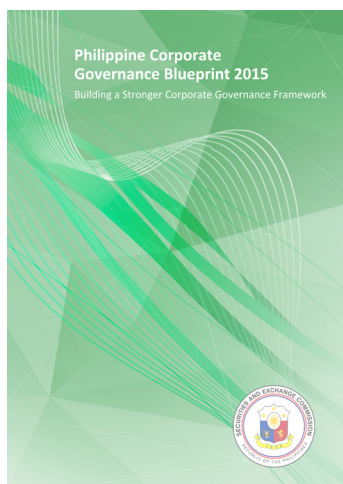


# Philippine Corporate Governance Blueprint 2015

Building a Stronger Corporate Governance Framework

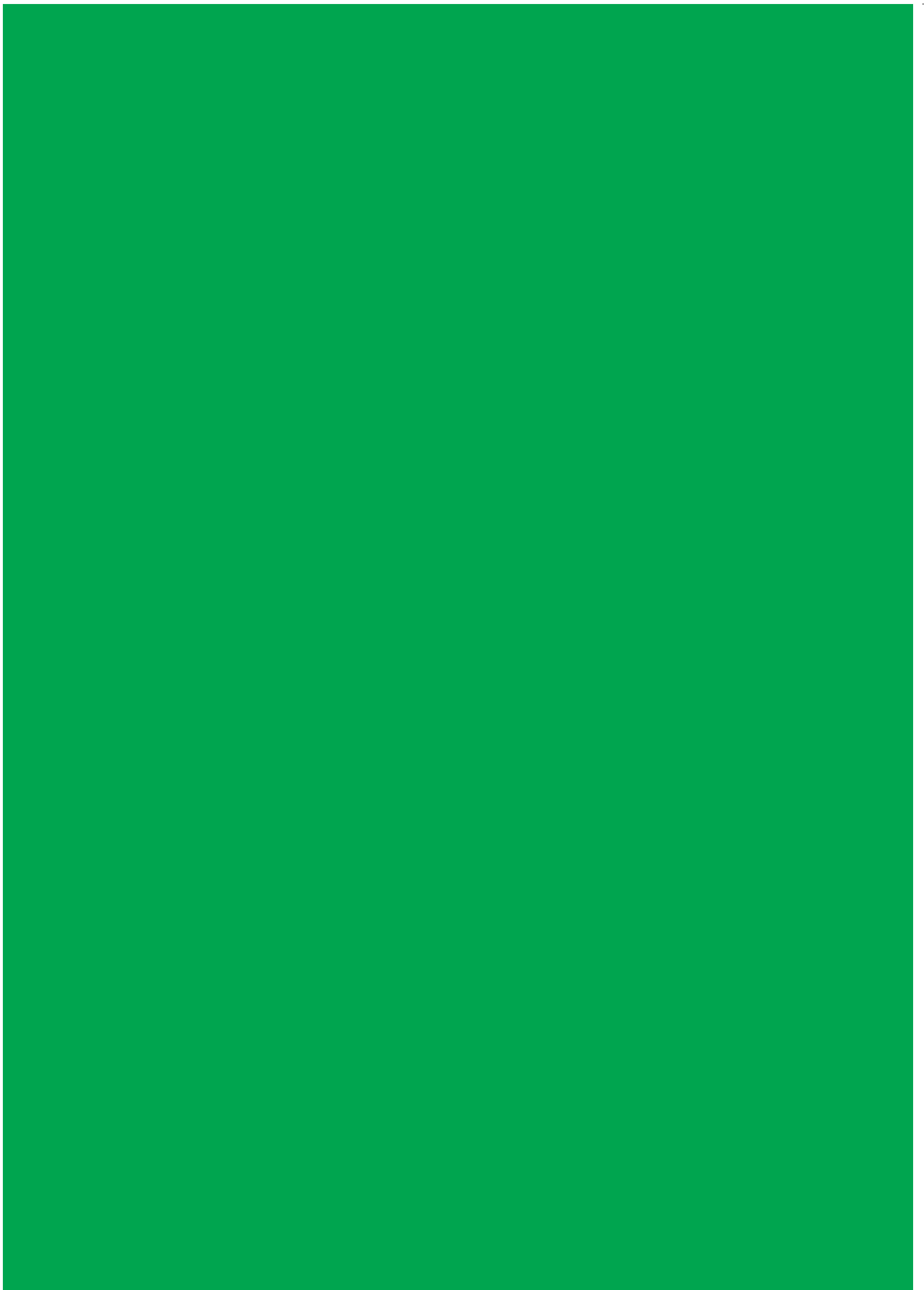




The cover design for the Philippine Corporate Governance Blueprint 2015 represents the overarching ideals of the Securities and Exchange Commission (SEC) to promote fairness, transparency and accountability. The color green aligns with the SEC's color palette while also symbolizing the concepts of growth, renewal, balance and sustainability – representing the SEC's continuing efforts to nurture healthy and vibrant corporate environments and capital markets in the Philippines. The different waves moving up and outward from the SEC logo signify the interconnections among the various regulatory bodies, companies and other stakeholders and how these groups can flow seamlessly together to create a structured corporate governance framework for the country. The facets in the background represent the multiple angles, perspectives and insights that have contributed to the completion of the CG Blueprint.

# Philippine Corporate Governance Blueprint 2015

Building a Stronger Corporate Governance Framework



# CONTENTS

<b>Message from the Secretary of Finance</b>	1
<b>Foreword from the Chairperson of the Securities and Exchange Commission</b>	2
<b>I. INTRODUCTION</b>	3
A. Objectives of the Philippine Corporate Governance Blueprint	5
B. Coverage of the Corporate Governance Blueprint	5
C. Methodology	6
D. Synopsis of Latest Assessment of Corporate Governance Practices in the Philippines	6
1. The Asian Corporate Governance Association	6
2. Organisation for Economic Co-operation and Development Reform Priorities in Asia	7
3. World Economic Forum	9
4. 2014 ASEAN Corporate Governance Scorecard Philippine Result	10
<b>II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK</b>	11
A. Shareholders: Their Rights Of Ownership	14
Overview	14
Challenges and Recommendations	14
1. Right to Participate in Annual Shareholders' Meeting	14
a. Notice of Annual Shareholders' Meeting	14
b. Annual Shareholders' Meeting Agenda	15
c. Attendance and Voting in the Annual Shareholders' Meeting	16
d. Minutes of the Annual Shareholders' Meeting	17
2. Right to Nominate Candidates to the Board	17
3. Right to Seek Redress for Violation of Rights	18
4. Right to be Notified of Material Related Party Transactions	18
5. Right to be Informed of Changes in Corporate Control	19
B. Role of Institutional Investors and Financial Advisors	20
Overview	20
Challenges and Recommendations	20
1. Stewardship/Responsible Investment Code of Institutional Investors	20
2. Disclosure of Institutional Investors' Corporate Governance and Voting Policies	21
C. Duties to Other Stakeholders	22
Overview	22
Challenges and Recommendations	22
1. Effective Redress for Violation of Stakeholders' Rights	22
2. Employee Participation	23
3. Anti-Corruption Programmes	23
4. Whistle-blowing Policy	24
5. Creating Shared Value as new Corporate Social Responsibility	24

# CONTENTS

D. Disclosure and Transparency	25
Overview	25
Challenges and Recommendations	26
1. Enhancing Disclosure in Annual Reports	26
a. Financial and Operating Results of the Company	26
b. Company Objectives and Non-financial Information	27
c. Transparency in Company's Ownership Structure	27
d. Remunerations of Members of the Board and Key Executives	28
e. Full Disclosure of Material Related Party Transactions	28
f. Foreseeable Risk Factors	29
g. Acquisition or Disposal of Assets	29
2. Strengthening Auditor Independence and the Importance of Audit Quality	30
3. Evaluating and Implementing Sustainability and Integrated Reporting	30
a. Sustainability Reporting	30
b. Integrated Reporting	31
4. Simplifying Reportorial Requirements	32
E. Board Roles and Responsibilities	33
Overview	33
Challenges and Recommendations	33
1. Roles and Responsibilities of the Board	33
a. Overseeing Succession Planning of Key Officers and Management	34
b. Aligning Key Officers and Board Remuneration with Long-Term Interest of the Company	34
c. Formal and Transparent Board Nomination and Election Process	35
d. Overseeing Internal Control and Audit	35
e. Overseeing Risk Management	36
2. Effectiveness of the Board of Directors	37
a. Board Committees	38
i. Audit Committee	38
ii. Risk Oversight Committee	39
iii. Corporate Governance Committee	39
iv. Related Party Transactions Committee	40
b. Board and Committee Charters	40
c. Board Seat Limit	40
d. Prior Training for First-Time Directors and Continuing Training for all Directors	42
e. Board Diversity	42
f. Board Assessment	44
g. Corporate Secretary and Compliance Officer	45
3. Board Independence	46
a. Qualifications of an Independent Director	46
b. Number of Independent Directors on the Board	47
c. Term of Independent Directors	49
d. Separation of the Role of the Chairman of the Board and Chief Executive Officer	50
e. A Balance of Non-Executive and Executive Directors on the Board	51

4. Ethical Standards	52
a. Adoption of a Code of Business Conduct and Ethics	52
b. Proper and Efficient Implementation and Monitoring of Compliance with the Code and Internal Policies	53
F. Towards A Stronger and More Effective Enforcement Regime	54
Overview	54
Challenges and Recommendations	55
1. Funding and Resources for the Securities and Exchange Commission	55
2. Updating of Laws and Regulations	56
3. Regulation of External Auditors	56
4. The Philippine Stock Exchange, Inc.'s Corporate Governance Initiatives	56
5. Comprehensive Corporate Governance Strategy	57
6. Further Rationalizing Corporate Governance Reportorial Requirements	57
7. Strengthening the Legal System to Effectively and Efficiently Resolve Capital Markets Related Cases	57
8. Harmonizing Corporate Governance Rules of all Regulatory Agencies	58
<b>III. IMPLEMENTATION ROADMAP: 2020</b>	<b>59</b>
<b>ACRONYMS AND ABBREVIATIONS</b>	<b>68</b>
<b>REFERENCES</b>	<b>69</b>
<b>ACKNOWLEDGMENTS</b>	<b>71</b>
<b>Tables</b>	
Table 1- Asian Corporate Governance Association - Corporate Governance Watch Market Scores 2014 vs 2012 vs 2010	7
Table 2 - Asian Corporate Governance Association - The Philippine Category Scores 2014 vs 2012	7
Table 3- Gross Domestic Product, Market Capitalization, Listed Companies in Asian Roundtable Economies, 2010	8
Table 4 - World Economic Forum Competitiveness Report (2010 – 2014)	9
Table 5 - ASEAN Corporate Governance Scorecard Average Scores of Top 100 Philippine Publicly-Listed Companies (PLCs) by Market Capitalization (2012 – 2014)	10
Table 6 - Countries with Stewardship Codes	21
Table 7 - Comparison of Global Reporting Initiative and Integrated Reporting Framework	32
Table 8 - Committees in Publicly-Listed Companies	38
Table 9 - Best Practices on Multiple Directorships	41
Table 10 - Number of Independent Directors in Publicly-Listed Companies	48
Table 11 - Board Composition of Publicly-Listed Companies in other ASEAN Countries	48
<b>Figures</b>	
Figure 1 - The Role of Business in Society	24
Figure 2 - Perspectives on Business Performance and Value	31
Figure 3 - Board Gender Diversity in Philippine Publicly-Listed Companies	43
Figure 4 - Philippine Publicly-Listed Companies with Female Independent Directors	43
Figure 5 - Term Limits of Independent Directors	49
Figure 6 - Years of Service of Independent Directors in Philippine Publicly-Listed Companies	50





# MESSAGE

## Secretary Department of Finance



I would like to congratulate the Securities and Exchange Commission (SEC) for the launch of the Philippine Corporate Governance Blueprint (CG Blueprint).

When one looks back at the past 50 years of the Philippines, the primary reason I think we have underperformed is the lack of good governance, both in the public- maybe primarily in the public- but also in the private sector. Now that we are being hailed as a resilient haven in Asia, one also cannot deny that governance is at the heart of the turnaround story we have been writing for the last five years.

Through the years, the SEC has continuously taken great reforms and initiatives through amendments of the Code and issuance of memorandum circulars, in order to improve and strengthen the corporate governance framework in the Philippines. This Blueprint is the latest testament to SEC's continuous efforts to improve corporate governance practices and policies to align with the evolving global and regional standards and best practices.

Through the effort and commitment of the SEC and the corporations themselves, great improvements were seen among corporations in the area of corporate governance. Since the institution of the ASEAN Corporate Governance Scorecard (ACGS) in 2012, it was noted that the average corporate governance scores of the top 100 Philippine publicly-listed companies by market capitalization rose from 48.9 in 2012 to 58 in 2013 and 67.02 in 2014 based on the 2014 ASEAN Corporate Governance Scorecard (ACGS) Philippine result. However, there are still many challenges that our Philippine corporations must work on. International corporate bodies such as the Organisation for Economic Co-operation and Development, Asian Corporate Governance Association, World Economic Forum and Asian Development Bank identified some of these challenges to include, quality accounting/auditing practices, effective enforcement, improvements relating to takeovers and related-party transactions, board performance and evaluation, and quality and timely disclosures.

Using as framework the six Principles of Corporate Governance recently adopted by the G20 and OECD, namely: 1.) basis for an effective corporate governance framework; 2.) the rights and equitable treatment of shareholders; 3.) institutional investors; 4.) the role of stakeholders; 5.) disclosure and transparency; and 6.) responsibilities of the Board, this Blueprint addresses the challenges faced by the Philippine corporations vis-a-vis the current standards and best practices across the region as set forth in the ACGS. It also provides for recommendations and mechanisms for compliance within a five-year roadmap.

