



**PSE Increases to 20%  
the Minimum Public Ownership Requirement  
for Initial and Backdoor Listings**

**August 2020**

The Philippine Stock Exchange (PSE) has issued *Memorandum Circular 2020-0076*<sup>1</sup> on August 3, 2020 and this sets out the *Guidelines on Minimum Public Ownership Requirement for Initial and Backdoor Listings (2020 MPO Guidelines)*. The *Guidelines* provide a modified minimum public offer size requirement for initial listings depending on the company's market capitalization and require a company applying for listing by way of introduction and backdoor listing to have at least 20% public float upon and after listing.

The recently issued *Guidelines* aim to: (i) increase the public ownership level of Philippine listed companies, (ii) promote the development of the capital market, and (iii) encourage the widest participation of ownership in listed enterprises.

This briefing discusses relevant issuances of the Securities and Exchange Commission (SEC) and of the PSE relating to the minimum public ownership (MPO) rule.

**A. Determination of Public Float**

The categorization of shareholdings in a publicly listed company (PLC) depends on (i) the amount of shareholding and its significance to the total outstanding shares, (ii) purpose of investment, and (iii) extent of involvement in the management of the company.<sup>2</sup>

Under *SEC Memorandum Circular 13-2017 (SEC MC 13-2017)*,<sup>3</sup> public float "refers to the portion of the issued and outstanding shares that are freely available and tradable in the market and are non-strategic in nature or those not meant for the purpose of gaining substantial influence on how the company is being managed." This excludes significant shareholdings of 10% or more of the total issued and outstanding shares of the company. This is in line with the *Guidelines in Determining the Public Ownership of PLCs in PSE Memorandum Circular 2010-0505*<sup>4</sup>, as amended by *PSE Memorandum Nos. 2012-0003*<sup>5</sup> and *2012-0053*<sup>6</sup> (*PSE MPO Rules*), which consider significant shareholdings (*i.e.*, 10% or more of the total issued and outstanding shares) held for the purpose of gaining substantial influence on how the PLC is being managed as non-public.

<sup>1</sup> *Memorandum Circular 2020-0076* dated August 3, 2020; available at <https://www.pse.com.ph/stockMarket/circulars.html>; last accessed at 4:43PM on August 28, 2020.

<sup>2</sup> See PSE Memorandum C.N. No. 2010-0505.

<sup>3</sup> *Rules and Regulations on Minimum Public Ownership (MPO) on Initial Public Offerings* dated November 29, 2018; <https://www.sec.gov.ph/mc-2017/mc-no-13-s-2017-rules-and-regulations-on-minimum-public-ownership-mpo-on-initial-public-offerings/>; last accessed at 4:54PM on August 29, 2020.

<sup>4</sup> *Guidelines in Determining the Public Ownership of PLCs* dated October 28, 2010; available at <https://www.pse.com.ph/stockMarket/circulars.html>; last accessed at 4:58PM on August 28, 2020.

<sup>5</sup> *Amended Rule on Minimum Public Ownership* dated January 3, 2012; available at <https://www.pse.com.ph/stockMarket/circulars.html>; last accessed at 5:01PM on August 28, 2020.

<sup>6</sup> *Amendments to the Reporting Requirements under the Rule on Minimum Public Ownership* dated September 28, 2012; available at <https://www.pse.com.ph/stockMarket/circulars.html>; last accessed at 5:03PM on August 28, 2020.

## Minimum Public Ownership Requirement

The *PSE MPO Rules* generally consider the following shares as public:

1. shares held by individuals which are not of significant size and which are non-strategic in nature;
2. shares held by trading participants which are non-strategic in nature;
3. shares held by investment funds and mutual funds;
4. shares in employee pension funds which are not of the employing company or its affiliates;
5. shares held by the PCD Nominee when numerous shareowners do not own any significant shareholding. When a shareowner owns a significant shareholding, such shareowner should be included in the list of Principal Stockholder and his shares be considered as non-public; and
6. shares held by social security fund, except when the acquisition is made with the intention of acquiring significant influence over the management of the PLC.

Accordingly, shares held by directors, officers, principal/substantial stockholders, and affiliates of the PLC are considered as non-public. Likewise, the following shares are generally considered as non-public:

1. shares held by the government through government-run social security funds, the Social Security System and Government Service Insurance System *when* the acquisition is made with the intention of acquiring significant influence over the management of the PLC;
2. shares held by banks *except* shares held in trust or on behalf of third parties (which are readily available to the public);
3. shares of a company (including its subsidiaries and affiliates) held by employees through employee sponsored plans for purposes of retirement, savings plan, incentive compensation program and employee pension fund; and
4. shares of a PLC that are locked-up, upon termination of the period of which will be determined based on the nature of the share ownership.

