

*Because of changing investment and consumer norms and a shifting global policy and regulatory landscape, sustainability and environmental, social and governance (ESG) concerns have become a compelling issue for businesses, and responding to these concerns have turned into an important performance metric and part of business agenda. In this bulletin, the Firm's Sustainability & ESG Group notes key legal developments in this area.*

## Regulatory and Policy Updates

### A Boost to ESG Investing: SEC Introduces New Rules on Sustainable and Responsible Investment Funds

The Securities and Exchange Commission (“SEC”) issued Memorandum Circular No. 11, Series of 2022 or the Rules on Sustainable and Responsible Investment Funds (the “Circular”), which took effect on January 3, 2023. The Circular laid out the rules governing Sustainable and Responsible Investment (“SRI”) Funds as a recognition to the global trend and continuous growth of SRIs in the recent years. The rules are applicable to newly formed or existing investment companies that seek to qualify or have qualified as SRI Funds, as well as to non-SRI companies that incorporate or seek to include sustainability or environmental, social, and governance (“ESG”) factors in its investment objectives and disclose such in their Registration Statements.

#### ***I. SRI Regulations***

To qualify as an SRI Fund, the investment company must



adopt one or more sustainability principles or ESG factors as its key investment focus and reflect the same in its investment objective or strategy in its Registration Statements. The expected exposure or minimum asset allocation percentage that is consistent with the SRI Fund’s sustainable investment objective should be at least two-thirds (2/3) of its net asset value (“NAV”) at all times.

Moreover, the SRI Fund’s name must accurately and fairly reflect the sustainability or ESG factors set out in its investment objective or strategy. The SRI Fund seeking registration must submit an explanation as to how the proposed name is proportionate to the ESG features of the SRI Fund as a whole and will neither mislead investors as to the role of ESG in its overall investment objective and strategy nor over-emphasize or overstate the SRI Fund’s ESG features. Only SRI Funds may use the term

The rules for Sustainable and Responsible Investment (SRI) Funds are applicable to new and existing investment companies seeking to be SRI Funds. It also applies to non-SRI companies wanting to include sustainability or ESG factors in their investment objectives and disclose them in Registration Statements.

“ESG,” “sustainability” or words of similar import in its name and/or its marketing materials, unless otherwise permitted by the SEC.

Sustainability principles, considerations or ESG factors that may be considered by an SRI Fund include: (a) the United Nations Sustainable Development Goals, (b) United Nations Global Compact Principles, (c) Common Principles for Climate Mitigation Finance Tracking, (d) Green Bond Principles of the International Capital Market Association, (e) Climate Bonds Taxonomy of the Climate Bonds Initiative, and (f) any other nationally or globally acceptable ESG or sustainability principles or criteria. Strategies that may be adopted by an SRI Fund to achieve its investment objective relating to sustainability or ESG, such as Negative or Exclusionary Screening, Best in Class/Positive Screening, ESG Integration, Active Ownership, Thematic Investment, or Impact Investing.

With regard to disclosure, an SRI Fund is mandated to disclose information such as key ESG investments or focus, ESG criteria and investment selection process, asset allocation, reference benchmark and indices, sustainable investment strategy and related risks, stewardship policies, and policies on breach of the ESG investment threshold or inconsistency with the sustainable investment objective. As for reportorial requirements, an SRI Fund must submit annual and quarterly reports on its compliance with SRI rules, as well as assessments on how it has attained its sustainable investment objectives. Failure to comply with reportorial requirements or making untrue or misleading statements of a material fact, or omission to state any material fact required to be stated will subject the investment company and/or its Fund Manager to penalties prescribed by the SEC.

As part of its goal to promote sustainable business practices and investments in sustainability-related

products and to enhance the visibility of SRI Funds, a list of qualified investment companies will be uploaded and updated regularly on the SEC website. This, notwithstanding, the SEC is not precluded from removing from the list any SRI fund that no longer qualifies under the requirements of the rules.

## *II. Regulations Applicable to Non-SRI Entities*

A non-SRI investment company that intends to include sustainability or ESG factors or considerations in its investment objective and disclose such information in its Registration Statements and other marketing materials, need not qualify as an SRI Fund but will be subject to additional requirements in relation to its Registration Statement and annual and quarterly reports.