It must be stressed however that addressing these challenges by providing recommendations and mechanisms for compliance will be put to naught unless a strong and effective enforcement regime would also be in place. Within the company, the task of ensuring proper observance of corporate governance practices and policies rests with the Board of Directors. This Blueprint clearly laid out some of the guidelines to have a strong and effective Board of Directors such as those providing for board seat limit, term limit, diversity, assessment, training and independence. Within the larger scope, the SEC has the greater task and mandate to enforce all corporate governance laws, rules and regulations. Thus, I fully support the reinforcement of SEC's authority through the amendment of the Securities Regulation Code and giving it sufficient funding and resources in order to make it a strong and effective regulatory agency.

With the CG Blueprint already in place, I wish SEC all the support and help from the government, corporations, other regulators and stakeholders as it begins the momentous task of implementing its five-year corporate governance roadmap in 2016. I have always believed that embedding governance into our culture is the only way to sustain the trajectory we have embarked on. I envision that by the end of 2020, a sound corporate governance framework will be deeply embedded in the Philippine corporate culture.

Thank you.

  
CESAR V. PURISIMA  
Secretary of Finance

# FOREWORD

## Chairperson Securities and Exchange Commission



Strong corporate governance is founded on the principles of fairness, accountability and transparency. It is key to increasing the global competitiveness of Philippine corporations in a manner that optimizes long term value to the company and its shareholders, as well as recognizes the role of its various stakeholders. The Securities and Exchange Commission (SEC) is a staunch advocate for good corporate governance. In recent years, to keep up-to-date with prevailing best practices, several initiatives of the SEC have been towards the improvement of corporate governance for Philippine companies. It acknowledges that corporate governance is a dynamic concept and best practices evolve over time. Hence, in order not to be left behind, it recognizes current best practices and strives to strengthen the Philippine corporate governance framework.

The Philippine Corporate Governance Blueprint (CG Blueprint) is the SEC's corporate governance roadmap for the next five years. It provides direction for the promotion of a strong corporate governance culture. Overall, it covers all relevant areas in corporate governance included in the recently released G20/OECD Principles of Corporate Governance. The SEC envisions that the Blueprint shall raise corporate governance standards to a level at par with global standards and ultimately, contribute to the development of Philippine capital markets. Moreover, the Blueprint clearly shows SEC's objective to have all corporations recognize and accept the globally recognized best practices, which, presently, is formally adopted mainly for PLCs.

To ensure that all interests are considered in the drafting of the CG Blueprint, a consultative group composed of various stakeholders, including representatives from compliance officers, shareholders, internal auditors and independent directors, was formed. Dr. Jesus P. Estanislao, the Philippines' corporate governance *guru*, contributed his expertise as consultant of the Blueprint. It should be noted that separate sections were devoted on Institutional Investors and Stakeholders, two areas that have not been previously given significant attention in the Philippines. This reiterates SEC's commitment to keep abreast with the latest developments in corporate governance.

Admittedly, corporate governance in the Philippines is still a work in progress. The biggest adversary is the closed mind set of some corporations. The SEC has consistently reiterated that the Philippines should know when to adapt to the ever changing best corporate governance principles and practices so as not to be left behind by its ASEAN and global counterparts. Another big challenge for the SEC is its perceived "overregulation". This matter is hopefully addressed by shifting to a "comply or explain" approach to be implemented in the 2016 Code of Corporate Governance, as introduced in the CG Blueprint.

With this, I would like to thank and give recognition to my SEC Co-Commissioners, Manuel Huberto B. Gaité, Antonieta Fortuna-Ibe, Ephyro Luis B. Amatong and Blas James G. Viterbo, for ensuring that the SEC is 100% committed to ensuring that the corporate governance practices of Philippine corporations are at par with those of the rest of the region. This CG Blueprint is a testament to this. More than that, this Blueprint is also evidence of SEC's continued commitment to its mission of "strengthening the corporate and capital markets infrastructure of the Philippines, and to maintain a regulatory system, based on international best standards and practices, that promotes the interests of investors in a free, fair and competitive business environment".

SEC would also like to extend its sincerest appreciation to all members of the consultative group for the time and invaluable input that they contributed to this initiative. Also, SEC would also like to give its thanks to the staff of the Corporate Governance Division of the Corporate Governance and Finance Department for the countless hours and effort that they gave to ensure the realization and publication of this blueprint.

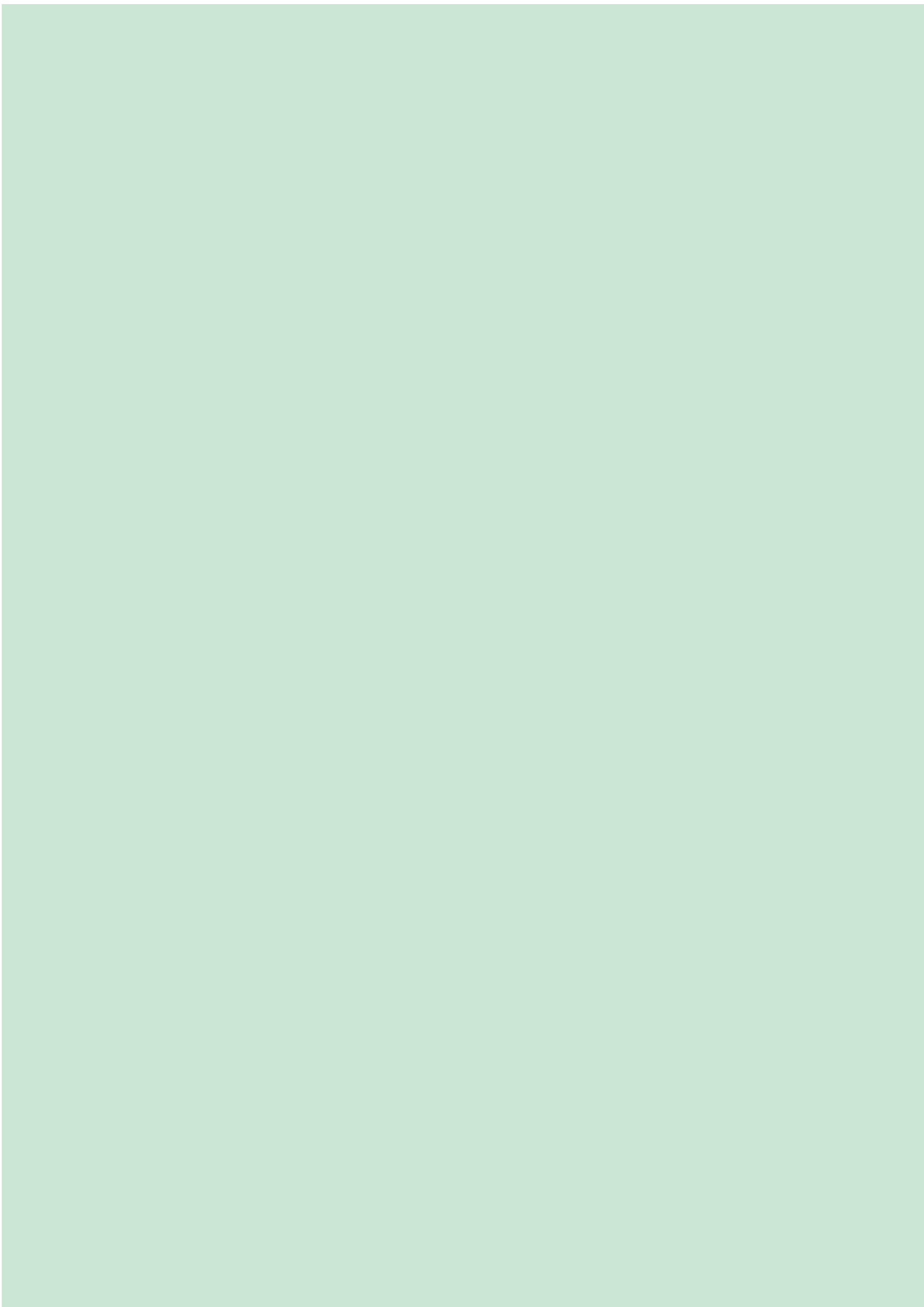
Lastly, SEC would like to emphasize that this Blueprint is just the beginning of this path towards a stronger corporate governance regime. The effective implementation of its recommendations necessitates a collective effort and cooperation of the corporations, regulators and all other stakeholders. Together, a strong corporate governance framework and culture for the Philippines will soon be a reality.

A handwritten signature in black ink, appearing to read "T. Herbosa".

TERESITA J. HERBOSA  
Chairperson

Securities and Exchange Commission

# I. INTRODUCTION



## I. INTRODUCTION

### A. Objectives of the Philippine Corporate Governance Blueprint

This Corporate Governance Blueprint (CG Blueprint) is the Securities and Exchange Commission's (SEC) Corporate Governance (CG) roadmap for the next five years. It is an articulation of the global corporate governance principles as the framework for further strengthening the CG regime in the Philippines. It puts forward specific and concrete guidelines for all Philippine corporations to adopt, taking into account the Philippine context and the recommended global and ASEAN best practices found in the ASEAN Corporate Governance Scorecard (ACGS). The ACGS provides for a methodology to assess the CG performance of publicly listed companies (PLCs) in the six participating ASEAN countries namely: The Philippines, Indonesia, Malaysia, Singapore, Thailand and Vietnam.

These broad guidelines are expected to be observed under the "comply or explain" operative principle and the principle of proportionality. Under the "comply or explain" operative principle, Philippine corporations are to comply with the CG practices to be set out in the 2016 Code of Corporate Governance. If they do not comply with the same, an explanation for the non-compliance shall be given, which shall be disclosed to the SEC in a report that shall be available to the public, including the company's shareholders and other stakeholders. In addition, under the principle of proportionality, the SEC addresses specific segments of the corporate sector, which may be differentiated on the basis of company type, size, access to public funds and risk profile, among others.

The SEC shall take note of the different explanations and would work towards adapting the ACGS guidelines to the more concrete and differentiated sectors in the Philippine economy. With mechanisms for public and open consultation in place, the SEC shall work towards implementing more sector-specific guidelines for CG practice. Moreover, the SEC shall work together with other regulators for certain sectors such as the Bangko Sentral ng Pilipinas (BSP) for banks, the Insurance

#### PRINCIPLE OF PROPORTIONALITY

The SEC differentiates segments of the corporate sector on the basis of company type, size, access to public funds and risk profile, among others.

#### *Comply or Explain Approach*

Philippine corporations are to comply with the corporate governance practices to be set out in the 2016 Code of Corporate Governance. If they do not comply with the same, an explanation for the non-compliance shall be given, which shall be disclosed to the SEC in a report that shall be available to the public, including the company's shareholders and other stakeholders.

Commission (IC) for insurance companies and the Governance Commission for Government-Owned and Controlled Corporations (GCG).

This CG Blueprint also identifies the strategic priorities and recommended courses of action within a five-year implementation plan to further strengthen the CG framework for all Philippine corporations in order:

1. To nurture sustainable transformative corporate performance, which not only optimizes shareholder value but, more importantly, stakeholder value;
2. To ensure the alignment of the Philippine corporate and capital market infrastructure with evolving international standards and best practices on CG;
3. To enhance the competitiveness of Philippine corporations in the context of globalization as they compete for capital in regional and global financial markets with an increasing demand for fairness, accountability and transparency;
4. To deepen the relationship of trust and collaboration among Philippine corporations, stakeholders and regulators working towards inclusive national economic progress and social equity transcending favorable business outcomes; and,
5. To improve the functioning of the Philippine financial market and facilitate inclusive national development.

This CG Blueprint, being a program of improvement and transformation between 2016 and 2020, shall be regularly tracked and closely assessed by the SEC and various stakeholders so as to achieve its objectives.

### B. Coverage of the Corporate Governance Blueprint

This CG Blueprint provides the best CG practices and policies that may be adopted by all Philippine corporations registered with the SEC. Although, the best practices are primarily prescribed for PLCs, public companies (PCs) and secondary licensees, all other companies are nonetheless encouraged to consider adopting said practices. Moreover, compliance of PLCs with CG standards has a powerful exemplary influence on smaller companies that are aspiring for business growth, more investors, and eventually, public listing.

Given its authority under relevant laws, the SEC may formulate and enforce rules and regulations and may establish specific and detailed legal requirements for different sectors based on the broad guidelines set forth in this CG Blueprint.

## I. INTRODUCTION

### C. Methodology

Through the technical assistance of the Asian Development Bank (ADB), the SEC convened a consultative group headed by Chairperson Teresita J. Herbosa and composed of members from various stakeholder groups to draft the CG Blueprint. Along with several prominent and highly-experienced individuals who have served in the boards of Philippine PLCs, representatives from the following institutions were invited to participate in this SEC initiative:<sup>1</sup>

1. Bangko Sentral ng Pilipinas (BSP);
2. Bankers Association of the Philippines (BAP);
3. Employers Confederation of the Philippines (ECOP);
4. Federation of Filipino-Chinese Chambers of Commerce and Industry, Inc. (FFCCCI);
5. Financial Executives Institute of the Philippines (FINEX);
6. Good Governance Advocates and Practitioners of the Philippines (GGAPP);
7. Institute of Internal Auditors Philippines, Inc. (IIAP);
8. Insurance Commission (IC);
9. International Finance Corporation (IFC);
10. Management Association of the Philippines (MAP);
11. Philippine Chamber of Commerce and Industry (PCCI);
12. Philippine Franchise Association (PFA);
13. Shareholders' Association of the Philippines (SharePhil);
14. The Philippine Stock Exchange, Inc.(PSE); and
15. UP Law Center Institute for the Administration of Justice.

Under the expert guidance of Dr. Jesus P. Estanislao, the Technical Consultant for the Blueprint, who is frequently invited to join Organisation for Economic Co-operation and Development (OECD) discussions in and outside the Philippines, the Consultative Group deliberated on CG principles and guidelines to be adopted to set a more effective CG framework to cover all Philippine corporations. The consultative group also discussed relevant CG issues and concerns. Several drafts were circulated and reviewed in order to put forward specific and concrete guidelines for Philippine corporations to consider adoption under the “comply or explain” principle and subject to the principle of proportionality.

