



Beneficial Ownership Transparency Guidelines

February 5, 2021

This is a bulletin on Securities and Exchange Commission (SEC) Memorandum Circular (MC) No. 01, series of 2021, entitled “*Guidelines in Preventing the Misuse of Corporations for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership*” (SEC MC No. 01-2021 or the Beneficial Ownership Transparency Guidelines). The circular took effect on January 29, 2021 and its full text is at <https://www.sec.gov.ph/mc-2021/mc-no-01-s-2021/>.

- A. [Mandatory Disclosure by Nominee Shareholders/Directors/Trustees of Existing Corporations](#)
- B. [Mandatory Disclosure by Nominee Incorporators/First Directors/Trustees and Shareholders of Corporations Applying for Registration](#)
- C. [Disclosure and Recording of the Alienation, Sale or Transfer of Shares of Stock](#)
- D. [Other Relevant Provisions](#)

A. **Mandatory Disclosure by Nominee Shareholders/Directors/Trustees of Existing Corporations**

SEC MC No. 01-2021 requires all shareholders or directors/trustees of registered corporations who are acting as nominees/trustees of another person to disclose to the SEC their principals or nominators or the persons on whose behalf they act as such shareholders or directors/trustees. The disclosure has to be made within 30 days from the effectivity of SEC MC No. 01-2021, or no later than February 28, 2021. Those who become nominees after the effectivity date of SEC MC No. 01-2021 (which is January 29, 2021) have to make the disclosure to the SEC within 30 days from the date they became nominee shareholders or directors/trustees.

Beneficial Ownership
Transparency Guidelines

The following are however exempted from the disclosure requirement under the Beneficial Ownership Transparency Guidelines: (i) PCD Nominee Corporation, and (ii) all covered institutions enumerated under Section 3(a) of the Anti-Money Laundering Act, as amended.¹ The exemption of the covered institutions however is limited only to the nominee arrangements related to products or services already subject to Customer Identification Requirements under the Anti-Money Laundering Act.

The information required to be disclosed to the SEC are the following:

If the Principal/Nominator is...	Information about the Principal/Nominator Required to be Disclosed to the SEC
An individual	<ol style="list-style-type: none"> 1. Full name; 2. Country of Residence; 3. Nationality; and 4. Taxpayer Identification Number (TIN) or Passport number.
A corporation	<ol style="list-style-type: none"> 1. Registered Name 2. Country of Registration 3. Names of incorporators and directors; 4. Its beneficial owner; and 5. TIN, if any.
A trust	<ol style="list-style-type: none"> 1. Name; 2. Nationality; 3. Country of Residence; and 4. TIN or Passport number of the trustor/s, trustee/s, and beneficiary/ies of the trust.

¹ Under Section 3(a) of the Anti-Money Laundering Act, as amended, covered persons, natural or juridical, refer to:

- (1) banks, non-banks, quasi-banks, trust entities, foreign exchange dealers, pawnshops, money changers, remittance and transfer companies and other similar entities and all other persons and their subsidiaries and affiliates supervised or regulated by the *Bangko Sentral ng Pilipinas*;
- (2) insurance companies, pre-need companies and all other persons supervised or regulated by the Insurance Commission;
- (3) (i) securities dealers, brokers, salesmen, investment houses and other similar persons managing securities or rendering services as investment agent, advisor, or consultant, (ii) mutual funds, close-end investment companies, common trust funds, and other similar persons, and (iii) other entities administering or otherwise dealing in currency, commodities or financial derivatives based thereon, valuable objects, cash substitutes and other similar monetary instruments or property supervised or regulated by the SEC;
- (4) jewelry dealers in precious metals, who, as a business, trade in precious metals, for transactions in excess of PhP1 Million;
- (5) jewelry dealers in precious stones, who, as a business, trade in precious stones, for transactions in excess of PhP1 Million;
- (6) company service providers which, as a business, provide any of the following services to third parties: (i) acting as a formation agent of juridical persons; (ii) acting as (or arranging for another person to act as) a director or corporate secretary of a company, a partner of a partnership, or a similar position in relation to other juridical persons; (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; and (iv) acting as (or arranging for another person to act as) a nominee shareholder for another person;
- (7) persons who provide any of the following services: (i) managing of client money, securities or other assets; (ii) management of bank, savings or securities accounts; (iii) organization of contributions for the creation, operation or management of companies; and (iv) creation, operation or management of juridical persons or arrangements, and buying and selling business entities; and
- (8) casinos, including internet and ship-based casinos, with respect to their casino cash transactions related to their gaming operations.