The non-SRI investment company must include in its Registration Statements the information on its ESG or sustainability investment objective and the percentage of the NAV that will be invested in ESG investments. The Registration Statements must contain the description of the process and criteria in selecting the investments to attain the ESG or sustainable investment objective, sustainability strategies and their continuous implementation, existing and emerging risks associated with these investments and mitigation strategies, and assessment methodologies adopted to measure and monitor the company’s ESG or sustainability-related objectives. The Registration Statements must also contain the policies and processes when the company’s other investments become inconsistent with its ESG or sustainability-related investment objectives.

As regards the non-SRI investment company’s annual or quarterly reports, these reports must describe (1) how the non-SRI fund (or the company) has attained its ESG or sustainable investment objectives, which includes the ESG or sustainability investments’ percentage in the NAV and (2) basis of the assessment performed relative to how the non-SRI Investment Company has attained its ESG or sustainability related investment objectives during the reporting period. The reports must also include a comparison of the current and previous assessment period.

A non-SRI investment company that has ESG or sustainability investments may not use the words “ESG,” “sustainability”, or words of similar imports in its name and marketing materials. Additionally, the company will not be included in the list of SRI funds on the SEC’s website.■



## New Guidelines on Sustainability-Linked Bonds Issuance Now Available

### **I. Background and Scope**

The Securities and Exchange Commission (“SEC”) issued Memorandum Circular No. 3, Series of 2023 or the Guidelines on the Issuance of Sustainability-Linked Bonds Under the ASEAN Sustainability-Linked Bond Standards in the Philippines (“**SLB Guidelines**”), which contains the guidelines on the issuance in the Philippines of Sustainability-Linked Bonds (“**SLBs**”) under the ASEAN Sustainability-Linked Bond Standards (“**ASEAN SLBs**”) of the ASEAN Capital Markets Forum (“**ACMF**”). The SLB Guidelines took effect on 6 April 2023. The SLB Guidelines primarily govern the issuances of ASEAN SLBs where the proceeds are intended to be used for general purposes. The SLB Guidelines are aligned with the ASEAN SLBs and the International Capital Market Association Sustainability-Linked Bond Principles (“**ICMA SLBP**”).

The SLB Guidelines defined SLBs as any type of bond instrument where the financial and/or structural characteristics can vary depending on whether the issuer achieves predefined sustainability/environmental, social and governance (“**ESG**”) objectives.

The SLB Guidelines supplements the requirements and procedure of the registration of securities under Sections 8 and 12 of the Securities Regulation Code (“**SRC**”).

According to SEC Commissioner Kelvin Lester Lee, “promoting and enabling a sustainable investment framework would help ensure that business activities and investment decisions contribute to progress while also

protecting Philippine resources.” In its efforts to further promote capital market integration in the region, the SEC has been actively involved in the regional sustainability agenda of the ACMF, currently working as co-chair of the ACMF Sustainability Finance Working Group.

### **II. Five Core Components of the ASEAN SLBs**

#### **A. KPIs**

The issuer must select external or internal sustainability Key Performance Indicators (“**KPIs**”) that measure the Issuer’s sustainability performance. The SLB Guidelines provide the required standards and criteria for selecting KPIs and the standards that are encouraged, such as aligning the KPIs with the United Nations Sustainable Development Goals. The definition and rationale of the KPI must also be disclosed, among others.

#### **B. Sustainability Performance Targets (“SPTs”)**

The issuer must calibrate one or more SPTs per KPI to express the level of ambition the Issuer is ready to commit to. Moreover, the issuer must disclose strategic information that may impact the achievement of the SPTs. Similar to the KPIs, the SPTs must be disclosed by the issuer through a publicly available website designated by the Issuer throughout the ASEAN SLBs’ tenure.

#### **C. Bond Characteristics**

The financial and structural characteristics of ASEAN SLBs can vary depending on whether the selected KPIs have reached the pre-defined SPTs. Potential variations of the ASEAN SLBs’ characteristics and fallback mechanisms must be disclosed.