The Consultative Group was divided into six clusters to deliberate on issues relevant to Philippine companies on each of the six G20/OECD Principles of Corporate Governance. The different clusters then presented to the whole consultative group the areas of concern and recommended courses of action for the same. Members

of the consultative group actively participated in the series of meetings. From these discussions and with the assistance of Dr. Estanislao, the SEC developed this CG Blueprint with a five-year implementation plan. A draft of the CG Blueprint was circulated for public exposure for a reasonable period to solicit public comments and suggestions.

### D. Synopsis of Latest Assessment of Corporate Governance Practices in the Philippines

Before discussing the guidelines and strategic priorities in this CG Blueprint, it would be worthwhile to note the assessment of CG compliance in the Philippines and the corresponding recommended CG reform priorities as published by various CG bodies.

#### 1. The Asian Corporate Governance Association

The Asian Corporate Governance Association (ACGA) is a non-profit Hong Kong-based membership association with more than 100 members, with a combined global presence and managed funds of US\$15 trillion. This is composed of: pension funds; investment/asset management firms; insurance companies and brokers; banks and other financial institutions; PLCs; private companies; and law, accounting and other professional firms. ACGA is dedicated to working with investors, companies and regulators in the implementation of effective CG practices throughout Asia. ACGA was founded in 1999 from a belief that CG is fundamental to the long-term development of Asian economies and capital markets.<sup>2</sup> ACGA's work covers independent research, advocacy and education.

Biannually, ACGA releases a CG Watch report, which is a major regional survey undertaken in collaboration with Credit Lyonnais Securities Asia (CLSA) Asia-Pacific Markets. The report looks at the macro CG quality in 11 Asian markets and provides aggregate data on more than 500 companies.<sup>3</sup>

The results of the survey for 2010, 2012 and 2014 can be seen in Table 1. Although there was a slight improvement in the 2014 *vis-à-vis* 2010 CG scores for the Philippines, it can be noted that better CG improvements were made by Malaysia, Thailand and India as objectively represented by their CG scores. The Philippines faces the challenge to improve its CG scores *vis-à-vis* its neighboring ASEAN countries to make investing in the Philippines more attractive.

<sup>1</sup> A complete list of all participating individual members of the consultative group is found in the Acknowledgment section.

<sup>2</sup> ACGA. <http://www.acga-asia.org/AboutACGA>.

<sup>3</sup> ACGA, Regional Surveys – CG. [http://www.acga-asia.org/content.cfm?SITE\\_CONTENT\\_TYPE\\_ID=19](http://www.acga-asia.org/content.cfm?SITE_CONTENT_TYPE_ID=19).

**Table 1**  
**Asian Corporate Governance Association**  
**Corporate Governance Watch Market Scores**  
**2014 vs 2012 vs 2010**

Rank	Market	2010	2012	2014	Change fr 2012	Change fr 2010
1	Singapore	67	69	65	-4	-2
2	Hong Kong	65	66	64	-2	-1
3	Thailand	55	58	60	+2	+5
4	Japan	57	55	58	+3	+1
5	Malaysia	52	55	58	+3	+6
6	Taiwan	55	53	56	+3	+1
7	India	49	51	54	+3	+5
8	Korea	45	49	49	+0	+4
9	China	49	45	45	+0	-4
10	Philippines	37	41	40	-1	+3
11	Indonesia	40	37	39	+2	-1

Table 2 presents a breakdown of the Philippine scores for 2012 and 2014. Looking at the breakdown, the Philippines gained points in CG rules and CG culture as there were notable CG reforms and improvements in investors' relations of companies and the birth of a new and active retail shareholder group, SharePhil. However, the Philippines is yet to make significant improvements in disclosing and implementing a regime of effective enforcement and of quality accounting/auditing practices. Some of these sought-after improvements relate to takeovers and related-party transactions (RPTs).

**Table 2**  
**Asian Corporate Governance Association -**  
**The Philippine Category Scores 2014 vs 2012**

	2012	2014	Change
Corporate Governance Rules/Practices	35	40	+5
Enforcement	25	18	-7
Policy & Regulatory Environment	44	42	-2
International Generally Accepted Accounting Principles	73	65	-8
Corporate Governance Culture	29	33	+4

## 2. Organisation for Economic Co-operation and Development Reform Priorities in Asia<sup>4</sup>

The Organisation for Economic Co-operation and Development (OECD) is composed of 34 Member countries from North and South America to Europe and Asia-Pacific. These Member countries include not only many of the world's most advanced countries but also emerging countries like Mexico, Chile and Turkey. Aside from its Member countries, the OECD also works closely with various Partners. These Partners include emerging economies like the People's Republic of China, India and Brazil and developing economies in Africa, Asia, Latin America and the Caribbean. The OECD provides a forum where governments work together, compare policy experiences, seek answers to common problems, identify good practices and work to coordinate domestic and international policies relating not only to CG but also to a wide range of things, from agriculture and tax to the safety of chemicals.

The OECD convened the Asian Roundtable on Corporate Governance to define, as agreed by consensus, several CG reform priorities and make recommendations that reflect the specific conditions and needs within Asia. The said Asian Roundtable prepared a 2011 Report which updated the Roundtable's 2003 White Paper on Corporate Governance in Asia with an overview of CG frameworks in 13 Asian economies. Excerpts from the said report are presented below.

<sup>4</sup> OECD (2011), "Reform Priorities in Asia: Taking Corporate Governance to a Higher Level", *Asian Roundtable on Corporate Governance*, <http://www.oecd.org/daf/corporateaffairs/roundtables/asia>.

## I. INTRODUCTION

The CG landscape in Asia is presented in Table 3 depicting varying stages of economic development and market sizes (see Table 3).

**Table 3**  
**Gross Domestic Product, Market Capitalization, Listed Companies in Asian Roundtable Economies, 2010**

Jurisdiction	(USD Billions, PPP)	Market Capitalization (USD millions)	Gross Domestic Product (nominal)	Listed Companies
Bangladesh	244.33	46,999	47%	302
China	10,085.71	4,762,836	81%	2,063
Chinese Taipei	821.78	818,490	190%	784
Hong Kong, China	326.23	2,711,333	1208%	1,413
India	4,198.60	3,228,455	210%	6,586
Indonesia	1,029.79	360,388	51%	420
Korea	1,417.54	1,089,216	108%	1,798
Malaysia	414.43	410,534	172%	956
Pakistan	464.20	38,168	21.8%	644
Philippines	367.43	157,320	78%	253
Singapore	291.94	647,226	291%	778
Thailand	586.82	277,731	87%	541
Vietnam	276.57	20,385	19.7%	164

The findings in the Asian Roundtable 2003 White Paper on Corporate Governance are still held valid. Serious governance problems were noted relating to three characteristics of the Asian companies:

1. concentrated ownership structure;
2. prevalent RPTs; and
3. lack of independence of boards of directors.

The report identified the following six reform priorities for Asian countries including the Philippines:

Priority 1: Public and private-sector institutions should continue to make the business case for the value of good CG among companies, board members, gatekeepers, shareholders and other interested parties, such as professional associations.

Priority 2: All jurisdictions should strive for active, visible and effective enforcement of CG laws and regulations. Regulatory, investigative and enforcement institutions should be adequately resourced, credible and accountable, and work closely and effectively with other domestic and external institutions. They should be supported by a credible and efficient judicial system.

Priority 3: The quality of disclosure should be enhanced and made in a timely and transparent manner. Jurisdictions should promote the adoption of emerging good practices for non-financial disclosure. Asian Roundtable jurisdictions should continue the process of full convergence with international standards and practices for accounting and audit. The implementation and monitoring of audit and accounting standards should be overseen by bodies independent of the profession.

Priority 4: Board performance needs to be improved by appropriate further training and board evaluations. The board nomination process should be transparent and include full disclosure about prospective board members, including their qualifications, with emphasis on the selection of qualified candidates. Boards of Directors (Board) must improve their participation in strategic planning, monitoring of internal control and risk oversight systems. Boards should ensure independent reviews of transactions involving managers, directors, controlling shareholders and other insiders.



Priority 5: The legal and regulatory framework should ensure that non-controlling shareholders are adequately protected from expropriation by insiders and controlling shareholders. Gatekeepers such as external auditors, rating agencies, advisors, and intermediaries should be able to inform and advise shareholders free of conflicts of interest.

Priority 6: Shareholder engagement should be encouraged and facilitated, in particular, by institutional investors.

### 3. World Economic Forum

The World Economic Forum (WEF) is an independent, international institution for public-private cooperation seeking to shape the global, regional, national and industry agendas. The WEF engages political, business, academic and other leaders of society in collaborative efforts to improve the state of the world.

The WEF publishes periodic Global Competitiveness Reports to assess the competitiveness landscape of 144 economies, providing insight into the drivers of their productivity and prosperity. The report remains the most comprehensive assessment of national competitiveness worldwide, providing a platform for dialogue between government, business and civil society about the actions required to improve economic prosperity. Competitiveness is defined as *the set of institutions, policies and factors that determine the level of productivity of a country.*

The level of productivity, in turn, sets the level of prosperity that can be earned by an economy. The different aspects of global competitiveness are captured in 12 pillars, which are:

#### Basic requirements sub-index

- Pillar 1: Institutions
- Pillar 2: Infrastructure
- Pillar 3: Macroeconomic environment
- Pillar 4: Health and Primary education

#### Efficiency enhancers sub-index

- Pillar 5: Higher education and training
- Pillar 6: Goods market efficiency
- Pillar 7: Labor market efficiency
- Pillar 8: Financial market development
- Pillar 9: Technological readiness
- Pillar 10: Market size

#### Innovation and sophistication factors sub-index

- Pillar 11: Business sophistication
- Pillar 12: Innovation

The Philippines has continually improved its ranking from 2010 to 2014 when it rose from 85<sup>th</sup> rank to 52<sup>nd</sup> rank. Serious efforts should be promoted and sustained to improve and align CG practices in the Philippines with the global CG standards in order to make Philippine companies more competitive in this globalized economy.

**Table 4**  
**World Economic Forum Competitiveness Report (2010 – 2014)**

	2010	2011	2012	2013	2014	Top
TOTAL NUMBER OF COUNTRIES	139	142	144	148	144	
<b>Philippine Ranking</b>	<b>85<sup>th</sup></b>	<b>75<sup>th</sup></b>	<b>65<sup>th</sup></b>	<b>59<sup>th</sup></b>	<b>52<sup>nd</sup></b>	
CORPORATE GOVERNANCE RANKINGS	90 (65%)					55 (38%)
Ethical Behavior of Firms	129	118	87	69	49	34%
Strength of Investors' Protection	109	111	110	107	105	73%
Protection of Minority Shareholders' Interests	80	84	57	47	45	31%
Strength of Auditing and Reporting Standards	75	62	41	38	48	33%
Efficacy of Corporate Boards	56	52	51	48	29	20%

## I. INTRODUCTION

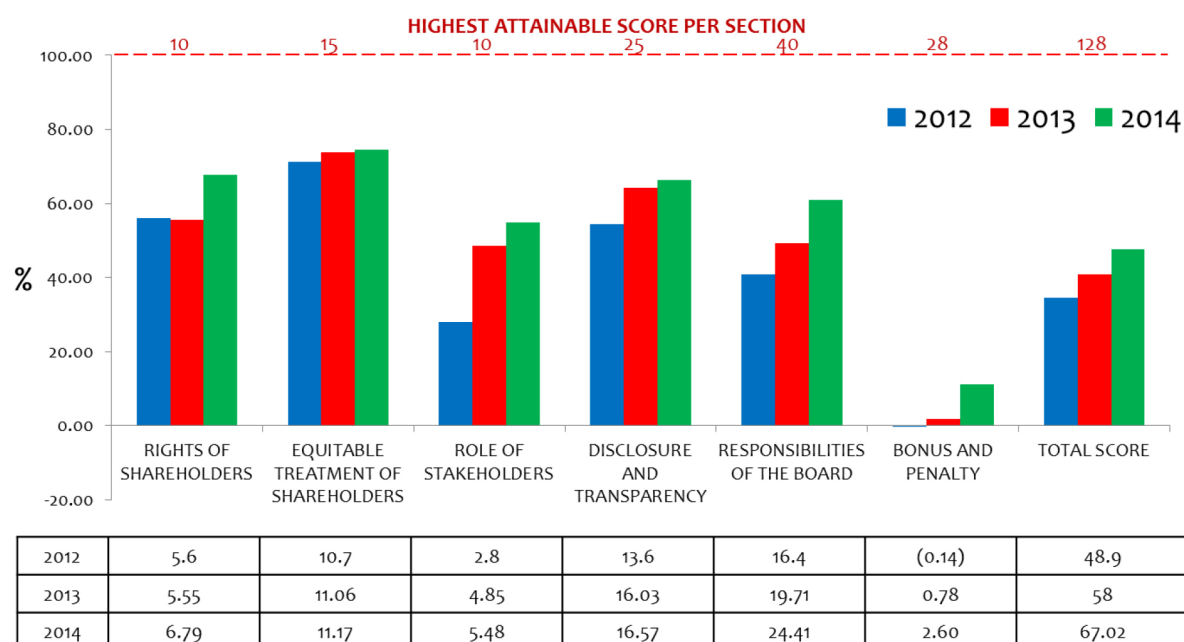
### 4. 2014 ASEAN Corporate Governance Scorecard Philippine Result

Since the adoption of the ACGS in 2012, the positive trend in the improving ACGS scores of Philippine PLCs manifests a deeper commitment to sound CG practices through the concerted effort by the regulators and the PLCs. The average CG scores of the top 100 Philippine PLCs by market capitalization rose from 58 points in 2013 to 67.02 points in 2014 (as shown in Table 5).

