special circumstances obtaining in the corporation, such as when there is a need for a special reserve for probable contingencies.

SECTION 3. Prohibition on retention of surplus profits in excess of paid-in capital. Pursuant to Sec. 42 of the RCC, stock corporations are prohibited from retaining surplus profits in excess of one hundred percent (100%) of their paid-in capital, except:

a. When justified by definite corporate expansion projects or programs approved by the board of directors; or
b. When the corporation is prohibited under any loan agreement with financial institutions or creditors, whether local or foreign, from declaring dividends without their consent, and such consent has not yet been secured; or
c. When it can be clearly shown that such retention is necessary under special circumstances obtaining in the corporation, such as when there is a need for special reserve for probable contingencies.

For stock corporations with excess retained earnings, their financial statements must contain description of appropriation or restriction on their retained earnings or relevant information in connection with their compliance with the above provisions under Sec. 42 of the RCC and other related financial disclosure guidance issued by the Commission.

SECTION 4. Retained Earnings available for dividends. Dividends, whether cash, property, or stock, shall be declared out of unrestricted retained earnings of the corporation. Accordingly, a corporation cannot declare dividends when it has zero or negative retained earnings otherwise known as Retained Earnings Deficit. For such purpose, the surplus profits or income must be a bona fide income founded upon actual earnings or profits. The existence, therefore, of surplus profits arising from the operation of corporate business is a condition precedent to the declaration of dividends.

Additional Paid-in Capital shall neither be declared as a dividend nor shall it be reclassified to absorb deficiency except through an organizational restructuring duly approved by the Commission.

Furthermore, the Reconciliation of Retained Earnings in accordance with this Circular shall not be used by the Real Estate Investment Trust (REIT) companies in determining the distributable income available for its shareholders. The determination of the distributable income must be in accordance with the REIT Act and its Implementing Rules and Regulations.

SECTION 5. Amendments to the Reconciliation of Retained Earnings Available for Dividend Declaration. The Reconciliation of Retained Earnings Available for Dividend Declaration is amended to account for the following items:

a) Updates in Philippine Financial Reporting Standards (PFRS), particularly PAS 19, *Employee Benefits*, and PFRS 16, *Leases*; and
b) Financial reporting relief related to COVID-19 provided by the SEC and BSP.[1]

For purposes of this Circular, the reconciling items are presented into the following categories: (a) unrealized income recognized in the Profit or Loss in the current reporting period; (b) unrealized income recognized in the Profit or Loss in prior reporting periods but realized in the current reporting period; and (c) unrealized income recognized in the Profit or Loss in prior reporting periods but reversed in the current reporting period.

In relation to Section 4 above, the phrase "actual earnings or profits" shall be the net income for the year based on the audited financial statements, adjusted for the following unrealized items:

1. Equity in net income of associate/ joint venture, net of dividends declared;
2. Unrealized foreign exchange gain, except those attributable to cash and cash equivalents;
3. Unrealized fair value adjustment (mark-to-market gains) of financial instruments at fair value through profit or loss (FVTPL);
4. Unrealized fair value gain of Investment Property;
5. Deferred Tax Asset; and
6. Other unrealized gains and adjustments that the Commission may prescribe.

The Reconciliation of Retained Earnings Available for Dividend Declaration shall be filed with the annual audited financial statements and shall be covered by an Auditor's Report. In the case of a parent company, the Reconciliation of Retained Earnings must also be submitted with the consolidated audited financial statements but the amount of the retained earnings presented therein shall be based on its separate ("stand-alone") financial statements.

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[1] Within the effectivity period set forth by the SEC and BSP in their respective Circulars.

SECTION 6. Repealing Clause. All existing guidelines of the Commission currently in force and effect that may be in conflict with these guidelines on the determination of unrestricted retained earnings available for dividend declaration are hereby repealed, modified, or amended accordingly.

SECTION 7. Effectivity and Transitory Provisions.

a. These guidelines shall take effect immediately after publication in two (2) newspapers of general circulation in the Philippines.

b. The revised Reconciliation of Retained Earnings Available for Dividend Declaration following the format as prescribed under Annex "A" of this Circular shall become effective for Audited Financial Statements covering periods ending 31 December 2023 and onwards and, if applicable, for Audited Interim Financial Statements starting the first quarter of 2024, and thereafter.

