

**[DOE DEPARTMENT CIRCULAR NO. 2001-05-002,
May 08, 2001]**

**SUPPLEMENTARY IMPLEMENTING RULES AND REGULATIONS
IMPLEMENTING REPUBLIC ACT 8479, "DOWNSTREAM OIL
INDUSTRY DEREGULATION ACT OF 1998," PARTICULARLY
SECTION 22 THEREOF**

WHEREAS, the Department of Energy ("DOE") issued on 11 March 1998, Department Circular No. 98-03-004, entitled "Rules and Regulations Implementing R.A. No. 8479, Downstream Oil Industry Deregulation Act of 1998" which took effect on 13 March 1998;

WHEREAS, the DOE issued on 19 June 1998, Department Circular 98-06-009, entitled "Supplementing Rules and Regulations Implementing R.A. no. 8479, Particularly Section 15 Thereof," which took effect on 24 June 1998;

WHEREAS, there is a further need to clarify the implementation of R.A. No. 8479, particularly Section 22 thereof to accomplish the Constitutional and legal objectives of the law;

WHEREAS, the Department of Justice (DOJ) issued on 12 February 2001 DOJ Opinion No. 6, series of 2001 ruling that the time provision of Section 22 is only directory or permissive and will not prohibit an Initial Public Offering ("IPO") to be conducted after the lapse of said period;

WHEREAS, the above-cited DOJ Opinion further rules that the prohibition on acquisition of shares in Section 22 of R.A. No. 8479 should refer to stockholders with a "substantial interest" in a crude oil refining company;

NOW, THEREFORE, the following supplementing rules are hereby issued:

SECTION 1. The following defined term is added to Section 3 of Department Circular No. 98-03-004:

x x x

qq. Substantial Interest refers to the ownership of shares of stock of a domestic crude oil refining corporation or entity, held beneficially, on record, or through any contractual arrangement, that would allow such shareholder to exercise voting power sufficient to elect at least one member of the board of directors of such domestic crude oil refining corporation or entity.

SECTION 2. Section 25 of Department Circular No. 98-03-004 is amended to read as follows:

"SECTION 25. Any person or entity, engaged in the oil refinery business within the Philippines 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 the Act, or the commencement of its refinery operations, or such other period as maybe determined under this IRR. Provided, That no single person or entity shall be allowed to own more than five percent (5%) of the stock offering; Provided, further, That any crude oil refining company and any stockholder holding a Substantial Interest shall not acquire, directly or indirectly, any share of stock offered by any other crude oil refining company pursuant to Section 22 of the Act: Provided, finally, That any such company which made the requisite public offering before the effectivity of this Act shall be exempted from the requirement."

SECTION 3. A new section, Section 25-A, is hereby incorporated in Department Circular No. 98-03-004 to implement Section 22 of R.A. No. 8479, to read as follows:

a. "Obligatory Nature of IPO — Undertaking a public offering through the stock exchange of at least ten percent (10%) of its common stock is obligatory on the part of any person or entity engaged in the oil refinery business. If such person or entity failed to undertake such public offering within the period prescribed by Section 22 of the Act, this obligation shall be complied with at the soonest time possible when the conditions surrounding the undertaking of such offering so warrant. For this purpose, the offer or shall take into account the prevailing business, economic, equity capital market, social or political circumstances and/or other conditions.

The offeror shall be responsible for obtaining all the necessary approval or clearance of the IPO from the Securities and Exchange Commission and other entities or offices.

b. Apprising DOE of Relevant Information — The offer or of IPO shall submit a quarterly report to the DOE essentially informing the DOE of its assessment whether or not undertakings of IPO are warranted under the circumstances. All relevant data, tables, summary and other documents should be submitted to support the conclusion whether or not conducting an IPO is warranted. Quarterly reports should include, among others, the following:

1. Assessment of the market to be supported by relevant, verifiable and empirical data, such as but not limited to the following factors:

- a) Philippine Stock Exchange ("PSE") Composite Index;
- b) Philippine Oil Index;
- c) Market liquidity on the PSE showing the average daily turnover;
- d) Historical Philippine Peso/US Dollar exchange rate;
- e) Stock Price Performance of a listed oil refining company;