Also, of the five governance categories, the most dramatic improvement in average scores on a year-on-year basis was in the Rights of Shareholders

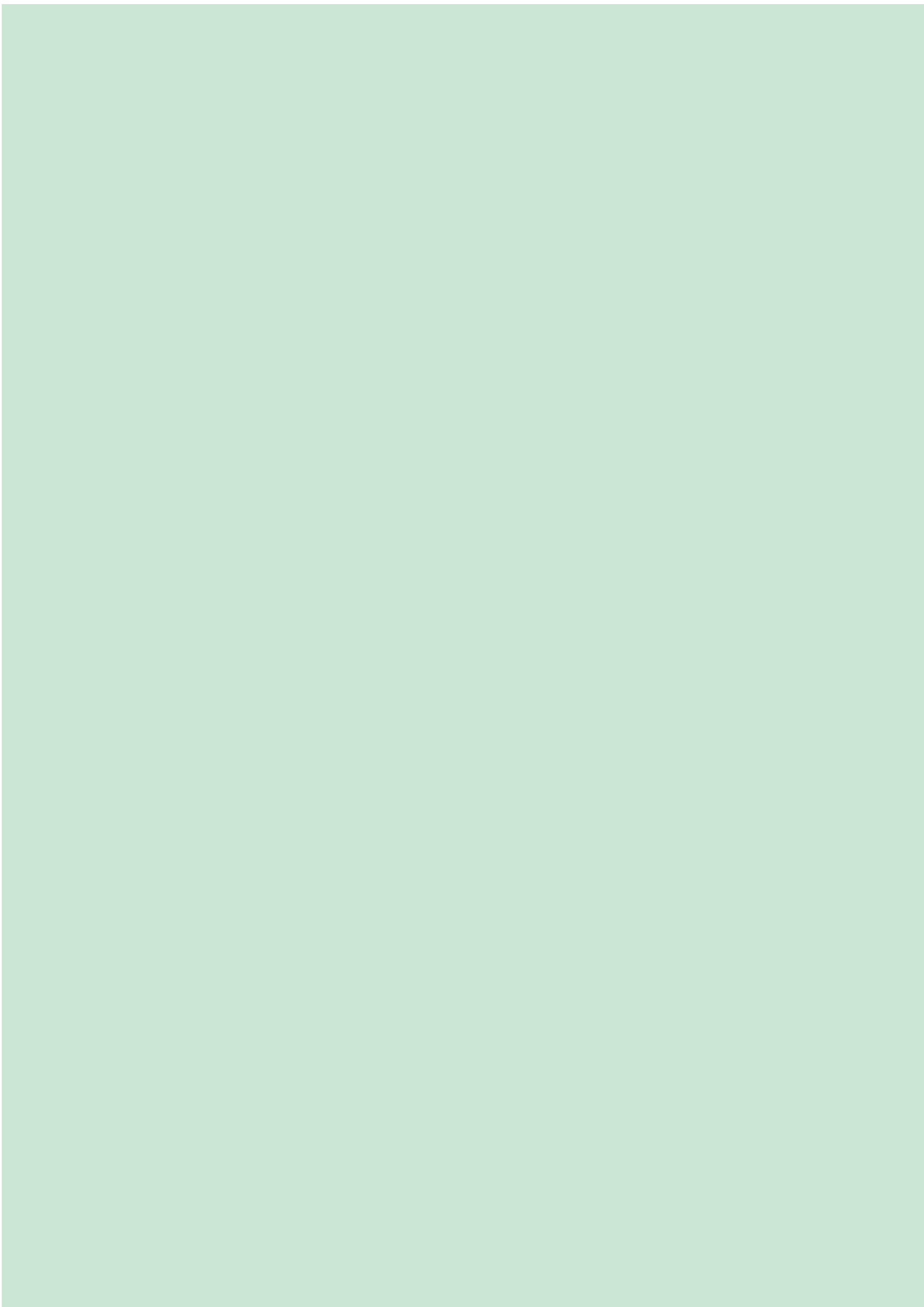
(6.79 points in 2014 compared with 5.55 points in 2013) and the Bonus Section (2.6 points in 2014 compared to 0.78 point in 2013). Although there are still many things that need to be done to raise the scores in all categories, special attention should be given to Role of Stakeholders in CG (5.48 points in 2014, maximum point is 10) and Responsibilities of the Board (24.41 points in 2014, maximum points is 40) as compared with Equitable Treatment of Shareholders (11.17 points in 2014, maximum points is 15) and Disclosure and Transparency (16.57 points in 2014, maximum points is 25).

**Table 5**  
**ASEAN Corporate Governance Scorecard Average Scores of Top 100 Philippine Publicly-Listed Companies by Market Capitalization (2012 – 2014)**



Analyzing the average scores of the companies by category according to market capitalization, the category that received the highest average score is the group whose companies' capitalization is above US\$10 billion.

## **II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK**



## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

**Corporate governance is the framework of rules, systems and processes in the corporation that governs the performance by the Board of Directors and Management of their respective duties and responsibilities to the stockholders and other stakeholders, which include, among others, customers, employees, suppliers, financiers, government and the community in which it operates.<sup>5</sup>**

Corporate governance provides a framework under which corporations can more effectively serve as agents for wealth creation as well as for social equity and national development. Consistent with the rule of law and the challenges of an open, competitive market that is already inextricably linked with the global economic and financial system, such a framework also respects and takes into account our local culture and other circumstances.

Our CG framework is open and dynamic. While it specifies broad guidelines, it expects these guidelines to be observed under the “comply or explain” principle and subject to the principle of proportionality. In general, our open market will take due note of—and respond to—explanations given for alternative compliance with the guidelines, which seek to further strengthen, deepen and widen our financial markets, and in particular, to develop our capital market and make access to development finance more inclusive. Explanations are provided through public disclosure ordinarily made in reports to the SEC and PSE, which need to be strengthened, resourced and staffed adequately to assess their reasonableness, and if necessary, act under their mandate to ensure that the spirit behind the guidelines is duly respected.

The guidelines underscore the separate personality of a corporation in the eyes of the law and the proper exercise of its rights and fulfilment of its duties, as it carries out its corporate mission while contributing to the development of the economy and society. Under these guidelines, the corporate Board of Directors is mandated to take final responsibility for exercising oversight function over management, while taking a long-term view in securing the company’s sustainability through due observance of fairness, transparency, and accountability under a corporate regime underpinned by ethics and social responsibility.

### Rationale for the Comply or Explain Approach

- It leaves decisions about the appropriateness of a company’s governance arrangements in the hands of its management and shareholders. In most cases, the primary purpose of good governance is to protect the long-term interests of the company and its owners, so it is right that, collectively, they should decide how to achieve that objective. In certain companies or sectors there may also be public interest considerations, in which case the arguments for a more traditional approach to regulation may be stronger.
- While it encourages companies to follow accepted best practices, it recognizes that in certain circumstances it may be appropriate for them to achieve good governance by other means. To be effective, good governance needs to be implemented in a way that fits the culture and organization of the individual company; these can vary enormously between companies depending on factors such as size, ownership structure, and the complexity of the business model. In general, one size does not fit all.
- By allowing a degree of flexibility, it enables codes to set more demanding standards. It can be more aspirational than legislation. Regulation tends to be written in terms of the minimum necessary requirements in order not to impose unjustified or disproportionate burdens on those being regulated. In contrast, a “comply or explain” code can set out market-leading practices and encourage the rest to aspire to the standards of the best.
- Codes can also be more easily adapted than regulation to take account of developments in best practices and encourage good practices relating to “softer” issues for which it would be inappropriate to prescribe minimum requirements into law, such as training and support for directors.

Source: Hogg, Sir Christopher. The “Comply or Explain” Approach to Improving Standards of Corporate Governance <http://www.financepractitioner.com/corporate-governance-viewpoints/the-comply-or-explain-approach-to-improving-standards-of-corporate-governance?page=1>.

*The corporate Board is mandated to take final responsibility for exercising oversight function over management, while taking a long-term view in securing the company’s sustainability through due observance of fairness, transparency, and accountability under a corporate regime underpinned by ethics and social responsibility.*

<sup>5</sup> Revised Code of Corporate Governance (RCCG), Article 1(a).

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

The broad guidelines apply to all corporations, ranging from small and mid-sized corporations to universal banks and companies belonging to large conglomerates. The “principle of proportionality” shall be considered as an overarching principle in applying the guidelines as specific application would vary between sectors, depending on scale of operations, risk profile, and relative importance in the economy, as well as on whether they “take other people’s money”, e.g. banks, insurance companies, and PLCs. Consultation on the application of guidelines is necessary. Thus, the SEC has put in place appropriate and effective mechanisms for continuing consultation. In particular, collaboration with the other regulatory authorities is essential. The SEC, while taking over-all responsibility for the broad guidelines that apply to all corporations, shall work closely with the BSP for the more specific guidelines for banks; with the IC for insurance companies; with the GCG for Government Owned and Controlled Corporations (GOCCs); and with the PSE for PLCs.

Compliance with the guidelines and conformance to them would guide Philippine companies to observance of CG practices that are in line with regional and global standards. Beyond conformance, however, the CG framework is expected to deliver performance, viewed from the perspective of actual contribution to economic outcomes as well as social equity. In this regard, companies should hold themselves accountable not only for financial performance, but also for the economic outcomes and social equity they deliver. In addition, since companies exist for the long term, their governance practices should help sustain them over time as progressive agents of economic and social development.

Compliance with the guidelines and conformance to them would guide Philippine companies to observance of CG practices that are in line with regional and global standards.

### A. Shareholders: Their Rights of Ownership

***Investors’ confidence that the capital they provide will be protected from misuse or misappropriation by corporate managers, board members or controlling shareholders is an important factor in the development and proper functioning of capital markets.<sup>6</sup>***

<sup>6</sup> OECD (2015), “G20/OECD Principles of Corporate Governance”, II. *The Rights and Equitable Treatment of Shareholders and Key Ownership Functions*, p. 20.

### Overview

The owners of the company are those who provide capital and hold equity shares in it. They are generally referred to as “shareholders.” Their fundamental role in forming and arranging the management of the affairs of the company, such that it grows and sustains itself, contributing to the overall development of the economy and society, should be duly recognized. As a group, shareholders take on the ultimate risk associated with the company’s operations; they are therefore entitled to the privileges of ownership and to sharing in the returns that may accrue to the company as a result of its operations.

The basic privileges or rights of ownership, as the law stipulates, include, among others: (a) inclusion in the ownership registry of the company; (b) ability to sell or transfer shares; (c) to be informed about the company’s performance through timely, relevant public disclosure; (d) to participate meaningfully in the general shareholders’ meetings; (e) to elect (or remove) members of the board of directors; and (f) to share in the profits of the company. Furthermore, shareholders should be able to participate and intervene in decisions that can change in a significant way the status and nature of the company. This includes, but is not limited to: changes in the articles of incorporation; issuance of additional shares of the company and extraordinary transactions such as those that would have significant impact on the overall structure of the company, which may include substantial sale of the company’s assets, or merger or consolidation.

### Challenges and Recommendations

#### 1. Right to Participate in Annual Shareholders’ Meeting

##### a. Notice of Annual Shareholders’ Meeting

The Corporation Code of the Philippines (Corporation Code) only provides the basic requirement among corporations that written notice of the annual shareholders’ meeting (ASM), stating the time and place thereof, shall be sent to all shareholders of record at least two weeks or 14 days prior to the meeting.<sup>7</sup> This period is considered by shareholders as too short to enable them to receive the notice on time, i.e., prior to the scheduled ASM. In

<sup>7</sup> Proposed Amendments to the Corporation Code, Section 50.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

many instances, due to time lags in the delivery, notices are received too close to the scheduled meeting, or worse, only after the meeting. Thus, shareholders are often left with only very limited time to react to a convening notice by the company and to make informed decisions concerning items for decision.<sup>8</sup>

Publicly-Listed Companies are required to disclose in the Annual Corporate Governance Report (ACGR) their observance of a minimum of 21 business days for giving out of notices to ASMs where items to be approved by shareholders are to be taken up.

Corporations may adopt the best practice recommended in the ACGS, wherein notice of the ASM is released at least 28 days before the meeting. It is also considered a best practice to put the notice of ASM on the company website.

**It is considered a best practice to put the notice of ASM on the company website.**

To better ensure timely receipt of meeting materials, corporations may provide in their by-laws the sending of notices of meeting electronically. However, the same must be done in accordance with the rules to be implemented by the SEC.<sup>9</sup>

The SEC shall consider adopting the 28-day period for giving out notices of ASMs in the proposed amendments to the Corporation Code. The notice should also be sent in a manner (either by personal service, by post or by courier) as to be received at least five days before the scheduled meeting.<sup>10</sup>

It is further proposed that each notice of meeting should further state or be accompanied by the following:<sup>11</sup>

- i. The agenda for the meeting;
- ii. A proxy form;
- iii. When attendance is allowed by remote communication, the fact thereof and the requirements and procedures to be followed when a stockholder elects such option;
- iv. When voting is allowed in absentia, the fact thereof and the requirements and procedures to be followed when a stockholder elects such option;
- v. When the meeting is for the election of directors, the requirements and procedure for nominating and the curriculum vitae or other relevant information of those already nominated including, but not limited to, such nominees' other executive functions or membership in other boards;
- vi. Other explanatory materials or a statement that such explanatory materials are available for inspection during office hours at the corporation's principal office and/or online at the corporation's website, or that soft copies thereof may be sent to a stockholder upon his request; and
- vii. The procedure for making inquiries or soliciting additional information about the agenda items before the meeting.

### b. *Annual Shareholders' Meeting Agenda*

There is nothing in the Corporation Code that mandates corporations to state in the written notice of ASM the agenda for the meeting. As provided therein, the notice of ASM basically needs to state only the time and place thereof. However, SEC rules mandate that PLCs and other companies required to submit SEC Form 20-IS (Information Statement) should include the agenda in their notices of ASM. For shareholders, however, the issues or matters in the agenda should be described and their rationale made clear to enable them to make a sound judgment on all matters brought to their attention for consideration and approval.

<sup>8</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", II. *The Rights and Equitable Treatment of Shareholders and Key Ownership Functions*, (C)(6) p. 24.

<sup>9</sup> Proposed Amendments to the Corporation Code, Section 33.

<sup>10</sup> Proposed Amendments to the Corporation Code, Section 32.

<sup>11</sup> Proposed Amendments to the Corporation Code, Section 33.

<sup>11</sup> Proposed Amendments to the Corporation Code, Section 33.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

The Revised Code of Corporate Governance (RCCG) provides that although all shareholders should be treated equally or without discrimination, the Board should give minority shareholders the right to propose the holding of meetings and the items for discussion in the agenda that relate directly to the business of the corporation.<sup>12</sup> Additionally, PLCs are required to state in their ACGR the procedures for putting forward proposals at shareholders' meetings.