#### **D. Reporting**

The issuer of the ASEAN SLB must publish and keep readily available and accessible through a public website designated by the issuer throughout the ASEAN SLBs’ tenure (i) up-to-date information on the performance of selected KPI’s including baselines, where relevant; (ii) a verification assurance report which includes an assessment on the issuer’s performance against SPTs as well as the related impact and timing of such impact, on the bond’s financial and/or structural characteristics; and (iii) any information enabling investors to monitor the level of ambition of the SPTs.

There must be a regular (at least annual) reporting of ASEAN SLBs. Issuers are encouraged to do reports more frequently and to provide a timeline as to when reporting on the ASEAN SLBs will be available.



## E. Verification

Issuers must seek independent and external verification, at least once a year, of their performance level against each SPT and for each KPI. This external verification will continue yearly until the last SPT trigger event of the bond has been reached.

## III. External Review Pre-Issuance

An external review by a credible and expert provider must be conducted pre-issuance. The external review provider's credentials, expertise, and scope of the verification conducted must be disclosed. Moreover, the report containing the verification must be available to the public and uploaded to a website designated by the issuer throughout the tenure of the ASEAN SLBs.

## IV. Applicability on Sustainability-Linked Bonds

In certain circumstances, and at the discretion of the SEC, outstanding bonds issued prior to the effectivity of the SLB Guidelines, which were issued by Philippine-based issuers and/or in instances where the proceeds were used in the Philippines, will be considered for eligibility under the SLB Guidelines. However, the issuance must be compliant with the requirements of the SLB Guidelines and have received certification from an internationally recognized certifying body. ■



## SEC Adopts ASEAN SRFs, Establishes Implementing Rules

### Background

The Securities and Exchange Commission (“SEC”) issued Memorandum Circular No. 4, Series of 2023 (“Circular”) adopting the ASEAN Sustainable and Responsible Fund Standards (“ASEAN SRFs”) and establishing rules to implement it in the Philippines. It took effect on 27 April 2023.

The ASEAN SRFs applies to investment companies, including sub-funds of umbrella funds, that seek to offer their shares, either locally or on a cross-border basis, as an ASEAN Sustainable and Responsible Fund (“ASEAN SRF”). It was developed by the ASEAN Capital Market Forum, in line with the growing importance of sustainable finance in the ASEAN, to provide minimum disclosure and reporting requirements for Collective Investment Schemes (“CIS”) that seek to qualify under the ASEAN SRFs and to address the need for a comparable, uniform, and transparent disclosure of information to mitigate the risk of, among others, greenwashing.

The Circular also applies to (i) local investment companies and their fund managers seeking to qualify under the ASEAN SRFs and want to either offer locally or on a cross-border basis under the ASEAN CIS Framework and



## Sustainability and ESG Developments in the Philippines

In this episode of Chambers Expert Focus podcast, SyCipLaw Partner Jose Florante M. Pamfilo and Special Counsel Catherina M. Fernandez give us a brief overview of CSR and ESG in the Philippines. They talk about how ESG has grown in popularity in recent years and more.

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(ii) foreign CIS operators already qualified as an ASEAN SRF in their home jurisdiction seeking to offer in the Philippines under the ASEAN CIS Framework. The ASEAN CIS Framework is the streamlined authorization process for the cross-border offer of CIS, such as unit trust funds or mutual funds.

#### **Minimum disclosure and reporting requirements for ASEAN SRFs**

The ASEAN SRF must disclose, among other things, its sustainable investment objectives and strategies. Examples of these sustainable investment strategies include, but are not limited to active ownership, ESG integration, and ethical and faith-based investing. It must also disclose its sustainability risk considerations and how it manages these risks. Other items to be disclosed include the ASEAN SRF's stewardship policies and processes in case of breach of the minimum asset allocation threshold or inconsistency with sustainable investment objectives.

As to the reporting requirements, the ASEAN SRF must provide annual and interim reports on how it has attained its sustainable investment objectives, which are to be made publicly available online on its website.