### **B. PSE Minimum Public Ownership Rules**

Prior to the issuance of the *2020 MPO Guidelines*, the *PSE MPO Rules* require a PLC to maintain, at all times, a minimum percentage of listed securities held by the public equivalent to 10% of the PLC's issued and outstanding shares, exclusive of any treasury shares.

Listed companies that become non-compliant with the MPO rule may be suspended from trading for a period of not more than six months and will automatically be delisted if it remains non-compliant after the lapse of the suspension period.<sup>7</sup> A PLC is also required to disclose to the PSE if it becomes aware that the number of listed securities in the hands of the public has fallen below the prescribed minimum percentage and to take steps to ensure compliance at the earliest possible time.

---

<sup>7</sup> PSE Amended Rule on Minimum Public Ownership, as amended

### C. 2017 SEC Rules on MPO in Initial Public Offerings

*SEC MC 13-2017* contains the rules and regulations on MPO for an initial public offering (IPO), which requires a higher MPO requirement of 20% (from 10% before it took effect on December 5, 2017<sup>8</sup>). It covers any company applying for the registration of its shares of stocks for the purpose of conducting an IPO (covered company), but does not cover existing PLCs as they remain subject to the 10% MPO requirement.<sup>9</sup>

*SEC MC 13-2017* further requires the following:

1. A covered company must always maintain an MPO of at least 20%. Otherwise, such company must bring the public float to at least 20% within a maximum period of 12 months from the date of the decline.
2. A covered company must establish and implement an internal policy and procedure to monitor its MPO and shall immediately report to the SEC within the next business day if its public float level has fallen below 20%.
3. Within 10 days after it becomes aware of its deficiency, a covered company must submit a time-bound business plan of steps it will take to bring the public float to at least 20% within a maximum of 12 months from the date of such decline to the SEC.

If a covered company fails to comply with *SEC MC 13-2017*, the SEC may impose administrative sanctions under Section 54 of the Securities Regulation Code.

### D. Updated Minimum Public Ownership Requirements

The *2020 MPO Guidelines* provide that a company doing an initial listing through an IPO must have a minimum public offer size of 20% to 33% of outstanding capital stock post-IPO, as follows:

Market Capitalization	Public Offer
Not exceeding PhP 500M	33% or PhP 50M, whichever is higher
Over PhP 500M to PhP 1B	25% or PhP 100M, whichever is higher
Over PhP 1B	20% or PhP 250M, whichever is higher

Consistent with *SEC MC 13-2017*, a company that will list through an IPO must always maintain a public ownership level of at least 20%.

A company that will apply for listing by way of introduction or conduct backdoor listing is required to have at least 20% public float upon and after listing.

<sup>8</sup> SEC MC 13-2017 was published on The Manila Bulletin and The Manila Standard on December 5, 2017.

<sup>9</sup> See Press Release issued by SEC entitled "SEC MANDATES 20 PERCENT PUBLIC FLOAT FOR IPO APPLICANTS" dated 21 November 2017.

## Minimum Public Ownership Requirement

Under the *PSE Listing Rules*, a backdoor listing is deemed to occur when a listed company acquires or merges or combines with an unlisted company, or when a listed company is acquired by, merged or combined with an unlisted company, and which acquisition, merger, or combination results in a substantial change in the business, membership of the board of directors, or voting structure of the listed company.

The reckoning period of this requirement for companies conducting a backdoor listing shall be: (i) from the actual issuance or transfer (as may be applicable) of the securities that would trigger a backdoor listing; or (ii) from the actual transfer of business where the Backdoor Listing Rules are triggered by a substantial change in business.

Listing by way of introduction refers to an application for listing of securities that are already issued or securities that will be issued upon listing, where no public offering will be undertaken because the securities for which listing is sought would be of such an amount and would be so widely held that their adequate marketability when listed can be assumed, or when listing in an exchange or public offering is mandated by law or by the SEC or other government agencies, in the exercise of their powers under the law.<sup>10</sup>

Analysts have noted that the country's capital markets lack depth and liquidity, and one of the reasons cited for this is the low level of public ownership in listed companies. The *2020 MPO Guidelines* seek to address this issue. Improved liquidity attracts good quality and long-term investments, improves market efficiency, and helps prevent collusive actions and price manipulations. However, it remains to be seen whether the new rules would have a significant impact on public float levels, as existing listed companies remain to be covered by the 10% MPO requirement. These companies need to be subject to a higher MPO level for a further deepening of the market, but this has to be done gradually and the regulators have to consider the matter carefully considering that, as one estimate puts it, public ownership in more than half of existing listed firm (including a number of firms in the PSEi) falls below 20%.