Companies are encouraged to adopt the recognized good corporate practice under the ACGS of stating in the notice of ASM the rationale and explanation for each agenda item requiring shareholders' approval, which may also be done through cross reference to specific page/part/section of the relevant source documents.

A proposed amendment to the Corporation Code is being introduced to require that each notice of meeting should state the agenda for the meeting.<sup>13</sup> The SEC shall also provide by way of a circular or implementing rules and regulations the requirement for all corporations to state in the notice of ASM, sufficient explanation for each item in the agenda requiring shareholders' approval. The PSE shall likewise consider including this requirement in its Disclosure Rules.

It is further proposed in the amendments to the Corporation Code that shareholders be given the right to propose any other matter for discussion or inclusion in the agenda of the ASM. In addition, shareholders shall also have the right to propose the holding of special meetings and the items for discussion in the agenda thereof.<sup>14</sup> The SEC shall later provide through a circular or implementing rules and regulations the process of filing proposals including a reasonable time within which shareholders may submit the same to the company.

### c. *Attendance and Voting in the Annual Shareholders' Meeting*

While attendance in person is ideal for effective participation of shareholders in ASMs, sometimes impediments exist that prevent this from happening. Companies should therefore consider other means, such as attendance and voting by remote communication or in absentia, by which shareholders' participation in key governance decisions can be facilitated. The G20/OECD Principles of Corporate Governance state that the objective of facilitating shareholder participation suggests that jurisdictions and/or companies promote the enlarged use of information technology in voting, including secure electronic voting. The principles further state that shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.

Many countries across the region have adopted poll voting as opposed to voting by show of hands. It has been noted in the ACGA-CLSA CG Watch 2014 report that currently, there is no requirement in the Philippines mandating poll voting and very few companies are adopting this. In this regard, the SEC shall make a study on its propriety, including the particular substantive matters or issues that must be voted on by poll.

In addition, the SEC shall consider issuing a circular requiring other corporations not required to file SEC Form 20-IS (Information Statement) to make the proxy form easily available or accessible by attaching it to the notice of ASM or putting the same on the company website in downloadable format. The SEC shall likewise upload a pro forma proxy form in its website.

Companies should therefore consider other means, such as attendance and voting by remote communication or in absentia, by which shareholders' participation in key governance decisions can be facilitated.

<sup>12</sup> Proposed Amendments to the Corporation Code, Article 6.

<sup>13</sup> Proposed Amendments to the Corporation Code, Section 33.

<sup>14</sup> Ibid.



## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Attendance by remote communication and voting by remote communication and/or in absentia are provided in the proposed amendments to the Corporation Code as additional options for shareholders to participate in ASMs. While these methods may be resorted to only when allowed either by the by-laws of the corporation or by a majority of the Board,<sup>15</sup> the latter should seriously consider adopting them in order to ensure that their foreign investors have similar opportunities to exercise their voting rights as domestic investors. When attendance is allowed by remote communication or when voting is allowed in absentia, companies should further state in the notice of ASM the fact thereof and the requirements and procedures to be followed when a stockholder elects such option.<sup>16</sup>

Upon approval of the proposed amendments to the Corporation Code, the SEC shall prescribe through a circular or implementing rules and regulations, the minimum standards or guidelines to make attendance by remote communication and voting in absentia efficient and accessible for shareholders.

Furthermore, companies must encourage and facilitate the exercise of poll voting. The SEC shall issue a circular requiring companies to state in the notice of ASM, the right of shareholders to demand the same

### *d. Minutes of the Annual Shareholders' Meeting*

Shareholders have the right to be informed about the results of the ASM within a reasonable period of time after the holding thereof. Presently, there is nothing in the law, rules or regulations of the SEC that mandate corporations to disclose to shareholders or to other stakeholders, the minutes thereof within a certain period of time. But in a recent SEC Notice,<sup>17</sup> it recommended the posting of the minutes of the ASM in the company website within five days from the date of the meeting.

Normally, the minutes of the last ASM are presented by companies to the shareholders only on the next ASM, which is a year after.

The PSE requires disclosure of all resolutions, approving material acts or transactions taken up in meetings of stockholders within ten minutes from its happening.<sup>18</sup>

The ACGS considers as best practice making publicly available by the next working day the result of the votes taken during the most recent ASM through company announcements or through company websites. The SEC shall consider requiring this practice in the 2016 Code of Corporate Governance together with the posting of the minutes of the ASM within five days from the date of the meeting, as an additional responsibility of the corporate secretary.

As to the matters that must be included in the minutes of the ASM, the following are proposed to be included in the Corporation Code:<sup>19</sup>

- i. A description of the voting and vote tabulation procedures used;
- ii. The opportunity given to stockholders to ask questions, as well as a record of the questions asked and the answers received;
- iii. The matters discussed and the resolutions reached;
- iv. A record of the voting results for each agenda item;
- v. A list of the directors, officers and stockholders who attended the meeting; and
- vi. Dissenting opinion on any agenda item that is considered significant in the discussion process.

### **2. Right to Nominate Candidates to the Board**

It is a recognized good practice for PLCs to give non-controlling shareholders or those owning at least more than a certain threshold, the right to nominate candidates for board membership.<sup>20</sup>

<sup>15</sup> Proposed Amendments to the Corporation Code, Section 16.

<sup>16</sup> Proposed Amendments to the Corporation Code, Section 33.

<sup>17</sup> SEC Notice dated 02 June 2014, Posting of Disclosures in Company Website, pursuant to SEC Memorandum Circular No. 11, Series of 2014.

<sup>18</sup> PSE (September 2013), "Revised Disclosure Rules", Section 4.1 (Disclosure of Material Information); Section 4.4 (Events Mandating Prompt Disclosure).

<sup>19</sup> Proposed Amendments to the Corporation Code, Section 32.

<sup>20</sup> ACFM ASEAN Corporate Governance Scorecard.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Through the proposed amendment to the Corporation Code,<sup>21</sup> shareholders shall be given the right to nominate any director who possesses all of the qualifications and none of the disqualifications set in the law or in the rules of the SEC. Upon approval of the proposed amendments, the SEC shall provide a certain threshold for the exercise of this right, either through a circular or implementing rules and regulations.

To further improve the nomination process, the G20/OECD Principles of Corporate Governance call for full disclosure of the experience and background of candidates and the nomination process, which will allow an informed assessment of the abilities and suitability of each candidate. It is increasingly considered as good practice to also disclose information about any other board positions that nominees hold or for which they have been nominated.

It is a good practice to disclose information about any other board positions that nominees hold or for which they have been nominated.

The above mentioned practices were included in the proposed amendments to the Corporation Code, such that, when the meeting is for the election of directors, the notice of meeting should further state or be accompanied by the requirements and procedure for nominating and the curriculum vitae or other relevant information of those already nominated including, but not limited to, such nominees' other executive functions or membership in other boards<sup>22</sup> of companies, specifying whether listed or not. The SEC shall further provide in a circular or implementing rules and regulations a mechanism where shareholders can easily send their nominations and the period for giving the same.

### 3. Right to Seek Redress for Violation of Rights

Violations of shareholder rights arising out of intra-corporate relations are treated as intra-corporate controversies. However, the quasi-judicial function of the SEC over intra-corporate controversies was removed with the passage of the Securities Regulation Code (SRC) in 2000. These cases are

now under the jurisdiction of regular courts. Thus, under the current legal system, shareholders have to go to the courts to initiate an action against erring corporate individuals and obtain relief. Unfortunately, this method is seen as ineffective and inefficient in addressing violations of shareholder rights. Shareholders are often discouraged from filing cases in courts because of the high cost of filing fees and other litigation expenses involved and the inherent slow pace of judicial proceedings mainly due to case backlog.

Recognizing the ineffectiveness of the current system, a provision on arbitration as an "alternative dispute resolution" (ADR) mechanism was included in the proposed amendments to the Corporation Code.<sup>23</sup> Thus, all controversies arising out of intra-corporate relations, which may include CG issues can be referred to arbitration at the first level. However, in order to be valid, the agreement to arbitrate must be provided in the corporation's Articles of Incorporation or by-laws. There is also a need for the SEC to formulate the rules and regulations which shall govern arbitration and to facilitate the organization of an arbitral board.

### 4. Right to be Notified of Material Related Party Transactions

The Corporation Code sets guidelines on the treatment of RPTs.<sup>24</sup> It provides that a contract of the corporation with one or more of its directors or officers is voidable, at the option of the corporation, unless all the following conditions are present:

- a. That the presence of such director in the board meeting in which the contract was approved was not necessary to constitute a quorum;
- b. That the vote of such director was not necessary for the approval of the contract;
- c. That the contract is fair and reasonable under the circumstances; and
- d. That in the case of an officer, the contract with him was previously approved by the board.

The law further provides that where any of the first two conditions is absent, the contract may be ratified by the stockholders, provided that full disclosure of the adverse interest of the director is made during the meeting and the contract is fair and reasonable under the circumstances.

<sup>21</sup> Proposed Amendments to the Corporation Code, Section 16.

<sup>22</sup> Proposed Amendments to the Corporation Code, Section 33.

<sup>23</sup> Proposed Amendments to the Corporation Code, Section 78.

<sup>24</sup> Proposed Amendments to the Corporation Code, Section 32.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

It was noted in the ACGA-CLSA CG Watch 2014 Report that there are no SEC rules requiring prior approval by minority stockholders' of major RPTs. While this may sound a good practice, requiring prior stockholders' approval may preclude companies from making prompt business decisions that are also for the benefit of all stakeholders. Measures should be geared towards preventing abuse, avoiding conflicts of interest and promoting transparency. There is also a need to study what constitutes a "material" RPTs which will be useful in order to define which transactions may lead to abuse and conflict of interest. Disclosure process may also be streamlined by requiring disclosures only for material or major RPTs. It should serve to obviate the need to disclose "trivial" or insignificant RPTs.

Under the RCCG, a director should avoid situations that may compromise his impartiality. If an actual or potential conflict of interest may arise on the part of a director, he should fully and immediately disclose it and should not participate in the decision-making process.

Disclosure of these transactions and similar matters involving possible conflicts of interest should be full, accurate and timely, and its content should be at par with the information made available to Directors and other insiders of the company. Related party transactions are currently required to be disclosed in the PLCs' ACGR and Annual Report, regardless of the amount involved.

Disclosure of related party transactions and similar matters involving possible conflicts of interest should be full, accurate and timely, and its content should be at par with the information made available to Directors and other insiders of the company.

The proposed amendment to the Corporation Code requires members of the board to present to stockholders during ASMs, disclosures on self-dealing and RPTs.<sup>25</sup> Another proposed amendment provides that when RPTs or self-dealings of a director are taken up, the concerned director shall abstain from taking part in the deliberation.

Relevant portions of the BSP issuance on RPTs shall be considered by the SEC. These shall include, among others, definition of related parties and RPTs, and policies on materiality thresholds and conflicts of interest. The SEC shall provide guidelines on RPTs in the 2016 Code of Corporate Governance.

### 5. Right to be Informed of Changes in Corporate Control

Mergers and sales of substantial portions of the corporate assets are examples of extraordinary transactions that affect corporate control in the capital market. Any decision by the majority of the Board to enter into these transactions is required to be presented to the shareholders for their approval.<sup>26</sup> Furthermore, in case of mergers, any dissenting stockholder may exercise his appraisal right.

With the recent passage of the Philippine Competition Act,<sup>27</sup> additional safeguards were put in place to make sure that mergers and acquisitions are in the best interest of all concerned. The Philippine Competition Commission (PCC) shall now have the power to review mergers and acquisitions with a transaction value exceeding P1,000,000,000.00.<sup>28</sup> The parties are prohibited from consummating their agreement until 30 days after providing notification to the PCC. An agreement consummated in violation of the requirement to notify the PCC shall be considered void and subject the parties to an administrative fine.

Corporations are required to render full, accurate, complete and timely disclosure of all rules and procedures governing the acquisition of control in the capital market, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets. Disclosures shall be made in the ACGR, Annual Report and other required

Full, accurate, complete and timely disclosure of all rules and procedures.

<sup>25</sup> Proposed Amendments to the Corporation Code, Section 32.

<sup>26</sup> Corporation Code of the Philippines, Sections 40 and 77.

<sup>27</sup> Republic Act 10667, Philippine Competition Act (2015).

<sup>28</sup> Corporation Code of the Philippines, Section 16 and 17.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

regulatory reports. A mechanism for protection of investors' rights and interests shall also be provided. Furthermore, with respect to the acquisition or disposition of shares in companies (particularly PLCs and those with significant fiduciary functions/responsibilities), a precise and forthright declaration of beneficial- not just nominal- interest should be required of all counter-parties.

### B. Role of Institutional Investors and Financial Advisors

***Institutional investors should focus on delivering value by promoting and safeguarding the interests of beneficiaries or clients over an appropriate time-horizon. This is often expressed as a fiduciary duty, requiring prudence, care, loyalty on the part of all agents which are subject to such obligations.***<sup>29</sup>

#### Overview

Institutional investors continue to dominate public share ownership in the global capital markets. Due to the large amounts of shares held by these entities, they can influence company decisions and can hold company management accountable for its actions. Institutional Investors include the Asset Owners (Pre-need Companies, Pension Funds and Insurance Companies) and Asset Managers (Trust Departments, Asset Management Companies, and Wealth Management Centers), including "Funds" or large pools of capital managed by professional managers (e.g., Fidelity, Vanguard, Blackrock, PIMCO) in different asset classes/investment "styles" (e.g., equity, fixed income, private equity, real estate, commodities, derivatives). It should be noted that the ultimate beneficiaries of the shares that they hold are not such institutions but their clients. As of 2009, shares held by Institutional Investors in the United States amounted to an aggregate of 73% of the outstanding equity of the 1000 largest corporations.<sup>30</sup> In the Philippines, they constitute a potential but untapped resource.