#### **Qualification of local investment companies as an ASEAN SRF**

The local investment company must be incorporated under Philippine laws and authorized to publicly issue shares under the Investment Company Act, Securities Regulations Code, and their respective Implementing Rules and Regulations. It must also comply with the ASEAN SRFS and with local rules on Sustainable and Responsible Investment Funds ("SRIF"), i.e., SEC Memorandum Circular No. 11, Series of 2022 and its amendments.

If the local investment company also seeks to offer on a cross-border basis under the ASEAN CIS Framework, it must comply with local laws implementing the Framework, specifically SEC Memorandum Circular No. 9, Series of 2021 or the Rules on Authorisation of an Investment Company as a Qualifying CIS and Recognition of a Foreign CIS Under the ASEAN CIS ("**ASEAN CIS Circular**"), and the other concerned jurisdiction's laws and rules on ESG Funds.

#### **Recognition of foreign ASEAN SRFs in the Philippines**

Qualified foreign CIS operators under the ASEAN SRFS, or "**foreign SRFs**," seeking to offer in the Philippines must comply with the ASEAN CIS Circular and submit the

Standard Letter issued in its home jurisdiction as proof that it has qualified as an ASEAN SRF.

The foreign SRF's name must accurately and fairly reflect the sustainability or ESG factors set out in its investment objective or strategy. The foreign SRF seeking recognition must submit an explanation as to how its proposed name is proportionate to its ESG features as a whole and will neither mislead investors as to the role of ESG in its overall investment objective and strategy nor over-emphasize or overstate the foreign SRF's ESG features. This also applies for the foreign SRF's marketing materials and website disclosures.

The foreign SRF must disclose the following information in its prospectus: its qualification as an ASEAN SRF, asset allocation, sustainable investment strategy and related risks, policies on inconsistency with the sustainable investment objective, and other information considered necessary by the foreign SRF, such as the use of a third-party certification or fund label.

A foreign SRF must submit annual and interim reports to the SEC with assessments on how it has attained its sustainable investment objectives. It must also report any breach of the ESG investment threshold or inconsistency with sustainable investment objectives.

In addition to the requirements of the Circular, all qualified ASEAN SRFs will be listed in the ASEAN Capital Market Forum's microsite dedicated for the ASEAN SRFs. ASEAN SRFs that no longer qualify under the requirements of the ASEAN SRFS and any amendments thereto will be removed from the list.

The ASEAN Sustainable and Responsible Fund Standards (ASEAN SRFS) were developed by the ASEAN Capital Market Forum to establish minimum disclosure and reporting requirements for Collective Investment Schemes (CIS) seeking qualification. This ensures transparent and comparable information, preventing risks like greenwashing in the ASEAN region.

### Administrative sanctions of the SEC

An investment company's qualification as an ASEAN SRF may be suspended or revoked if it fails to comply with local SRIF rules and/or the ASEAN SRFs. Failure to comply with the Circular will subject the company and/or its fund manager to penalties prescribed by the SEC.

A foreign SRF's recognition in the Philippines may be suspended or revoked if it fails to comply with the Circular, such as the reportorial requirements on breach and inconsistency, or if it loses its status as an ASEAN SRF in its home jurisdiction or its authority to offer under the ASEAN CIS Circular. ■



## SEC Set to Issue Guidelines on Blue Bonds

The Securities and Exchange Commission (“SEC”) is set to adopt the Philippines’ Blue Bond Framework and has made available for public comments the [draft guidelines](#) on the issuance of Blue Bonds, including clear qualifications on eligible blue projects and activities.

The issuance is part of the SEC’s efforts in taking an active role in promoting the use of capital markets in achieving the United Nations Sustainable Development Goals (“UN SDGs”) and the targets under the Paris Agreement to reduce the Greenhouse Gas emissions to lower the global average temperature to well below 2 degrees Celsius.

Blue Bonds are a subset of Green Bonds. The proceeds of Blue Bonds must be applied exclusively to finance marine and ocean-based projects that have positive environmental, economic, and climate benefits. Currently,

despite the rising trend of sustainability financing, investors have been hesitant to buy into blue bonds globally because of the lack of a concrete framework that governs Blue Bonds and activities that will help it attain its sustainability goals.