---

<sup>10</sup> Based on PSE Listing Rules, Listing By Way of Introduction involves the following situations:

1. The securities sought for listing are already listed or traded or will simultaneously be listed on another stock exchange or, subject to the approval of the Exchange, are listed on another trading market;
2. The securities of an unlisted issuer are distributed by way of property dividend by a listed issuer to shareholders of that listed issuer;
3. Where a holding company is formed and its securities are issued in exchange for the securities of one or more listed issuer or issuers is withdrawn at the same time the securities of the issuer are listed;
4. Where listing of securities in an exchange is mandated by law or by the SEC, in the exercise of its powers under the Securities Regulation Code; and
5. Where public offering of securities is mandated by law or applicable regulations; provided that the applicant company secures a clearance from the relevant agency stating that such agency does not object to the listing by way of introduction of the securities of the company; provided further that a company which is considered as a 'closely held corporation' as such term is defined under Section 127 (B) of the National Internal Revenue Code of 1997, is NOT qualified to list by way of introduction under this subsection (e). A subsidiary company that is qualified to list under subsection (e) hereof cannot list its holding company which does not meet the requirements of this section.

## SyCipLaw's Banking, Finance and Securities Department

For more information about the legal issuances discussed in this bulletin, please contact:

Vicente D. Gerochi IV  
Partner, Head of Banking, Finance and Securities Department  
[vdgerochi@syciplaw.com](mailto:vdgerochi@syciplaw.com)

## SyCipLaw's Banking, Finance and Securities Department

The Banking, Finance and Securities Department of SyCip Salazar Hernandez & Gatmaitan advises a host of Philippine and international banks and financial institutions on different types of financing transactions and on regulatory matters. In the regulatory sphere, our services include reviewing bank forms and templates for compliance with legal requirements, advising on new financial products and services, responding to jurisdictional queries and providing periodic updates on new laws and regulations, and assisting with regulatory compliance and investigations.

---

### Other COVID-19 related bulletins

The links to our earlier bulletins can be found at the SyCipLaw information hub, <https://syciplawresources.com/>.

Please note that there are other COVID-19 related government issuances which are not covered by our bulletins. For more information about other regulations, please contact your account partner or [sshg@syciplaw.com](mailto:sshg@syciplaw.com) or [info@syciplaw.com](mailto:info@syciplaw.com).

---

## Minimum Public Ownership Requirement

This briefing contains a summary of the legal issuances discussed above. It was prepared by SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) to update its clients about recent legal developments.

This bulletin is only a guide material and is circulated for information purposes only. SyCipLaw assumes no responsibility for the accuracy, completeness or timeliness of any information provided in this bulletin. It does not constitute legal advice of SyCipLaw or establish any attorney-client relationship between SyCipLaw and the reader. It is not a substitute for legal counsel. Online readers should not act upon the information in this bulletin without seeking professional counsel. For more specific, comprehensive and up-to-date information, or for help regarding particular factual situations, please seek the opinion of legal counsel licensed in your jurisdiction.

SyCipLaw may periodically add, change, improve or update the information in this bulletin without notice.

Please check the official version of the issuances discussed in this bulletin. There may be other relevant legal issuances not mentioned in this bulletin, or there may be amendments or supplements to the legal issuances discussed here which are published after the circulation of this bulletin.

No portion of this bulletin may be emailed, forwarded, reposted, copied in different electronic devices, copied or posted online in any platform, copied or reproduced in books, pamphlets, outlines or notes, whether printed, mimeographed or typewritten, or copied in any other form, without the prior written consent of SyCipLaw.

### **SyCip Salazar Hernandez & Gatmaitan**

SyCipLaw Center, 105 Paseo de Roxas

Makati City 1226, The Philippines

t: +632 8982 3500; +632 8982 3600; +632 8982 3700

f: +632 8817 3145; +632 8817 3896

e: [sshg@syciplaw.com](mailto:sshg@syciplaw.com)

[www.syciplaw.com](http://www.syciplaw.com)