Although there is limited information on Institutional Investors in the country, it was observed that there has been a constant increase of institutional accounts registered with the active brokers of the PSE. for the past two years. According to its 2013 and 2014 Stock Market Investor Profiles, there were 21,987 institutional accounts in 2013 from 19,089 institutional accounts in 2012. This further increased to 29,892 accounts in 2014. Institutional investor groups in the Philippines

include the Fund Managers Association of the Philippines (FMAP), Trust Officers Association of the Philippines (TOAP), and Investment Houses Association of the Philippines (IHAP).

It is worthwhile to note that the global trend sees a rapid reduction of retail investors, i.e. volume and value, in capital market transactions if only because it has become increasingly difficult- if not impossible- for the former retail investors to compete with institutional investors in terms of research capability, execution and simple scale economics.

#### Challenges and Recommendations

##### 1. Stewardship/Responsible Investment Code of Institutional Investors

It should be noted that Stewardship/Responsible Investment Codes<sup>31</sup> are adopted by a number of countries and groups, most of which encourage Institutional Investors to participate on a voluntary basis. These countries and groups include the European Union, The International Corporate Governance Network (ICGN), Italy, Japan, Malaysia, Netherlands, South Africa, Switzerland, and the United Kingdom. Stewardship/Responsible Investment Codes usually include the disclosure of the institutional investors of the following: (i) policy and process on how they will discharge their stewardship responsibilities (including engagement and monitoring of investee companies); (ii) management of conflicts of interest; (iii) voting policies and activities; (iv) policy and process on engagement with other shareholders of the investee companies; and (v) incorporation of sustainability considerations (including environmental, social, and governance issues) into their investment analysis and activities.

**Institutional Investors should disclose their policies with respect to CG.**

The G20/OECD Principles of Corporate Governance recommend that Institutional Investors should disclose their policies with respect to CG. In some countries, this is done through the adoption of a Stewardship/Responsible Investment Code for Institutional Investors. There is no current established Stewardship/Responsible Investment Code for Institutional Investors in the Philippines.






<sup>29</sup> International Corporate Governance Network (ICGN) (2014), "ICGN Global Governance Principles", 10.1 Institutional Investors, p. 22.

<sup>30</sup> Commissioner Luis A. Aguilar, "19 April 2013 Speech on Institutional Investors: Power and Responsibility", <http://www.sec.gov/News/Speech/Detail/Speech/1365171515808> posted and modified on 28 July 2014.

<sup>31</sup> ICGN, "Responsible Investment Codes", <https://www.icgn.org/policy/responsible-investment-codes>, accessed on 10 September 2015.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

**Table 6**  
**Countries with Stewardship Codes**

	Malaysia	Malaysian Code for Institutional Investors	2014
	Japan	Principles for Responsible Institutional Investors (Japan's Stewardship Code)	2014
	Italy	Italian Stewardship Principles	2013
	United Kingdom	The UK Stewardship Code	2012
	South Africa	Draft Code for Responsible Investing by Institutional Investors in South Africa	2010

It is recommended that regulators work with institutional investor groups (e.g., FMAP, TOAP, and IHAP), large asset owners, such as the Government Service Insurance System and the Social Security System, and other buy-side groups in studying the potential development and implementation of a Stewardship Code/Responsible Investment Code for Institutional Investors. Should such a Code be developed, regulators should work with the aforementioned groups and include in the scope of its contents and implementation the determination of a compliance monitoring system and reward mechanism for institutions that adopt the identified best CG practices.

### 2. Disclosure of Institutional Investors' Corporate Governance and Voting Policies

Institutional investors are called upon to disclose their own policies on the exercise of ownership rights. Such policies include those related to voting during ASM and direct contact and dialogue with the company's Board and its management.

Presently, there are no rules on how institutional investors vote or disclose their voting policy. They may have their own charters with respect to voting policies, but currently, these are not required to be disclosed.

Consequently, the SEC shall conduct a study on making mandatory selected CG practices for institutional investors that would have a material impact on the company and other stakeholders, such as disclosure of CG and voting policies.

In addition to the recommendation for a disclosure of Institutional Investors' Voting Policy to cover the buy side, equally if not more important, is a requirement for "sell side institutions", e.g., investment houses, brokerages or universal bank trust departments (that are part of what are essentially "sell side" institutions) to clearly disclose existing/potential conflicts of interests arising from capital/debt-raising engagements with their borrower/issuer customers. This, incidentally, was at the heart of the Glass-Steagall legislation in the United States, whose repeal was widely considered a cause of many subsequent financial crises, most notably, the 2008 crisis.

Institutional investors are called upon to disclose their own policies on the exercise of ownership rights.

<sup>32</sup> IFC (2009), "Global Corporate Governance Forum Focus 8", *Stakeholder Engagement and the Board: Integrating Best Governance Practices*, p. 6.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

### C. Duties to Other Stakeholders

***Engaging with stakeholders has governance implications because it goes to the heart of how power and authority are understood and used within the company. By definition, stakeholders have a stake in the company, and have the possibility of gaining benefits or experiencing losses or harm as a result of the operations of a company.<sup>32</sup>***

#### Overview

Other than shareholders, there are other parties with stakes and interests in a company based on law or contract. They are generally referred to as “other stakeholders.” As the law provides, and as the financial statements of the company clearly show, these other stakeholders include at least the following: customers; officers and employees; suppliers; creditors and other providers of resources for the company to use; the government; and on the basis of the company’s broader socio-economic responsibility, the company’s other stakeholders extend to the community and economy in which it operates.

Some other compelling reasons why “other stakeholders” are critical and need to be protected are:

- a. Recent financial crises have underscored the critical importance of sustainable inclusive development - not just absolute aggregate growth.
- b. The overarching economic importance of corporations in general and PLCs in particular to the growth and development of economies.

The company binds itself to respect, recognize, and honor the rights of its different stakeholders, specifically those established by law, the company’s articles of incorporation and by-laws, or through mutual agreement with other parties. In addition, the company recognizes the contribution of all stakeholders to the long-term and sustained success of the company. It actively seeks their cooperation in the pursuit of its wealth-creating strategic priorities. In cases where stakeholder interests are not legislated, CG should make additional commitments to stakeholders. Concern over corporate reputation and corporate performance should give recognition to broader interests.

The G20/OECD Principles of Corporate Governance and the RCCG recognize the importance of stakeholders. The latest amendment to the RCCG was brought about by the need to include references to stakeholders specifically in the definition of CG and sections on Board Governance, Accountability and Audit, and Disclosure and Transparency.

To ensure that the role of stakeholders in Philippine corporations is appreciated and to underscore their importance, there is a need to highlight and address the weaknesses and problem areas experienced by various stakeholders.

#### Challenges and Recommendations

##### 1. Effective Redress for Violation of Stakeholders’ Rights

The company should give special attention to the care, efficiency, and effectiveness in serving their customers, consumers and other major constituencies. In addition, the rights of creditors, suppliers, and contractors should be honored in view of the contractual agreements entered into with them. In short, the operations of corporations could have repercussion on many other stakeholders; hence, stakeholders should be given the ability to communicate and obtain redress for any violation of their rights.

At present, stakeholder rights are protected by certain laws, among which are the Consumer Protection Act of the Philippines, Truth in Lending Act, Labor Code of the Philippines, Philippine Competition Act, Ecological Solid Waste Management Act of 2000 and Philippine Clear Air Act of 1999. However, best corporate governance practices dictate that the protection of stakeholders’ rights goes beyond what the law requires.

It is considered as best practice to protect the rights and address the needs of the company’s stakeholders through the: (i) principle of fair treatment of all stakeholders; (ii) adoption of a system for complaint handling and redress; and (iii) protection of client information.

### Philippine Laws that Protect Stakeholders

*Consumer Protection Act of the Philippines*  
(Republic Act No. 7394)

*Truth in Lending Act*  
(Republic Act No. 3765 )

*Labor Code of the Philippines*  
(Presidential Decree No. 442)

*Philippine Competition Act*  
(Republic Act No. 10667)

*Ecological Solid Waste Management Act of 2000*  
(Republic Act No. 9003)

*Philippine Clear Air Act of 1999*  
(Republic Act No. 8749)

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Board of Directors may follow the widely accepted practice of formulating and disclosing a policy on how it serves its customers. The company should always abide by the principle of “truth in advertising”, and provide clear and timely information as well as effective mechanisms to address customer complaints, questions and suggestions. In general, the Board should adopt a program designed to attend responsibly to the rights of consumers in order to win their trust and continued loyalty.

With regard to relations with creditors, suppliers, and contractors, dealings should always be conducted in a professional and objective manner, in line with the Code of Ethical Conduct that the company has formulated and adopted. In the selection of suppliers and contractors, both economic and non-economic factors, such as environmental, social or human rights, should also be considered. Creditor rights should also be protected by adopting policies for their proper and fair treatment.

Hence, effective mechanisms should be put in place to provide relevant, accurate, sufficient, reliable, timely and regular information to all stakeholders. These mechanisms should address concerns and issues these stakeholders may raise. Moreover, these concerns and issues should be attended to expeditiously and professionally. When they feel their rights are violated, they should have an opportunity to effectively seek redress.

Companies should arrange for the function of a stakeholders’ relations office to be discharged attentively and responsibly in the same manner that an office for investors’ relations has become necessary for PLCs. Contact details of these offices, including a direct telephone line and email address should be provided in the company’s website or Annual Report which stakeholders (e.g., customers, suppliers, the general public, etc.) can use to voice their concerns and/or complaints for possible violation of their rights. Further, the company should fully disclose all its policies and programs on stakeholders in the ACGR.

### 2. Employee Participation

Corporate governance recognizes the stakes of officers and employees of the corporation and values their contribution to its long-term success. It puts great store on the health, safety, and welfare of employees and in particular, on their continuing training and personal development so they become stronger and more productive assets of the company.

In the context of CG, performance enhancing mechanisms for participation may benefit the company directly as well as indirectly through the readiness by employees to invest in firm specific skills. Nonetheless, there is a need to strike a balance between protecting the interest of employees/management of an enterprise and institutionalizing rigid systems that do not permit corporations to re-invent themselves/adopt disruptive, potentially more productive technologies/processes. In a rapidly-changing world, rigidity is a fearsome enemy and one that leads to uncompetitiveness, decline and ultimately, death of a company.

It is considered as a best practice to permit development of performance-enhancing mechanisms for employee participation. The company’s reward and compensation policies should be aligned with the long term interest of the company “from both the financial and non-financial perspective,” and should not encourage excessive risk taking.

Under pertinent retirement laws, retirement benefits should also be protected. Hence, the company should make appropriate and reasonable arrangements for the eventual retirement of its officers and employees.

Examples of mechanisms for employee participation include: employee representation on boards and governance processes such as work councils that consider employee viewpoints on certain key decisions. With respect to performance enhancing mechanisms, employee stock ownership plans or other profit sharing mechanisms may be adopted as in other jurisdictions.

### 3. Anti-Corruption Programmes

Corporate Governance combats corrupt practices. The ACGS considers bribery, fraud, extortion, collusion, conflict of interest, and money laundering as corrupt practices. In this context, these include an offer or receipt of any gift, loan, fee, reward, or other advantage to or from any person as an inducement to do something that is dishonest, illegal, or a breach of trust in the conduct of the enterprise’s business. Thus, an anti-corruption policy should address programmes to mitigate corrupt practices.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

It is considered as a best practice for CG to promote integrity in the conduct of company business and, whenever possible, to formalize this commitment through an integrity pledge. The fight against corrupt practices should be the tone set by the officers and management of the corporation and this should be disseminated all over the organization through Anti-Corruption Programmes and outline procedures to resist and to stop acts considered corruption. Anti-Corruption programmes may involve conducting a risk analysis on a business unit to assess the potential for incidents of corruption within the unit and conducting training for employees on the company's policy and procedures on anti-corruption.

### 4. Whistle-blowing Policy

Relative to the company's commitment in promoting integrity in doing business, officers and employees as well as other relevant stakeholders should be able to communicate freely and responsibly any concern and knowledge they may have about illegal and unethical practices within the corporation. Their right to communicate these matters to the Board should not be compromised in any way, and should be strongly protected by a whistle-blowing policy. The company should subscribe to the broader integrity initiatives and anti-corruption programs that have already been launched in the broader economy and society.

The proposed amendment to the Corporation Code recognizes the need to protect whistleblowers and provides for a penalty clause for retaliation against whistleblowers. A whistle-blowing policy that allows employees and other stakeholders to freely communicate their concerns without fear of any retribution or repercussion is a recognized best practice.

Officers and employees should be able to communicate freely and responsibly any concern and knowledge about unethical and illegal practices within the corporation.

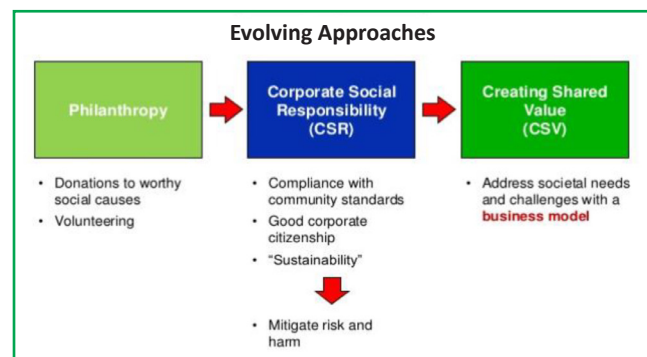
Companies should refrain from discriminatory or disciplinary actions against employees or other stakeholders. Instead, they should encourage and protect them. Protection of whistleblowers should emanate directly from the highest level of the corporation.<sup>33</sup> Details of the actual whistle-blowing policy and the monitoring process should be disclosed in the company's website and the ACGR.

### 5. Creating Shared Value as new Corporate Social Responsibility

Creating Shared Value (CSV) is viewed by many as the new wave of Corporate Social Responsibility (CSR). It was born out of the philosophy that companies need to go beyond CSR—not just allotting a budget or a time table for social responsibility campaigns, but really existing as a business for the community. The term is said to have been first used in a Harvard Business Review article by Michael Porter and Mark Kramer.<sup>34</sup>

Figure 1 below illustrates the role of business in society.<sup>35</sup>

**Figure 1**  
**The Role of Business in Society**



<sup>33</sup> GGAPP's comment during Consultative Group Discussion held on 11 September 2015.

