

Newsletter

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The Securities and Exchange Commission (SEC) has issued Memorandum Circular No. 13, series of 2024, concerning the Enhanced Compliance Incentive Plan (ECIP) to encourage regulatory compliance of the corporations following the success of the 2023 SEC Amnesty Programs.

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ENHANCED COMPLIANCE INCENTIVE PLAN

TO: All Concerned Corporations

The Securities and Exchange Commission (SEC) has issued Memorandum Circular No. 13, s. 2024, to enhance corporate governance and boost investor participation. This circular actively implements reforms and programs to encourage compliance among regulated entities and aims to assist businesses in maintaining good standing by offering opportunities to meet reportorial requirements, particularly for those at risk of revocation or delinquency.

I. COVERED VIOLATIONS

The following violations by corporations, including branch offices, representative offices, regional headquarters, and regional operating headquarters of foreign corporations:

- a. Non-filing of General Information Sheet (GIS) for the latest and prior years;
- b. Late filing of GIS for the latest and prior years;
- c. Non-filing of Financial Statements (AFS for brevity), whether audited or certified, including fines for its attachments [e.g., Certificate of Existence of Program/Activity (COEP), Non-Stock and Non-Profit Organization (NSPO) Forms] for the latest and prior years; and
- d. Late filing of AFS, including fines for its attachments (e.g., COEP, NSPO Forms), for the latest and prior years.

In addition, the ECIP shall also cover violations under Memorandum Circular (MC) No. 28, s. 2020, or the "Requirement for Corporations, Partnerships, Associations, and Individuals to Create and/or Designate E-mail Account Address and Cellphone Number for Transactions with the Commission" (MC28).

II. ECIP RATES

The applicable rates will be as follows:

- A. Non-compliant corporations, including delinquent corporations:

Violations	ECIP Fee
1. Late and Non-Filing of GIS; 2. Late and Non-Filing of AFS; or 3. Non-compliance with MC 28	Php 20,000

The above rate will be applicable, given that, the applicant corporation will:

- i. submit the latest reportorial requirement due at the time of application; and
- ii. comply with MC No. 28.

Payment of the ECIP fee, does not confer compliant status to availing corporations, corporations are still required to submit supporting documents as mentioned in the subsequent portions of this newsletter.

- B. Suspended and Revoked Corporations: The ECIP rate for Suspended and Revoked Corporations, including those which have filed for the lifting of suspension/revocation, are as follows:

Violations	ECIP Fee
Petition Fee	Php 3,060; and
1. Late and Non-Filing of GIS; 2. Late and Non-Filing of AFS; or 3. Non-compliance with MC No. 28	50% of the assessed fines*

Payment of the ECIP fee does not automatically lift the suspension and revocation. Corporations with suspended and revoked registration, or Certificates of Authority (CAs) in the case of Financing Companies (FCs) and Lending Companies (LCs), are still required to file a Petition to Lift Order of Suspension/Revocation of Certificate of Registration and submit supporting documents.

****ECIP fee does not cover the penalties for erroneous entries in reportorial reports as this shall be dealt separately.***

III. FILING OF APPLICATION AND SUPPORTING DOCUMENTS

The duly authorized representative or resident agent of the corporation (“Applicant”) shall file a web-based Expression of Interest Form (EOI) and Application for Availment of ECIP via the Electronic Filing and Submission Tool (eFAST) and upload the following requirements:

- a) For Domestic Corporations (Ordinary Stock and Non- Stock):
 - i. Latest due AFS and its attachments;
 - ii. Latest due Amended AFS, if any;
 - iii. Latest due GIS; and
 - iv. Latest due Amended GIS, if any.

- b) For Foreign Corporations (Branch Offices, Representative Offices, Regional Area Headquarters, and Regional Operation Headquarters):
 - i. Latest due AFS and its attachments;
 - ii. Latest due Amended AFS, if any;
 - iii. Latest due GIS; and
 - iv. Latest due Amended GIS, if any.

A. Application and Payment Procedures for Non-Compliant and Delinquent Corporations.

Non-compliant corporations include corporations who:

- i. have not complied with the prescribed submission of GIS and AFS intermittently or consecutively in the previous years; and/or
- ii. have not complied with MC 28. Delinquent Corporations are those corporations declared as such pursuant to SEC MC No. 19, s. 2023.

Corporations that fall under this type of category shall accomplish a web-based EOI Form through the eFAST. After submission of the EOI, the eFAST will automatically generate a Payment Assessment Form (“PAF”) amounting to **Twenty Thousand Pesos (Php 20,000.00)** reflecting the fixed ECIP amount. The Applicant must settle this fee through the Electronic System for Payment to SEC (eSPAYSEC), where the electronic Official Receipt (eOR) is generated. Once the payment is settled, the Applicant shall upload the requirements cited in Part III of this newsletter. **Subsequently, once the submitted documents have been evaluated and deemed compliant, a Confirmation of Payment will be issued.**

B. Application and Payment Procedures for Revoked and Suspended Corporations. Revoked and Suspended corporations eligible for ECIP are those **who failed in submitting their AFS and GIS, intermittently or consecutively, in the previous years, non-compliant with MC No. 28, or both.**

Corporations that fall under this type of category shall accomplish a web-based EOI. Further, the applicant is directed to pay its corresponding petition fee first via eSPAYSEC, through a PAF that will be generated by the system. After the petition fee has been settled, the Applicant shall upload the other requirements through the eFAST and wait for the assessment of the 50% of their fines and penalties.

