

Department Circular No. 2002-10-006

PROVIDING ADMINISTRATIVE PENALTIES FOR VIOLATION OF CERTAIN PROVISIONS OF DEPARTMENT CIRCULAR NO. 98-03-004, AS AMENDED BY DEPARTMENT CIRCULAR NO. 2001-05-002 IN CONNECTION WITH THE INITIAL PUBLIC OFFERING (IPO) OF COMMON STOCK OF ANY PERSON OR ENTITY ENGAGED IN THE OIL REFINERY BUSINESS

WHEREAS, Section 1, Article XII of the Constitution provides that private enterprises, including corporations, cooperatives and similar collective organizations, shall be encouraged to broaden the base of their ownership;

WHEREAS, Section 22 of R. A. 8479 ("Downstream Oil Industry Deregulation Act of 1998") has required that "any person or entity engaged in the oil refinery business shall make a public offering through the stock exchange of at least ten percent (10%) of its common stock within a period of three (3) years from the effectivity of this Act or the commencement of its refinery operations", except that any company which has made the requisite public offering before the effectivity of the Act shall be exempted from such requirement;

WHEREAS, said mandate under Section 22 of R.A. 8479 is reiterated under Section 25 of Department Circular No. 98-03-004, dated 11 Mar amended by Department Circular No. 2001-05-002, dated 08 May 2001 which provides for the Rules and Regulations implementing R. A. 8479;

WHEREAS, Department of Justice (DOJ) Opinion No. 6, s 2001, dated 12 February 2001 reiterated the conclusion that the intention of the law is to broaden the base of ownership of oil companies and that the three-year period fixed therein should be construed liberally, hence, the initial public offering (IPO) could still be conducted after the lapse of the said three-year period;

WHEREAS, to ensure the implementation of said IPO, within the context of the intention of the Downstream Oil Industry Deregulation Act of 1998, there is a need to clarify when sanctions are to be applied in case of violations of the requirements of Section 25 of Department Circular No. 98-03-004, as amended by Department Circular No. 2001-05-002;

NOW, THEREFORE, the following supplemental rules are hereby promulgated:

Section 1. Section 25-A c. of Department Circular No. 98-03-004, as amended by Department Circular No. 2001-05-002 is hereby further amended to read as follows:

"c. **Power of DOE to Direct Conduct of IPO**_- Should the Secretary of Energy determine that the socio-economic, political, financial, and technical data, and other conditions warrant the conduct of an IPO, as guided by the assessment and determination of an independent financial adviser mutually acceptable to the DOE and the offeror, he shall direct the offeror to prepare for and/or conduct an IPO within a reasonable period."

Section 2. A new paragraph is hereby incorporated in Section 25-A of Department Circular No. 98-03-004, as amended by Department Circular No. 2001-05-002 to read as follows:

"d. **Penalties** - Any person or entity violating the directive of the Secretary of Energy provided in Section 25-A c. hereof shall be fined in the amount of Fifty Thousand Pesos (P50,000.00) for every day of delay in the conduct of its IPO reckoned from the date determined by the Secretary of Energy for the holding of said IPO."

Section 3. This Department Circular shall take effect immediately upon its complete publication in at least two (2) newspapers of general circulation.

(Sgd.)
VINCENT S. PÉREZ
Secretary