In response, in the draft guidelines, the SEC has identified “Eligible Blue Projects” that are “most commonly used or expected to be supported by the blue bond market.” The identified Eligible Blue Projects include, but are not limited to, ecosystem management and natural resources restoration of coastal, marine, and river ecosystems, sustainable fisheries management, sustainable aquaculture, sustainable tourism in the vicinity of marine conservation areas, solid waste management projects within 50 kilometers of the coast or a river that drains to the ocean, resource efficiency and circular economy, wastewater management, ports and shipping projects, and marine and offshore renewable energy. Fossil fuel power generation projects are excluded from being Eligible Blue Projects, in line with the ASEAN Green Bond Standards.

The draft guidelines also provide “Eligible Blue Activities”, specific activities that would “contribute substantially” to UN SDG 6 (ensure availability and sustainable management of water and sanitation for all) and UN SDG 14 (conserve and sustainably use the oceans, seas, and marine resources for sustainable development). The identified Blue Activities include, but are not limited to, water supply, water sanitation, ocean-friendly and water-friendly products, ocean-friendly chemicals and plastic-related sectors, sustainable shipping and port logistics sectors, and fisheries, aquaculture, and seafood value chain.

To enable potential Blue Bond issuers to measure compliance, the draft guidelines also set quantitative performance measures that may be made part of their use of proceeds reporting.

Lastly, the guidelines allow for applicability to outstanding bonds issued by Philippine-based issuers, where the proceeds were used according to the standards provided and reserved the right of the SEC to direct any issuer from using the “Blue Bond” label.

The SEC has said that it aims to release the final framework by the second quarter of the year, with the hope of attracting sustainability-focused investments to address climate issues. However, final guidelines have yet to be released by the SEC as of this writing. ■



## BSP publishes draft Guidelines on the Integration of Sustainability Principles in UITFs

The *Bangko Sentral ng Pilipinas* (“**BSP**”) recently published and made available for comments a draft circular setting out the guidelines on integrating sustainability principles in the creation, administration, and management of Unit Investment Trust Funds (“**UITFs**”) by trust entities (“**TEs**”). The draft circular seeks to amend certain provisions of the Manual of Regulation for Banks (“**MORB**”) and the Manual of Regulations for Non-Bank Financial Institutions (“**MORNBF**”), defining what sustainability or ESG-themed funds are and embedding sustainability-related requirements therein.

### Sustainability or ESG-focused UITF

Under the draft circular, a sustainability or ESG-themed fund shall refer to a UITF that represents itself or is marketed as a sustainability or ESG-focused fund and uses or includes environmental, social, and/or governance components as its key investment focus and/or strategy, as follows:

- a. *environmental*– such as climate change, natural resource conservation, pollution and waste management, environmental opportunities, energy usage, carbon footprint, contaminated property, hazardous waste, or toxic emissions, among others;
- b. *social*– such as human capital, product liability, stakeholder opposition, social opportunities, social or employee welfare, healthcare initiatives, diversity, inequality, or human rights monitoring, among others; and
- c. *governance*– such as transparency, board diversity, shareholder rights, investor relations, conflict of interest in board decisions, business ethics, political influence, legal practices, bribery, or corruption, among others.

Accordingly, a UITF is deemed to be focused on sustainability or ESG if at least two-thirds (2/3) of the fund’s net asset value is invested in assets that address the foregoing ESG factors and these factors significantly influence the selection of the investment assets of the fund.

### Additional requirements for sustainability or ESG-themed funds

According to the BSP, “[a] TE offering a sustainability or ESG-themed UITF is expected to have appropriate systems, policies, and procedures, as well as internal control systems to ensure that it is able to meet the fund’s sustainability or ESG targets and objectives and manage the relevant E&S risks arising from the fund’s investments.”

To this end, the draft circular provides for additional requirements that a TE offering sustainability or ESG-themed UITFs must meet on top of the requirements in Part IV of the MORB/MORNBF and the related appendices. In general, these include: (1) incorporating material E&S risks in its investment processes in accordance with the requirements under Appendix 86a (Sustainable Investment Activities), which is also a new insertion to the MORB/MORNBF introduced by the draft circular; (2) establishing objective criteria that allow for the monitoring of the fund’s compliance with its stated sustainability or ESG goals and objectives; and (3) adopting measures to ensure that investments are channeled to companies that comply with sustainability-related standards, laws, and regulations as well as companies that do not engage in greenwashing, as defined under Section 413 of the MORB/MORNBF.