<sup>34</sup> Fernando, Irene. "Adapting the CSV Business Model". Manila Bulletin, 14 December 2014. <http://www.mb.com.ph/adapting-the-csv-business-model/#CwjzcmEfrFegTYAi.99>.

<sup>35</sup> Porter, Michael. "The New Competitive Advantage: Creating Shared Value". Harvard Business Review, October 11, 2013. <http://www.slideshare.net/amitkapoor/porter-prizeindia-michaelporterpresentation>.



## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Gone are the days when there was one and only one social responsibility of businesses – to engage in activities designed to increase profits so long as it stays within the “Rules of the Game.”<sup>36</sup> Corporations can and must play an indispensable role alongside government and civil society to solve complex global challenges like poverty, inequality, unemployment and climate change.<sup>37</sup>

At present, most companies promote social responsibility by doing something separate from the business. Corporate Social Responsibility is fundamentally about taking resources from the business and investing those resources into being good corporate citizens.<sup>38</sup> Creating Shared Value goes much further by focusing on activities and strategies that have long-term positive impact on business as well as on society.<sup>39</sup> Creating Shared Value aims at changing how core business operates. It is about integrating social and environmental impact into business – using the integration to drive economic value.<sup>40</sup> In both cases, compliance with laws and ethical standards and reducing harm from corporate activities are assumed.<sup>41</sup>

Best practice dictates that companies should be socially responsible in all its dealings with communities, ensuring that their interaction serves the communities in a positive and progressive manner, fully supportive of their comprehensive and balanced development.

The ACGS encourages companies to make an effort to ensure that their Code of Business Conduct and Ethics is applied to foster a value chain that is environmentally friendly and consistent with promoting sustainable development. The value chain consists of inputs to the production process, the production process itself and the resulting output. Environmentally friendly/sustainable development means that the company not only complies with existing environmental regulation but

also voluntarily employs value chain processes that reduce waste/pollution/damage to the environment. Ensuring a value chain and promoting sustainable development create shared value.

Companies should recognize and place importance on the interdependence between business and society and should promote a symbiotic relationship that allows companies to grow its business while contributing to the advancement of the society where it operates.<sup>42</sup> Social responsibility and profitability are complementary. The key is to innovate business models.<sup>43</sup>

### D. Disclosure and Transparency

***A strong disclosure regime that promotes real transparency is a pivotal feature of market-based monitoring of companies and is central to shareholders’ ability to exercise their ownership rights on an informed basis.***<sup>44</sup>

#### Overview

In respecting the rights of shareholders and living up to their duties towards all their other stakeholders, companies carry out their operations and report on their performance in line with the demands of integrity, fairness, transparency and accountability. They therefore make full, timely and accurate “disclosures of all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company”.

**“Investors have lost trust in corporate information since the global financial crisis.”**

–Association of Chartered Certified Accountants (ACCA)

High quality disclosure and transparency help attract capital and build confidence in the market. They help secure ethical and professional behavior. In general, they build trust among various stakeholders and thereby facilitate sustainable wealth creation, through strengthening the ability of capital markets to function and to widen participation. They, thus, raise more capital, make access to development finance more equitable, and facilitate a more efficient allocation of resources in the economy.

<sup>36</sup> Friedman, Milton. “The Social Responsibility of Business is to Increase its Profits”. *New York Times Magazine*, September 13, 1970. <http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html>.

<sup>37</sup> Moore, Carol. “Corporate Social Responsibility and Creating Shared Value: What’s the Difference?”. *Heifer International*, May 14, 2015. [https://sharedvalue.org/sites/default/files/resource-files/CFR-047%20Corporate%20Social%20Responsibility%20White%20Paper\\_FINAL.pdf](https://sharedvalue.org/sites/default/files/resource-files/CFR-047%20Corporate%20Social%20Responsibility%20White%20Paper_FINAL.pdf).

<sup>38</sup> Ibid.

<sup>39</sup> Nestle (2014), “Nestlé Philippines CSV Report 2013”, *Creating Shared Value*, p. 11. <https://www.nestle.com.ph/documents/2013%20csv%20report%20-%20philippines.pdf>.

<sup>40</sup> Moore, “Corporate Social Responsibility and Creating Shared Value: What’s the Difference?”

<sup>41</sup> Porter, M. and M. Kramer. “Creating Shared Value”. *Harvard Business Review*, January–February 2011. <https://hbr.org/2011/01/the-big-idea-creating-shared-value>.

<sup>42</sup> Nestle (2014), “Nestlé Philippines CSV Report 2013”, *Creating Shared Value*, p. 11.

<sup>43</sup> Macasero, Ryan. “The Way to Inclusive Growth: Create Shared Value”. *Rappler*, 3 October 2014. <http://www.rappler.com/business/industries/70944-creating-shared-value>. Accessed on 10 September 2015.

<sup>44</sup> OECD (2015), “G20/OECD Principles of Corporate Governance”, V. *Disclosure and Transparency*, p. 42.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

With the utmost value of transparency and disclosure in maintaining good CG, it is very important to review and identify areas for improvement and set out recommendations to enhance the standards of disclosure. To further strengthen the disclosure regime, the following initiatives shall be carried out by the SEC through amendments of the SRC, RCGG, Corporation Code, PSE Listing Requirements or PSE Disclosure Rules or through an SEC Advisory; and, by appropriate disclosures in the ACGR:

### Challenges and Recommendations

#### 1. Enhancing Disclosure in Annual Reports

A weak disclosure and non-transparent practices can contribute to unethical behavior and to a loss of market integrity at great cost, not just to the company, but to its shareholders, as well. Furthermore, insufficient or unclear information may hamper the ability of the markets to function, increase the cost of capital and result in poor allocation of resources.<sup>45</sup>

While there are indicated “best practice guidelines”, companies are generally given the freedom to either “comply or explain”.

The G20/OECD Principles of Corporate Governance do not intend to prejudice or second-guess the business judgment of individual market participants, board members and company officials. What works well in one company, for one investor or a particular stakeholder may not necessarily be generally applicable to corporations, investors and stakeholders that operate in another context and under different circumstances.<sup>46</sup> The Principles leave it to individual jurisdictions to define this term in a functional manner that meets the intended outcome of the Principles.<sup>47</sup>

The legislative and regulatory elements of the CG framework can usefully be complemented by soft law elements based on the “comply or explain” principle such as a CG Code in order to allow for flexibility and address specifics of individual companies.

To strengthen disclosures and transparency, the Board should have internal corporate disclosure policies and procedures which are practical and in accordance with the best practices. These policies and procedures should ensure compliance with the disclosure requirements as set out in SEC Rules and PSE Listing Requirements and Disclosure Rules.

#### a. *Financial and Operating Results of the Company*

Timely and reliable reporting on information material to investors is vital for investor confidence. The value of information, especially financial information, declines over time. The older the information, the less relevant and reliable it is.

The financial and operating results of the company are provided by the Audited Financial Statements (AFS), pursuant to the applicable standards adopted by the SEC. These financial statements, for which the company’s Board and Management take full and final responsibility, are complemented and enriched by Management discussion and analysis of operations that need to be included in annual reports.

Presently, all PLCs are required to file their AFS to the SEC.

As failures of governance are often linked to the failure to disclose the “whole picture” particularly where off-balance sheet items are used to provide guarantees or similar commitments between related companies, the G20/OECD Principles of Corporate Governance recommend that material and significant financial transactions relating to an entire group of companies be disclosed in line with high quality internationally recognized standards and include information about contingent liabilities and off-balance sheet transactions, as well as special purpose entities.

Moreover, the Board should establish corporate disclosure policies and procedures to ensure a comprehensive, accurate and timely report to stakeholders - a holistic and reliable report that gives a complete picture of a company’s financial and non-financial profiles.

<sup>45</sup> OECD (2015), “G20/OECD Principles of Corporate Governance”, V. *Disclosure and Transparency*, p. 42.

<sup>46</sup> OECD (2015), “G20/OECD Principles of Corporate Governance”, I. *Ensuring the Basis for an Effective Corporate Governance Framework*, p. 13.

<sup>47</sup> OECD (2015), “G20/OECD Principles of Corporate Governance”, *About the Principles*, p. 9.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

### b. *Company Objectives and Non-financial Information*

Information is not limited to financial matters. Company objectives, mission, vision, core values, and strategic priorities (which the Board review annually) as well as other non-financial information also need to be disclosed. In addition to their commercial objectives, companies are encouraged to disclose policies relating to business ethics, the environment, human rights, including where relevant within their supply chain, and other public policy commitments.

Investors have increasing interest on how Boards execute their responsibilities. Investors benefit when corporate boards and their key committees report periodically on how they have fulfilled their obligations. Accordingly, there is greater demand for more narrative non-financial information in addition to the financial information.

As investors are particularly interested in information that may shed light on the future performance of the enterprise, it is highly recommended that companies disclose to all shareholders and other stakeholders the company's strategic (long-term goals) and operational objectives (short-term goals).

Moreover, it is highly recommended that the Board supplements the report of management by reporting to the shareholders on how it performed its responsibilities. This should include describing how it performed its oversight role on management through the different board committees. In addition, Board committees should also report on their performance. A set of criteria for the Board's report on its oversight role on management will be provided in the 2016 Code of Corporate Governance.

### c. *Transparency in Company's Ownership Structure*

One of the basic rights of investors is to be informed about the ownership structure of the enterprise and their rights *vis-à-vis* the rights of other owners. This requires information about the real shareholders. The right to such information should also extend to information about the structure of a group of companies and intra-group relations. Such disclosures should make transparent the objectives, nature and structure of the group.<sup>48</sup>

Currently, SEC rules require disclosure of the ultimate beneficial owner of shares to the regulators within ten calendar days, which is far behind regional best practice of three working days, as mentioned in the ACGA-CLSA CG Watch 2014 Report. Similarly, director dealings and changes in shareholdings by holders of ten percent or more are only required to be disclosed within ten calendar days after the close of each calendar month, although the PSE requires directors to disclose dealings within five trading days. In addition, there are no SEC or PSE regulations that require directors to report internally to the company their dealings in the company's shares or any change in shareholdings by ten percent or more.

Investors should be informed about the ownership structure of the enterprise and their rights *vis-à-vis* the rights of other owners.

Companies should disclose relevant information regarding their ownership structure, including but not limited to the following:

- i. Identity of beneficial owners, holding five percent shareholdings or more;
- ii. Direct and indirect (deemed) shareholdings of major and/or substantial shareholders, directors and senior management;
- iii. Details of the parent/holding company, subsidiaries, associates, joint ventures and special purpose entity (SPE)/special purpose vehicle (SPV) both foreign and domestic;
- iv. Directors' dealings in the shares of the company; and
- v. Foreign shareholdings.

In addition, a study shall be conducted to amend the SRC for the adoption of the regional best practice on the disclosure of the ultimate beneficial owner of shares to the regulators from the current ten calendar days to three business days.

It is also a good practice, as set out in the ACGS, to include in the Board Charter a requirement for the directors to disclose/report to the company their dealings in the company's shares within three business days.

<sup>48</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", V. Disclosure and Transparency, (A)(3) p. 43.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

### d. *Remunerations of Members of the Board and Key Executives*

Information about Board and executive remuneration is also of concern to shareholders. Presently, PLCs are mandated to include in their Annual Reports and Information Statements a clear, concise and understandable disclosure of all fixed and variable compensation that may be paid, directly or indirectly, to its directors and top four management officers during the preceding fiscal year.

Companies should provide clear disclosure of its remuneration policies, the level and mix of remuneration, and the procedure for setting remuneration in the company's annual report. The company's disclosure of remuneration policies enables investors to understand the link between the remuneration paid to directors and key management personnel and the company's performance.

In the ACGA-CLSA CG Watch 2014 Report, it was noted that the disclosure of Board remuneration has improved slightly with the ACGR system and SEC requirements, but still falls short of international standards. Disclosure on an individual basis (including termination and retirement provisions) is increasingly regarded as good practice and is now mandated in many countries.

A formal and transparent procedure for developing a policy on executive remuneration and for fixing the remuneration packages of individual directors is highly recommended. Also, the level of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully. A company should avoid paying more than what is necessary for this purpose.

In addition, companies should disclose in their Annual Reports and Information Statements the Board and executive remuneration on an individual basis (including termination and retirement provisions). The aforementioned information shall be included in the 2016 Code of Corporate Governance, on a "comply or explain" basis.

### e. *Full Disclosure of Material Related Party Transactions*

To ensure that the company is being run with due regard to the interests of all its investors, it is essential to fully disclose all material RPTs and the terms of such transactions to the market, individually.<sup>49</sup>

Fully disclose all material RPTs and the terms of such transactions to the market, individually.

The current RCCG mentions RPTs but failed to expound on this and to emphasize the critical importance of this issue. Though there have been discussions about this in the international financial reporting standards, there is no mention about the importance of RPTs other than its impact on the financial statements. In this context, SEC will consider BSP's definition/coverage of "related parties" which will apply to all companies subject to the principle of proportionality.

Per proposed BSP Circular, related parties include bank's subsidiaries as well as affiliates and any party (including its subsidiaries, affiliates and special purpose entities) that the bank exerts direct/indirect control/significant influence over the bank, the bank's directors, officers, stockholders and their related interests as defined under existing regulations, and their close family members as well as corresponding persons in affiliated companies. These also include such other persons/juridical entities identified by the bank's Board as related parties. Related Party Transactions should be interpreted broadly to include not only transactions that are entered into with related parties but also outstanding transactions that were entered into with an unrelated party that subsequently becomes a related party.<sup>50</sup>

The company should abide by the rules of regulatory authorities (SEC, BSP, PSE) on the definition and coverage of RPTs, particularly, with the company's obligation to report all material/significant transactions, especially those that pass certain thresholds

<sup>49</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", V. *Disclosure and Transparency*, (A)(6) p. 45.

<sup>50</sup> Proposed Bangko Sentral ng Pilipinas Circular, Guidelines on RPTs of Banks (2015).