The term 'covered persons' exclude lawyers and accountants acting as independent legal professionals in relation to information concerning their clients or where disclosure of information would compromise client confidences or the attorney-client relationship, provided that these lawyers and accountants are authorized to practice in the Philippines and shall continue to be subject to the provisions of their respective codes of conduct and/or professional responsibility or any of its amendments.

The disclosure must be done in such form and manner as the SEC deems practicable. The SEC shall electronically acknowledge the receipt of the disclosure.

B. Mandatory Disclosure of Nominee Applicant/Incorporators/First Directors/Trustees and Shareholders of Corporations Applying for Registration

The incorporators of a corporation shall disclose to the SEC, within 30 days from the issuance by the SEC of the Company's Certificate of Registration, the person or persons on whose behalf the registration of the corporation was applied for.

For corporations that are still in the process of registering with the SEC, the nominee incorporators/directors/trustees/shareholders of the applicant corporation have to disclose their principals/nominators. The information they need to disclosed are their principal's/nominator's: (i) full name, (ii) country of residence, (iii) nationality, (iv) TIN or passport number.

If they are not nominee incorporators/directors/subscribers/applicants, they shall make a declaration stating that they are not acting for and on behalf of another person. The declaration has to be submitted to the SEC in connection with the application for registration of the corporation.

C. Disclosure and Recording of the Alienation, Sale or Transfer of Shares of Stocks

The alienation, sale, or transfer of shares of stock (and the information on the date thereof and by whom and to whom made) shall be disclosed and recorded in the stock and transfer book (STB) of the issuing corporation within 30 days from date of such alienation, sale, or transfer, subject to compliance with the requirements for the recording or registration of transfers under applicable regulations. Unless thus disclosed and recorded, the same shall not be binding on the issuing corporation. No transfer or assignment of ownership or rights over shares of stock shall be effective unless the name of the transferee is properly indicated and said transferee is properly identified and the transaction is recorded in the STB of the issuing corporation in accordance with the Beneficial Ownership Transparency Guidelines.

The transfers of shares in a publicly listed company which are made through the Philippine Stock Exchange are not covered by the disclosure requirement. However, the disclosure of beneficial ownership information is still required in the General Information Sheet of the publicly listed company.

D. Other Relevant Provisions

1. Beneficial ownership disclosures shall form part of the records of the corporation.
2. The corporation is required to keep and maintain at its principal office adequate, timely and accurate information relating to its beneficial owners. Information on beneficial ownership is adequate when the corporation has the complete names, specific residential addresses, dates of birth, nationalities, TIN, if any, and percentage of ownership, if applicable, of the beneficial owners of all of its issued shares. The information is timely if any change is recorded within three (3) days from the time the information became available or is reasonably expected to become available with the exercise of due diligence. It is accurate if the information is correct in all its details.
3. The SEC may impose sanctions if after due notice and hearing, the SEC finds that:
 - a. There is a willful violation of the circular or any related orders of the SEC;
 - b. In the Mandatory Disclosure, there are untrue statements of any material fact required to be stated or necessary to make the statements therein not misleading; or
 - c. Any person has refused to permit any lawful examination in its affairs.

The following are the penalties that the SEC may impose:

- i. Beginning March 1, 2021, a fine in the amount of at least PhP5,000 but not more than PhP2 million, plus an amount that is not more than PhP1,000 for each day of continuing violation but in no case to exceed PhP2 million;
- ii. Suspension or revocation of the Certificate of Incorporation of the issuing corporation; or
- iii. Other penalties within the power of the SEC to impose.

SyCipLaw's Corporate Services Department

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