#### *a. Plan Rules*

The draft circular also provides for more specific rules and/or guidelines that a trustee shall observe with respect to the plan rules of a sustainability or ESG-themed UITF. As regards the fund’s title, for instance, the draft circular provides sample words such as “ESG,” “sustainable,” and “sustainability” that may be included therein to distinguish it from other non-ESG or non-sustainability-themed UITFs. The draft circular also mandates that (a) a clear description of the UITF’s sustainability or ESG goals, strategy/ies, and investment priorities be reflected in the fund’s objectives, policies, and limitations, and (b) all material E&S risks of the fund be disclosed in the Plan rules. Then, to ensure that all



investments do not compromise the sustainability or ESG objectives of the fund, a TE is further expected to disclose in the plan rules how the remainder of the portfolio shall be invested. A UITF that merely incorporates or integrates ESG considerations into its investment process in order to seek financial returns would not be regarded as having ESG or sustainability focus.

#### *b. Disclosure Requirements*

In addition to the above-mentioned disclosures, the draft circular requires regular disclosures on the part of the trustee to ensure that its clients understand the nature of the risks inherent in the sustainability or ESG-themed UITFs that it offers, reduce information asymmetries, and aid the clients in making informed decisions about how sustainability or E&S risk issues can impact their investments. These regular disclosures are principally made through: (a) an Annual Report, where the TE discloses the results of the annual assessment of the attainment of the UITF's sustainability-related objectives, and (b) Key Investor Information Documents ("KIIDs"), where the trustee provides a clear explanation on how the fund achieved its sustainability or ESG objective/s as well as how the objective/s and/or strategy/ies have contributed to the fund's return. Also, where the fund is tracking a sustainability or ESG benchmark or index to measure the attainment of its sustainability or ESG focus, the TE shall further provide an explanation of how such index/benchmark is consistent with or relevant to the fund's investment focus.

#### *c. Prevention of greenwashing*

Finally, the draft circular mandates the trustee to adopt, in line with Section 413 of the MORB/MORNBF, to adopt control mechanisms to prevent greenwashing relative to its fund disclosures. A trustee may be deemed as engaging in greenwashing in the following cases: (1) there is lack of alignment between the fund's sustainability or ESG-related name and its investment objectives and/or strategies; (2) Marketing activities do not accurately reflect the fund's investment objectives and/or strategies; (3) The fund fails to follow its sustainability or ESG-related investment objectives and/or strategies; (4) There are misleading claims about the fund's sustainability or ESG-related performance and results; and (5) There is lack of disclosure about the fund's investment strategies or the fund's sustainability or ESG-related performance and results.

#### Conclusion

The Circular is part of the BSP's ongoing reforms pursuant to the Sustainable Finance Framework put in place in March 2020. In October 2021, the BSP issued BSP Circular No. 1128, series of 2021, which focused on the Environmental and Social Risk Management or ERSM framework. Then, in August 2022, the BSP issued BSP Circular No. 1149, series of 2022, which set the Guidelines on the Integration of Sustainability Principles in Investment Activities of Banks.

Once approved, the Circular will give trust entities one year to comply with the guidelines. ■



## **BSP proposes higher Single Borrower's Limit for green projects and 0% reserves for green bonds**

The *Bangko Sentral ng Pilipinas* ("BSP"; the Philippine central bank) is set to issue a circular amending its regulations on credit exposure limits to a single borrower and the rates of required reserves under the BSP's Manual of Regulations for Banks ("MORB"). The [draft circular](#) entitled 'Grant of Additional Single Borrower's Limit for Financing Green or Sustainable Projects and Zero Percent Reserve Requirement Rate Against Sustainable Bonds' was made available for public comments until 23 June 2023.