For corporations whose Certificates of Incorporation have been suspended or revoked, **the Petition to Lift Order of Suspension/Revocation, alongside the following supporting documents, must also be submitted to the designated SEC emails depending on their respective jurisdictions:**

1. Directors’ or Trustees’ Certificate;
2. Latest due AFS, and its attachments, as received by the SEC and Bureau of Internal Revenue (BIR);
3. Latest due GIS, as received by the SEC;
4. Copies of Certificate of Incorporation and latest Certificate of filing of Amended Articles or By-laws (if any) together with latest Articles of Incorporation and By-laws;
5. Copy of registration of stock and transfer book or membership book;
6. Secretary’s Certificate of No Intra Corporate Controversy;
7. Sworn Certification by the External Auditor;
8. Proof of ongoing operation, such as but not limited to:
 - Audited Financial Statements;
 - Income Tax Returns;
 - Mayor’s or Business Permits;
 - Contracts;
 - Receipts showing payment of Real Estate Tax;
 - Certification/Recognitions/Annual Conventions; or
 - Any similar/related documents.
9. Latest Mayor’s/Business Permit;
10. BIR Certificate of Registration;
11. Certificate from the Corporate Secretary that the Latest Financial Statement and Income Tax Return was received by the SEC and BIR. Respectively; and
12. Compliance with SEC Memorandum Circular No. 28, Series of 2020.

After submission of the documents, the **Applicant should wait for the verification of its corporate status**. After the assessment and monitoring process is completed, to determine the total amount of fines and penalties, the Applicant will receive an email notification from the system with the PAF that **contains the amount reflecting the 50% of the total assessed fines** to be paid through eSPAYSEC. **After payment has been settled, and submitted documents have undergone monitoring and evaluation, the Applicant shall receive a Confirmation of Payment for ECIP. A corporation's status will be updated, subject to the processing and issuance of the Lifting of Revocation and/or Order of Revival.**

IV. ISSUANCE OF CONFIRMATION OF PAYMENT

Corporations which have fully complied with all the conditions set forth in these rules, including the payment of the relevant fines and penalties, shall be issued with a Confirmation of Payment for ECIP. **The same is final and irrevocable, covering the period/s indicated in the said Confirmation.**

However, if, upon initial evaluation, **the required documents are found to be incomplete, the application will be reverted.** The reason for the reversion will be communicated to the corporation's official email address.

The issuance of the Confirmation of Payment for ECIP shall not exempt the corporation from filing its subsequent mandatory reportorial requirements in a timely manner.

V. EXCEPTIONS

The following entities are excluded from the coverage of the ECIP:

- a. Corporations whose securities are listed on the Philippine Stock Exchange ("PSE");
- b. Corporations whose securities are registered but not listed on the PSE;
- c. Corporations considered as Public Companies;
- d. Corporations with intra-corporate dispute;
- e. Corporations with disputed GIS;
- f. Corporations with expired corporate term; and
- g. Other corporations covered under Sec. 17.2 of RA No. 8799 or the "Securities Regulation Code."**

***Corporations covered under Sec. 17.2 of RA No. 8799 or the "Securities regulation Code includes:*

- (1) An issuer which has sold a class of its securities pursuant to a registration under section 12 of RA No. 8799;*
- (2) An issuer with a class of securities listed for trading on an Exchange; and*
- (3) An issuer with assets of at least Fifty million pesos (50,000,000.00) or such other amount as the Commission shall prescribe, and having two hundred (200) or more holder each holding at least one hundred (100) share of a class of its equity securities.*

VI. FORFEITURE OF ECIP FEES

Should an applicant-corporation fail to submit the complete set of requirements within the deadline will forfeit their ECIP fees. The ECIP fees include:

- a) Php20,000.00 for non-compliant and delinquent corporations,
- b) 50% of the total assessed penalties for suspended/revoked corporations, and
- c) the initial petition fee of Php3,060.00 applicable to suspended/revoked corporations.

VII. REFUND OF OVERPAYMENT

Refund of the ECIP fees for non-compliant corporations are generally not allowed, except in:

- a) highly meritorious cases, and
- b) subject to existing accounting and auditing rules and regulations.

VIII. PERIOD

Applications for the ECIP shall be accepted starting from **September 2, 2024 to November 30, 2024**.

IX. EFFECTIVITY AND REPEALING CLAUSE

Application of ECIP shall take effect immediately upon completion of its publication in a newspaper of general circulation. Further, the implementation of SEC Resolution No. 435, s. 2010, is hereby suspended.

Our View:

The Enhanced Compliance Incentive Plan (ECIP) will encourage non-compliant and delinquent corporations to settle their violations at a lower rate and also the ECIP will give a second chance to those corporations who fails to avail the SEC MC No. 20, series of 2023 Final Extension of Amnesty Applications.

Companies who have the violations listed under Memorandum Circular 6, series of 2024, should consider availing the ECIP as the fee of Php 20,000 is lower than the penalty of non-filing and late filing as shown below:

Violations	ECIP Fee	Scale of Fines and Penalties***
Late and Non-Filing of GIS;	P20,000	P21,000 – P54,000
Late and Non-Filing of AFS; or	P20,000	P24,000 – P90,000
Non-compliance with MC 28	P20,000	P20,000

****The range of the scale of fines is based on the retained earnings, accumulated income, fund balance or members' equity. (See SEC MC No. 6, series of 2024. [Updated Fines and Penalties on the Late and Non-Submission of Audited Financial Statements \(AFS\), General Information Sheet for the full text](#))*

The application period for ECIP is from September 2, 2024 to November 30, 2024, therefore Corporation should submit their application along with the audited financial statements for year 2023 or audited financial statements for fiscal year 2024 before November 30, 2024.

For the full text of the Memorandum Circular, refer to the link below.

SEC Memorandum Circular No. 13, series of 2024. [Enhanced Compliance Incentive Plan](#)

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Comments and suggestions are welcome.

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