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## New SEC Guidelines on the Establishment of Corporations with at least Two Incorporators

Pursuant to the enactment of Republic Act No. 11232, otherwise known as the Revised Corporation Code, the Securities and Exchange Commission (“SEC”) adopted SEC Memorandum Circular No. 16 dated 30 July 2019 (“**Guidelines**”) in order to expound the qualifications of persons, whether natural or juridical, seeking to form and organise a domestic corporation in the Philippines.

### Implications for business in the Philippines

Unlike in the old Corporation Code where only natural persons can be incorporators, the Revised Corporation Code now allows natural persons, SEC-registered partnerships,<sup>[1]</sup> SEC-registered domestic corporations or association, foreign corporations, or a combination of any of the above, to establish a corporation.

The Guidelines aim to promote the efficient and proper implementation of this new provision by spelling out the qualification, documentary requirements, and other special rules that apply to at least two, but not more than 15, incorporators.<sup>[2]</sup> In turn, this would encourage more persons and entities to join the Philippine market, thereby creating a more robust business climate.


### Significant provisions of the Guidelines

#### Requirements and qualifications of incorporators

As provided in the Revised Corporation Code, each incorporator of a stock corporation must own, or be a subscriber to, at least one share of the capital stock. If the corporation is about to be established as a non-stock corporation, the incorporator must be a member of the same corporation.

In addition to the usual SEC-prescribed requirements for registration, a partnership, a domestic corporation or association seeking to become an incorporator of another domestic corporation must show to the SEC that its investment is authorised by all partners (in case of a partnership), or authorised by a majority of the board of directors or trustees and ratified by the stockholders representing at least 2/3 of the outstanding capital stock, or by at least 2/3 of the members, at a meeting duly called for that purpose (in case of a domestic stock and non-stock corporation, respectively). The authorisation must be shown in a Partners’ Affidavit, or a Directors’/Trustees’ Certificate or a Secretary’s Certificate.

A foreign corporation must also submit a document showing that it is authorised to invest in the domestic corporation about to be formed. The document, which can be in the form of a Board Resolution, Director’s Certificate, Secretary’s Certificate or its equivalent, must either be duly authenticated by a Philippine Consulate or with an apostille affixed thereto in case it is executed in territories which are Apostille-contracting parties.



In the above instances where the incorporator is a juridical entity, the incorporator should also indicate in the certificate the name of the person who will sign in the incorporation documents on its behalf. The named signatory, however, may not be designated as a director or trustee in the same incorporation documents, unless he or she is also an owner of at least one share of stock, or a member of the non-stock corporation being formed.

As for natural persons who seek to become incorporators, they must be of legal age, and must sign the Articles of Incorporation and/or By-Laws themselves.

#### [Indication of TIN in all documents to be filed with the SEC](#)

The Guidelines likewise prescribe that the Taxpayer Identification Number (“**TIN**”) of the natural person or the corporation, partnership or the association, as well as its designated signatory, should be indicated in the Articles of Incorporation. This is material because the SEC will not accept any application for incorporation if this requirement is not complied with. For foreign corporations which have not yet been issued a TIN, the passport number of all its foreign investors indicated in the Articles of Incorporation should suffice. After incorporation, however, all the foreign investors, natural or juridical, shall secure a TIN, which shall be reflected in all documents to be filed with the SEC.

#### **Conclusion**

With the implementation of the Revised Corporation Code, it is apparent that the Philippine government is ready to take on the task of making the country a great destination for investment opportunities. The SEC is leading this charge when it exercises its power to implement and clarify certain provisions of the new law.

Nevertheless, it is important to note that notwithstanding the liberalisation of the law and the Guidelines on who can be an incorporator of a domestic corporation, foreign incorporators and the inclusion of foreign nationals in the Articles of Incorporation are always subject to constitutional, statutory and regulatory limitations on foreign participation in certain economic activities.

If you have any questions or require any additional information, please contact [Felix Sy](#) or [Reeneth B. Santos](#) of Insights Philippines Legal Advisors (a member of ZICO Law).

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*This alert is for general information only and is not a substitute for legal advice.*

[1] Natural persons who are licensed to practice a profession, and partnerships or associations organised for the purpose of practicing a profession shall not be authorised to organise as a corporation unless otherwise provided under special laws.

[2] The establishment of a corporation by a single person, otherwise known as a One Person Corporation, is provided in, and governed by, Title XIII, Chapter III of the Revised Corporation Code and SEC Memorandum Circular No. 07 dated 5 April 2019.