The draft circular is part of the BSP's 11-point Sustainable Central Banking Strategy introduced in December 2022, which provides for the BSP's role in

advancing the sustainability agenda in the Philippine financial system. The BSP aims to support the financing of green and sustainable projects, including transition activities, that contribute to the achievement of the National Government's climate commitments and sustainable development goals as laid down in the Philippine Development Plan and Nationally Determined Contributions.

To scale up sustainable finance, the draft circular seeks to implement the following measures: (i) the grant of an additional single borrower's limit ("SBL") of fifteen percent (15%) on loans, credit accommodation and guarantees (collectively, "loans") to finance green or sustainable projects, including transition activities to decarbonization; and (ii) the reduction of the reserve requirement rate to zero percent (0%) against outstanding and new issuances of sustainable bonds by banks.

#### Single borrower's limit

The SBL, under Section 362 of the MORB, restricts banks from extending large loans to one borrower or a group of related borrowers by limiting the amount of these loans to only twenty-five percent (25%) of a bank's net worth. As an exception, there are instances when the SBL may be increased. The draft circular seeks to add green financing to these instances. It provides that the total amount of loans may be increased by an additional fifteen percent (15%) of a bank's net worth when the loans are for the purpose of financing green or sustainable projects, including transition activities to decarbonization.

The lending bank must ensure: (i) that the project/activity is not illegal or in breach of environmental laws and regulations; (ii) that standard prudential controls for safeguarding creditors' interests are implemented, such as negative pledge covenants or a lien on shares; and (iii) that the borrower assigns in favor of the lending bank all proceeds from insurance covering the project as collateral to secure the loan.

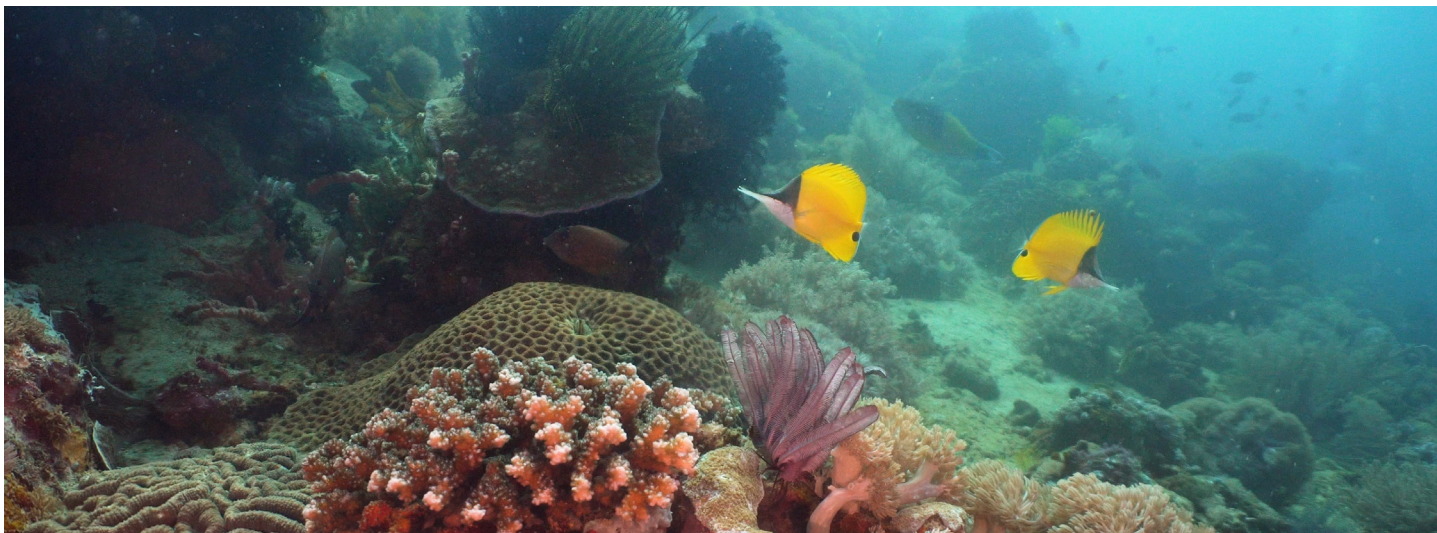
The additional fifteen percent (15%) shall only be allowed until 31 December 2030. All new loans extended beginning 01 January 2031 shall not exceed the standard SBL of twenty-five percent (25%). Existing loans granted before the cut-off with the additional SBL of fifteen percent (15%) may be maintained until their respective maturity periods.

