

**DE BORJA MEDIALDEA BELLO
GUEVARRA & GERODIAS**

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FOR: Ms. Ninya Castillo-Gan
(SHS 1984 Foundation)

FAX No.:

FROM: Atty. Rose Nava

RE: Setting up a Foundation

DATE:

Documentary Requirements

Five (5) or more persons not exceeding fifteen (15), all of legal age and a majority of whom are Philippine residents, may form a private foundation in the form of a non-stock and non-profit corporation by filing with the Securities and Exchange Commission ("SEC") the following documents:

- (i) Name verification certificate stating that the proposed name of the foundation is available for use;
- (ii) Articles of Incorporation and By-Laws;
- (iii) written undertaking to change the corporate name, if necessary;
- (iv) duly accomplished registration data forms (RDS96-1 and RDS96-1DN);
- (v) resolution of the Board of Trustees that the foundation shall comply with the requirements of the SEC; and
- (vi) bank certificate of deposit of the contributions of the members. The total amount of contributions shall not be less than One Hundred Thousand Pesos (P100,000.00). The certificate shall (a) state that

the amount is deposited in the name of the Treasurer-in-trust for the foundation; (b) specify the savings/current account number and the branch of the bank in which the account is opened; (c) contain a checkwriter validation on the side; and (d) be duly notarized. For verification purposes, a photocopy of the bank passbook is required to be presented to the SEC.

If the SEC finds the stated purpose(s) of the proposed foundation to be vague, the SEC may additionally require the submission of a statement signed by the members explaining the following: (a) the ways and means of achieving the foundation's purpose(s); the projects the foundation intends to implement; (c) the sources which will fund the foundation's projects; and (d) the manner by which the foundation shall spend its funds to implement its projects.

To complete the Articles of Incorporation and By-Laws of your proposed foundation, the following information shall be required:

1. proposed name of the foundation, which as stated, should be certified as available for use;
2. purpose(s) for which the foundation is incorporated;
3. address of the foundation;
4. names, nationalities, residences, birthdates and the number, date and place of issue of the Community Tax Certificates of the incorporators, trustees and officers of the foundation;

[Please note that unlike stock corporations, there is no limit on the number of trustees that a foundation may have. All trustees must be members, and majority of the trustees must be Philippine residents.]

5. names of the members of the foundation and the amount of their contributions;
6. qualifications of members and trustees; date of annual meeting;

[Note that membership in a foundation is personal and non-transferable, unless the Articles of Incorporation and By-Laws provide otherwise.]

7. date of annual meeting of the members; and
8. names of the President, Corporate Secretary and Treasurer of the foundation.

Taxation

We refer you to the following pertinent provisions of the Tax Code governing private foundations:

Income Tax. Non-stock corporations or associations organized and operated exclusively for religious, charitable, scientific, athletic or cultural purposes, or for the rehabilitation of veterans, no part of the net income or assets of which shall belong or inure to the benefit of any member, organizer, officer or any specific person, are exempt from income tax on income received by them as such. [Section 30(E)]

Deductions. Donations to non-profit domestic corporations are deductible in full, provided the donation is made to such a corporation:

1. organized and operated exclusively for scientific, research, educational, character building and youth and sports development, health, social welfare, cultural or charitable purposes, or a combination thereof, no part of the net income of which inures to the benefit of any private individual;
2. which, not later than the fifteenth day of the third month after the close of the taxable year in which contributions are received, makes utilization directly for the active conduct of the activities consistent with the purpose or function for which it is organized and operated, unless an extended period is granted by the Secretary of Finance in accordance with the rules and regulations to be promulgated, upon recommendation of the Commissioner of the Bureau of Internal Revenue (BIR);
3. the level of administrative expenses of which shall, on an annual basis, conform with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner of the BIR, but not to exceed thirty percent (30%) of total expenses; and
4. the assets of which, in the event of dissolution, shall be distributed to another non-profit domestic corporation organized for similar purpose or purposes, or to the State for public purpose, or shall be distributed by a court to another organization to be used in such manner as in the judgment of the court shall best accomplish the general purpose for which the dissolved organization was organized. [Section 34(H)(2)(c)]

Total contributions or donations made during the taxable year in favor of accredited domestic corporations or associations organized and operated exclusively for religious, charitable, scientific, youth and sports development, cultural or educational purposes, or for the rehabilitation of veterans, or to social welfare institutions, or to non-government organizations, in accordance with rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner of the BIR, no part of the net income of which inures to the benefit of any private stockholder or individual, may be deducted by the donor to the extent of ten percent (10%) of taxable income if the donor is an individual, and five percent (5%) thereof if the donor is a corporation.
[Section 34(H)(1)]

Donor's Tax. Donations in favor of educational, charitable, religious, cultural or social welfare corporations, institutions, accredited non-government organizations, trusts or philanthropic organizations or research institutions or organizations are exempt from the donor's tax; provided that, not more than thirty percent (30%) of the donation shall be used by the donee for administrative purposes. For purposes of the exemption, the donee should (i) be incorporated as a non-stock entity; (ii) pay no dividends; (iii) be governed by trustees who receive no compensation; and (iv) devote all its income to the accomplishment and promotion of the purposes enumerated in the Articles of Incorporation.
[Section 101(A)(3)]

Additional Requirements for Income Tax Exemption / Qualification for Deductions. In any case, for the foundation to establish its tax exempt status, and for its donors to qualify for deduction, the foundation should file the following documents with the BIR within ninety (90) days from issuance of its corporate charter:

1. Affidavit or sworn statement setting forth the following:
 - (i) name and address of the foundation;
 - (ii) SEC registration number and date of issue;
 - (iii) character of the organization;
 - (iv) status;
 - (v) purposes of the foundation;
 - (vi) actual activities and proposed projects;
 - (vii) sources of income and its disposition;
 - (viii) whether or not any of its income is credited to surplus or inures or may inure to the benefit of any private individual;
 - (ix) manner of disposition of income in case of dissolution; and
 - (x) other facts relating to its operations which affect its right to exemption.

2. A copy of the Articles of Incorporation and By-Laws with the SEC Certificate of Registration attached thereto.

Restrictions

During the operations of the foundation, please note that it is prohibited from:

1. lending any part of its income or property without adequate security and/or a reasonable rate of interest;
2. purchasing any security or property for more than an adequate consideration;
3. disposing of any security or property for less than an adequate consideration;
4. diverting income or transferring property by way of lease or sale to any of its trustees or officers, their families or any corporation controlled directly or indirectly by the foregoing individuals or their families;
5. using any part of its property, income or seed capital for a purpose other than for which it was created or organized; and
6. engaging in any activity contrary to law or policy.

Please write or call us should you have questions or need further clarification.