For the Commission:

EMILIO B. AQUINO
Chairperson

ANNEX "A"

<u>Reconciliation of Retained Earnings Available for Dividend Declaration</u>

For the reporting period ended [Date]

[Company Name]

[Address]

Unappropriated Retained Earnings, beginning of reporting period (see Footnote 2)		**XX,XXX**
Add: <u>Category A</u>: Items that are directly credited to Unappropriated Retained Earnings		
Reversal of Retained Earnings Appropriation/s	xx,xxx	
Effect of restatements or prior-period adjustments	xx,xxx	
Others (describe nature)	xx,xxx	XX,XXX
Less: <u>Category B:</u> Items that are directly debited to Unappropriated Retained Earnings		
Dividend declaration during the reporting period	xx,xxx	
Retained Earnings appropriated during the reporting period	xx,xxx	
Effect of restatements or prior-period adjustments	xx,xxx	
Others (describe nature)	xx,xxx	XX,XXX
Unappropriated Retained Earnings, as adjusted		**XX,XXX**
Add/Less: Net Income (loss) for the current year		**XX,XXX**
Less: <u>Category C.1</u>: Unrealized income recognized in the profit or loss during the reporting period (net of tax)		
Equity in net income of associate/joint venture, net of dividends declared	xx,xxx	
Unrealized foreign exchange gain, except those attributable to cash and cash equivalents	xx,xxx	
Unrealized fair value adjustment (mark-to-market gains) of financial instruments at fair value through profit or loss (FVTPL)	xx,xxx	
Unrealized fair value gain of Investment Property	xx,xxx	
Other unrealized gains or adjustments to the retained earnings as a result of certain transactions accounted for under the PFRS (describe nature)	xx,xxx	
Sub-total		**XX,XXX**
Add: <u>Category C.2</u>: Unrealized income recognized in the profit or loss in prior reporting periods but realized in the current reporting period (net of tax)		
Realized foreign exchange gain, except those attributable to Cash and cash equivalents	xx,xxx	
Realized fair value adjustment (mark-to-market gains) of financial instruments at fair value through profit or loss (FVTPL)	xx,xxx	
Realized fair value gain of Investment Property	xx,xxx	
Other realized gains or adjustments to the retained earnings as a result of certain transactions accounted for under the PFRS (describe nature)	xx,xxx	
Sub-total		**XX,XXX**
Add: <u>Category C.3</u>: Unrealized income recognized in profit or loss in prior periods but reversed in the current reporting period (net of tax)		
Reversal of previously recorded foreign exchange gain, except those attributable to cash and cash equivalents	xx,xxx	

Reversal of previously recorded fair value adjustment (mark-to-market gains) of financial instruments at fair value through profit or loss (FVTPL)	xx,xxx	
Reversal of previously recorded fair value gain of Investment Property	xx,xxx	
Reversal of other unrealized gains or adjustments to the retained earnings as a result of certain transactions accounted for under the PFRS, previously recorded (describe nature)	xx,xxx	
Sub-total		**XX,XXX**
Adjusted Net Income/Loss		**XX,XXX**
Add: <u>Category D</u>: Non-actual losses recognized in profit or loss during the reporting period (net of tax)		
Depreciation on revaluation increment (after tax)	xx,xxx	
Sub-total		**XX,XXX**
Add/Less: <u>Category E</u>: Adjustments related to relief granted by the SEC and BSP (see Footnote 3)		
Amortization of the effect of reporting relief	xx,xxx	
Total amount of reporting relief granted during the year	(xx,xxx)	
Others (describe nature)	(xx,xxx)	
Sub-total		**XX,XXX**
Add/Less: <u>Category F</u>: Other items that should be excluded from the determination of the amount of available for dividends distribution		
Net movement of treasury shares (except for reacquisition of redeemable shares)	(xx,xxx)	
Net movement of deferred tax asset not considered in the reconciling items under the previous categories	(xx,xxx)	
Net movement in deferred tax asset and deferred tax liabilities related to same transaction, e.g., set up of right of use of asset and lease liability, set-up of asset and asset retirement obligation, and set-up of service concession asset and concession payable	(xx,xxx)	
Adjustment due to deviation from PFRS/GAAP – gain (loss)	(xx,xxx)	
Others (describe nature)	(xx,xxx)	
Sub-total		**XX,XXX**
Total Retained Earnings, end of the reporting period available for dividend		**XX,XXX**

FOOTNOTES:

(1) The amount of retained earnings of a company should be based on its separate ("stand-alone") audited financial statements.

(2) Unappropriated Retained Earnings, beginning of reporting period refers to the ending balance as reported in the "Reconciliation of Retained Earnings Available for Dividend Declaration" of the immediately preceding period.

(3) Adjustments related to the relief provided by the SEC and BSP pertain to accounting relief (e.g. losses that are reported on a staggered basis) granted by regulators. However, these are actual losses sustained by the Company and must be adjusted in the reconciliation to reflect the actual distributable amount.

(4) This Reconciliation of Retained Earnings Available for Dividend Declaration is pursuant to Sec. 42 of the Revised Corporation Code, which prohibits stock corporations to retain surplus profits in excess of one hundred (100%) percent of their paid-in capital and their power to declare dividends. However, this Reconciliation of Retained Earnings should not be used by the REIT companies as a basis to determine the amount of its distributable income or dividends to its shareholders. The determination of its distributable income should be in accordance with the REIT Act and its Implementing Rules and Regulations.