#### Reserves requirement

Reserve requirements obligate banks to hold reserves against deposits and deposit substitute liabilities. The required reserves must be in the form of deposits maintained by the bank with the BSP. Reservable liabilities include demand deposits, savings deposits, time deposits, and bonds, among others. Under current regulations, bonds issued by universal banks, commercial banks, digital banks, and thrift banks are subject to a three percent (3%) reserve requirement. The draft circular seeks to distinguish sustainable bonds from all other bonds by subjecting the former to a zero percent (0%) reserve requirement, while maintaining the standard three percent (3%) reserve requirement for all other bonds. This shall apply to outstanding and new issuances of sustainable bonds by banks, and shall be effective until 31 December 2025.

'Sustainable bonds' include, among others, existing and new issuances of green, social, sustainability and other bonds defined under relevant regulations of the Securities and Exchange Commission and regional/international standards, such as those issued by the International Capital Markets Association or endorsements of the ASEAN Capital Markets Forum. ■

The BSP aims to support the financing of green and sustainable projects, including transition activities, that contribute to the achievement of the National Government's climate commitments and sustainable development goals as laid down in the Philippine Development Plan and Nationally Determined Contributions.



## Project Spotlight

### UBS Optimus Foundation UK and the Blue alliance Seal Loan Agreement for the Oriental Mindoro MPAs

In February 2023, UBS Optimus Foundation UK, a member of the UBS Optimus Foundation network, extended a Five Hundred Thousand United States Dollar (USD500,000) facility to the Blue alliance for the Oriental Mindoro MPA Network Inc. (**Blue Alliance**), a non-stock domestic corporation organized for the purpose of promoting the protection and restoration of marine ecosystems in Oriental Mindoro.<sup>1</sup>

Blue Alliance operates as a non-governmental organization co-managing several thousand hectares of the North Oriental Mindoro marine protected areas (**MPAs**) with local governments and communities.<sup>2</sup> Oriental Mindoro is located in the island of Mindoro in the MIMAROPA region of Luzon, Philippines and is home to diverse marine life.

UBS Optimus Foundation, as a grant-making foundation that offers UBS clients a platform to drive positive social and environmental change,<sup>3</sup> agreed to provide financial support to Blue Alliance to aid the protection of the environment and relieving poverty, as well as support education, citizenship, and community development.

With this financial support, Blue Alliance committed to use the facility strictly for purposes considered exclusively charitable in England and Wales, such as developing ecotourism programs (such as citizen science, eco-tours, and multimedia tools) and building an interpretation center (called Sea Sensorium) to increase awareness for the environmental problems and fund the MPAs in Oriental Mindoro; purchasing equipment for the management of MPAs, such as patrol boats and demarcation buoys; and covering costs for community engagement and the ongoing management of the MPAs during the initial scale-up while revenues are low.

**SyCipLaw, through SyCipLaw partners Vicente D. Gerochi IV and Joanna Marie O. Joson, senior associates Ricardo Jesus E. Gutierrez and Hailin DG Quintos-Ruiz, and associates Julia Patricia C. Herrera-Lim and Mark Joshua L. Faderguya, advised UBS Wealth Management on the status of Blue Alliance as a non-stock, non-profit corporation, tax implications and considerations, and corporate approvals required by Blue Alliance, and issued the legal opinion addressed to UBS Optimus Foundation UK.**


Sources:

<sup>1</sup> Articles of Incorporation of Blue Alliance, Second Article.

<sup>2</sup> Blue Alliance Philippines available at <https://www.linkedin.com/company/blue-alliance-ph> (last accessed 26 May 2023).

<sup>3</sup> UBS Philanthropy, Who We Are available at <https://www.ubs.com/global/en/ubs-society/philanthropy/optimus-foundation/who-we-are.html> (last accessed 26 May 2023).





This bulletin was prepared by SyCipLaw's ESG and Sustainability practice group.

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