

## SyCipLaw Corporate Services Bulletin:

### 2019 Guidelines for the Protection of SEC-Registered Non-Profit Organizations from Money Laundering and Terrorist Financing Abuse

On December 27, 2019, the Securities and Exchange Commission (“**SEC**”) issued Memorandum Circular No. 25, series of 2019 or the “2019 Guidelines for the Protection of SEC-Registered Non-Profit Organizations from Money Laundering and Terrorist Financing Abuse” (“**2019 NPO Guidelines**”). The 2019 NPO Guidelines took effect on December 28, 2019.

It defines the term “NPO” as “an SEC registered Non-Stock Corporation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of good works.” The term includes foundations. On the other hand, it defines “Non-Stock Corporation” as a “corporation with no authorized capital stock and no part of its income is distributable as dividends to its members, trustees, or officers.”

#### Compliance Requirements for NPOs

Under the 2019 NPO Guidelines, NPOs are subject to the following compliance requirements:

1. NPOs are encouraged to make publicly accessible online, accurate, current and complete information regarding their status, finances, expenses, projects, activities, those who control or direct such activities, composition of their governing boards, and their beneficial owners among other material information.
2. NPOs must adopt policies on good governance. In particular:
  - a. Organizational integrity – The board of trustees (“**BOT**”) must maintain oversight over the organization by establishing strong financial and human resource policies, meeting on a regular basis, and actively monitoring activities.
  - b. Partner relationships – The BOT must ensure that proper due diligence is carried out on individuals and organizations that (i) donate money or funds (*i.e.*, donors), (ii) receive money (*i.e.*, beneficiaries) or (ii) work closely with the NPO, through the use of selection criteria and searches of publicly available information, including domestic blacklists and UN sanctions lists. The BOT may execute agreements to outline the expectations and responsibilities with partners, including detailed information as to the application of funds and compliance with requirements for regular reporting, audits and on-site visits.
  - c. Financial accountability and transparency – The BOT must approve an annual budget and follow a process to monitor the use of funds. The BOT must also mandate the NPO to keep adequate and complete financial records of income, expenses, and financial transactions throughout its operations, including with respect to the use of its funds. NPOs must clearly state the program goals when collecting funds, and ensure that funds are applied as intended and consistent with the purpose of the organization.

Information about the activities of the NPO must be made publicly available. NPOs must be informed as to the sources of their donations and establish a set of criteria to determine whether donations should be accepted or refused.

- d. Record keeping – The BOT must mandate the NPO to maintain, for a period of at least five (5) years, records of domestic and international transactions that are sufficiently detailed to verify that funds have been received and spent in a manner consistent with the purpose and objectives of the organization, and to make these available to the SEC.
  - e. Program planning and monitoring – The BOT must require the NPO to establish appropriate internal controls and monitoring systems to ensure that funds and services are being used as intended.
3. All SEC registered Non-Stock Corporations must accomplish the revised Mandatory Disclosure Form (“MDF”) attached to the 2019 Guidelines for submission to the SEC through the Anti-Money Laundering Division (“AML”) of its Enforcement and Investor Protection Department (“EIPD”) or to the nearest SEC Extension Office within 60 days from the effective date of the 2019 Guidelines (**on or before February 26, 2020**). The MDF may be submitted online through the following link:

[https://docs.google.com/forms/d/e/1FAIpQLSfvAHeK8BQuM5oYJX1MV6ZtJXtXe9fLzhO5dqJf\\_Gu2dyIhRw/viewform](https://docs.google.com/forms/d/e/1FAIpQLSfvAHeK8BQuM5oYJX1MV6ZtJXtXe9fLzhO5dqJf_Gu2dyIhRw/viewform)

In case the Non-Stock Corporation has already accomplished an MDF pursuant to SEC Memorandum Circular No. 15, s. of 2018 on or before July 31, 2019, the Non-Stock Corporation will be deemed compliant with respect to this requirement, unless otherwise ordered by the SEC. In case the Non-Stock Corporation is registered after December 28, 2019, it must submit the MDF within six (6) months from the date of its registration.

Failure to file the MDF may be cause for revocation of the Certificate of Incorporation of the non-compliant Non-Stock Corporation.

## Compliance Requirements for NPOs at Risk

An “NPO at Risk” is “[a] subset of NPOs identified as at risk of money laundering or terrorism financing abuse based on a risk assessment of the NPO Sector conducted by the Anti-Money Laundering Council (“AMLC”) and/or the SEC.”

In addition to the requirements applicable to NPOs in general, NPOs at Risk are also subject to the following:

1. They must establish an audit committee or appoint an officer or employee responsible for audit functions.
2. They (a) will be subject to existing minimum requirements based on laws, SEC rules and other requirements as may be prescribed by the SEC; (b) must prepare Annual Financial Statements audited by an independent Certified Public Accountant accredited by the Board of Accountancy; (c) must conduct of mandatory background checks of their officers and trustees; (d) will undergo

mandatory audit by the SEC; (e) must establish of an internal audit system; and (f) must attend sustained outreach programs of the SEC.

3. The trustees, officers, and/or responsible representatives of NPOs at Risk are required to attend the yearly outreach programs and seminars on money laundering and/or terrorism financing, vulnerabilities, risks, and mitigation measures conducted by the SEC.
4. They must establish and record the true and full identity of their donors/sources of funds identified as Politically Exposed Persons (“PEPs”).

The 2019 Guidelines defines the term “PEP” as an individual who is or has been entrusted with a prominent public position/function in (a) the Philippines with substantial authority over policy, operations or the use or allocation of government-owned resources; (b) a foreign state; or (c) an international organization. This definition includes the PEP’s immediate family members, and close relationships and associates that are reputedly known to have (a) joint beneficial ownership of a legal entity or legal arrangement with the main/principal PEP; or (b) sole beneficial ownership of a legal entity or legal arrangement that is known to exist for the benefit of the main/principal PEP.

5. They must enhance the monitoring of donors from a foreign jurisdiction that is recognized as having inadequate internationally accepted Anti-Money Laundering and Combating the Financing of Terrorism standards.

They must adopt the following preventive measures: (a) maintain information on their activities and those who control their activities; (b) have controls in place to ensure that funds are fully accounted for and spent in a manner consistent with the NPO’s stated activities; (c) follow a “know your beneficiaries and associate NPOs” rule; and (d) report to the SEC any fact within their knowledge that gives rise to a suspicion that they are being exploited for money laundering or terrorism financing purposes.

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