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

of materiality. A materiality threshold shall be set at a level where omission or misstatement of the transaction could pose significant risk to the company and could influence the economic decision of its Board. The threshold level may vary from one company to another depending on the nature, scope, frequency, value of and risks associated with the RPTs. The company shall document the justifications of the materiality threshold set. Moreover, the SEC may direct a company to reduce its materiality threshold if it deems that the threshold is inappropriate considering the company's size, risk profile and risk management systems.

In addition, companies should disclose their policy covering the review and approval of material/significant RPTs. Also, companies should have a committee of non-executive directors, a majority of whom shall be independent directors, to review material/significant RPTs. The aforementioned shall be included in the 2016 Code of Corporate Governance.

### *f. Foreseeable Risk Factors*

Users of financial information and market participants need information on reasonably foreseeable material risks that may include risks that are specific to the industry or the geographical areas in which the company operates; dependence on commodities; financial market risks including interest rate or currency risk; risk related to derivatives and off-balance sheet transactions; and risks related to the environment.<sup>51</sup> Disclosure of risk is most effective when it is tailored to the particular industry in question.

Moreover, considering that financial and non-financial risks commonly arise from significant business decisions or material transactions that the company enter into, the disclosure of such risk should be included in reporting such transactions. For example, if a company acquired a significant subsidiary which must be reported in a current report, the SEC may require the disclosure in such report of any risk identified arising from the acquisition and how the company would address such risks.<sup>52</sup>

Also, it is highly recommended that the Risk Management Framework of the companies include a reporting channel that will ensure that the Board and all its committees are given adequate and reliable information on the risks that the company is facing and how these are being addressed.<sup>53</sup> In addition, the SEC recommends that companies should maintain a risk register of prioritized risks which should be periodically reviewed and updated by the risk management committee or an equivalent body. The aforementioned shall be included in the 2016 Code of Corporate Governance.

### *g. Acquisition or Disposal of Assets*

Under the present SRC, companies are required to make a full, fair, accurate and timely disclosure to the public of every material fact or event that occurs, which could adversely affect their viability or the interest of their stockholders and other stakeholders. Such information includes the acquisition or disposal of assets of the company. This is to avoid anti-competitive merger which takes place when a firm, directly or indirectly acquires the whole or substantial part of the stock or the assets of one or more companies, where the effect of such acquisition lessens competition or creates monopolies.

This material transaction is already required to be disclosed to the PSE within ten minutes from Board approval. The rule should apply to corporations accessing public funds. Pre-approval by SEC need not be required, as it causes delay, but the SEC should have the right to postpone or stop such transaction if disclosure is insufficient or if the transaction could adversely and materially affect economic rights of shareholders, such as, a company selling key franchises and/or significant operating assets.

The SEC will set the criteria for a more comprehensive and detailed disclosure of the acquisition or disposal of significant assets of PLCs or those companies allowed to access public funds. The disclosure should include the rationale, effect on operations and approval at board meetings with Independent Directors present. The aforementioned shall be included in the 2016 Code of Corporate Governance and in the amendment to the Corporation Code.

<sup>51</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", V. *Disclosure and Transparency*, (A)(7) p. 46.

<sup>52</sup> R.G. Manabat & Co.'s comment on the Draft SEC CG Blueprint received on 14 October 2015.

<sup>53</sup> *Ibid.*

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Moreover, the ACGS recommends that the Board of the offeree company should appoint an independent party to evaluate the fairness of the transaction price.

### 2. Strengthening Auditor Independence and the Importance of Audit Quality

High quality audits conducted by independent, competent and qualified auditors provide confidence to investors. Accordingly, independent auditors should be independent in substance and appearance, from the companies they audit. This should be principle-based and not just provide a list of what the auditors can and cannot do.

Independent auditors should be independent in substance and appearance.

It is good practice for external auditors to be recommended by an independent board audit committee or an equivalent body and to be appointed either by that committee/body or by shareholders directly. The International Organization of Securities Commissions (IOSCO) Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence state that "standards of auditor independence should establish a framework of principles, supported by a combination of prohibitions, restrictions, other policies and procedures and disclosures, that address at least the following threats to independence: self-interest, self-review, advocacy, familiarity and intimidation.

There are global standards governing audit independence and quality that the SEC has already adopted particularly the Philippine Standards on Auditing, Philippine Standards on Quality Controls and the Code of Ethics for Professional Accountants. These Standards and the Code are robust in terms of principles and guidance on independence and audit quality controls. Thus, it is highly recommended that audit committees be required to exercise effective oversight to ensure that said Standards and the Code are being complied with by independent auditors.<sup>54</sup>

Also, the Audit Committee should disclose policies and procedures to assess the suitability and independence of external auditors. In addition, the Audit Committee should review and monitor the suitability and independence of external auditors on a periodic basis.

<sup>54</sup> Ibid.

### 3. Evaluating and Implementing Sustainability and Integrated Reporting

As external pressures including resource scarcity, globalization, and access to information continue to increase, the way corporations respond to sustainability challenges in addition to financial challenges will determine their long-term viability and competitiveness.

Currently, there are no existing reporting guidelines from the regulators that are specific to sustainability or integrated reporting other than the CSR Act that requires a general disclosure of CSR-related activities.

As the awareness for sustainability and integrated reporting increases, this merits consideration of the adoption of the same for Philippine companies.

#### a. Sustainability Reporting

Sustainability reporting enables organizations to consider the impacts of a wide range of sustainability issues, enabling them to be more transparent about the risks and opportunities they face. It helps organizations to measure, understand and communicate their economic, environmental, social and corporate governance performance, and then set goals, and manage change more effectively.<sup>55</sup>

A sustainability report presents the organization's values and governance model, and demonstrates the link between its strategy and its commitment to a sustainable global economy. Sustainability reporting can be considered as synonymous with other terms for non-financial reporting; triple bottom line reporting, CSR reporting, and more. It is also an intrinsic element of integrated reporting, a more recent development that combines the analysis of financial and non-financial performance.<sup>56</sup>

<sup>55</sup> Global Reporting Initiative, "About Sustainability Reporting", <https://www.globalreporting.org/information/sustainability-reporting/Pages/default.aspx> accessed on 2 September 2015.

<sup>56</sup> Ibid.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

In an ACGA review of companies reporting in mid-2014, it was found that nine out of ten large companies reported on sustainability, with all reporting taking place via the Annual Report or website. But most of these companies only reported on philanthropic activities and were not even sophisticated in their disclosure. Reports are relatively short and only one company used the Global Reporting Initiative (GRI) Framework.

### b. Integrated Reporting

The mission of the International Integrated Reporting Council (IIRC) is to establish Integrated Reporting (IR) and thinking within mainstream business practice as the norm in the public and private sectors. With this, GRI is working to help bridge the gap between the value of integrated thinking for executives and the reality of sustainability and financial reporting practice for organizations.

An IR is a concise communication about how an organization's strategy, governance, performance and prospects, in the context of its external environment, lead to the creation of value over the short, medium and long term.<sup>57</sup> Its primary purpose is to explain to providers of financial capital how an organization creates value over time.<sup>58</sup> An IR is intended to be more than a summary of information in other communications (e.g., financial statements, a sustainability report, analyst calls, or on a website); rather, it makes explicit the connectivity of information to communicate how value is created over time.<sup>59</sup> An IR benefits all stakeholders interested in an organization's ability to create value over time, including employees, customers, suppliers, business partners, local communities, legislators, regulators and policy-makers.<sup>60</sup>

For executives frustrated by apparent investor short-termism, below is a diagram bringing the three perspectives on business performance and value together in order to give a complete picture of IR.<sup>61</sup>

**Figure 2**  
**Perspectives on Business Performance and Value**



<sup>57</sup> IIRC (2013), "International Integrated Reporting (IR) Framework", Part I: Introduction, (1A) p. 7.

<sup>58</sup> IIRC (2013), "International Integrated Reporting (IR) Framework", Executive Summary, p. 4.

<sup>59</sup> IIRC (2013), "International Integrated Reporting (IR) Framework", Part I: Introduction, (1E) p. 8.



<sup>60</sup> IIRC (2013), "International Integrated Reporting (IR) Framework", Executive Summary, p. 4.

<sup>61</sup> KPMG International (2012), "Integrated Reporting: Performance Insight through Better Business Reporting", Issue 2, p. 7. [<http://integratedreporting.org/wp-content/uploads/2012/06/KPMG-Integrated-Reporting-Performance-Insight-Through-Better-Business-Reporting-Issue-2.pdf>].

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Following is a detailed look at the pluses and minuses of the two major bodies (GRI and IIRC) pushing forward corporate reporting:<sup>62</sup>

**Table 7**  
**Comparison of Global Reporting Initiative and Integrated Reporting Framework**

		
STRENGTHS	Reliance on relevance of issues should mean better reporting on less issues	Focus on value creation within companies, from financial capital provider's perspective
	Focus on future targets and expected performance	Responsive to negative and positive externalities
	Good flexibility to incorporate Sustainability Accounting Standards Board (SASB) and IIRC approaches	Flexibility to accommodate other frameworks (including GRI and SASB)
	Widely used among large listed companies and good reputation	Potential for integration of Environmental, Social and Governance (ESG) issues into business-as-usual reporting
	Requires process and compulsory metrics reporting	
WEAKNESSES	More stringent tests for compliance than IIRC	No guidance on metrics or Key Performance Indicators
	G4 reporting might result in less transparency and comparability overall	Little standardization Strategist
	Does not identify relevant issues for some companies	Freedom may lead to poor ESG disclosure
	Extensive supply chain disclosure is likely to increase related costs	Lacks alignment with traditional materiality

In order to address the increasing focus of foreign institutional investors on sustainability reporting by investee companies, an impact study on the requirement of sustainability or integrated reporting by listed companies is recommended.

In addition, a further study shall be conducted by the regulators (SEC, PSE) for the inclusion of sustainability or integrated reporting in the PSE Listing Requirements or Disclosure Rules, pursuant to a "comply or explain" basis.

#### 4. Simplifying Reportorial Requirements

Disclosure for minimal compliance tends to be the norm for some PLCs due to various regulations or reportorial requirements and the differing formats where or how they should be published (corporate website, annual reports, regulatory agencies' forms, government agencies websites, etc.). In addition to the foregoing, we have the required financial disclosures, which are technical and change from time to time. Some companies significantly rely on the assistance of external auditors to prepare these disclosures.

<sup>62</sup> Dwayne Baraka, "How do the Major Corporate Sustainability Reporting Initiatives Measure up?", <http://www.dwaynebaraka.com/blog/2014/01/20/major-corporate-sustainability-reporting-initiatives-gri-iirc-sasb-measure> posted on 20 January 2014.



## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

There is a tendency for minimum compliance because the regulatory reports are becoming voluminous and burdensome. The intent is to make the reports simple (not to cover up anything) and just state what is needed to prevent further clarifications and simplify the disclosure requirements.

With this, the SEC will pursue a study on how to minimize and align the reportorial requirements for all regulatory agencies. Possible areas for alignment are the following:

- Manner, timing and forms of disclosure – differs among regulatory agencies.
- Materiality of information for disclosure on a per industry basis.

### E. Board Roles and Responsibilities

***If directors can keep their fiduciary duty firmly in mind, big changes in the boardroom should follow. They will spend more time discussing disruptive innovations that could lead to new goods, services, markets, and business models; what it takes to capture value-creation opportunities with a big upside over the long-term; and shutting or selling operations that no longer fit.***<sup>63</sup>

#### Overview

The G20/OECD Principles of Corporate Governance state that the CG framework should ensure the strategic guidance of the company, the effective monitoring of management by the Board, and the Board's accountability to the company and the shareholders. Hence, a strong CG framework is essential particularly because the Board is vested with the responsibility of overseeing the affairs of the company. As such, it is tasked with overseeing the over-all control environment of the corporation, monitoring management performance and accountability to all its shareholders. It acts for and on behalf of the company as a whole. It promotes and secures its long-term strength and sustainability.

The Board has a fiduciary duty to act in the best interest of the corporation. Ingrained in this fiduciary duty are the duties of care and loyalty.<sup>64</sup> The duty of care requires the exercise of prudent judgment by the board members. In this regard, directors are expected to make decisions for the benefit of the entire company, taking into account shareholders' long-term interests as well as the rights of all other stakeholders. The duty of loyalty relates to the duty of directors to put the interest of the company and all its shareholders above his or her own. It is emphasized that the duty of the director is to the entire company and not only to controlling or minority shareholders.<sup>65</sup> Hence, in deciding matters that may affect different shareholder groups, they are duty-bound to treat all shareholders fairly.

To help ensure the development and growth of our Capital Markets, there is a need to underscore the importance of the duties and responsibilities of the Board. Corollarily, there is a need to highlight and address the weaknesses and problem areas experienced by the Board.

#### Challenges and Recommendations

##### 1. Roles and Responsibilities of the Board

The Board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the corporation.<sup>66</sup> The Board is also primarily responsible for the governance of the corporation, specifically: a) The approval of a corporate strategy and Business Plan aimed at achieving the approved vision, mission and objectives of the corporation; and, b) Oversight over management's successful implementation of the same. Further, the RCGG states that it is the Board's responsibility to foster the long-term success of the corporation, and to sustain its competitiveness and profitability in a manner consistent with its corporate objectives and the best interests of its shareholders and other stakeholders.

<sup>63</sup> Barton, D. and M. Wiseman. "Where Boards Fall Short". *Harvard Business Review*, January-February 2015 issue. <https://hbr.org/2015/01/where-boards-fall-short>.

<sup>64</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", VI. *The Responsibilities of the Board*, (A) p. 52.

<sup>65</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", VI. *The Responsibilities of the Board*, (A) p. 52.

<sup>66</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", VI. *The Responsibilities of the Board*, p. 51.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Nevertheless, the greater demands of best CG practices and the thrust towards greater transparency and accountability from better educated shareholders and stakeholders put into focus several issues that must be addressed by the Board to ensure the optimal performance of their functions.

### a. *Overseeing Succession Planning of Key Officers and Management*

Succession Planning is a big concern for a corporation to ensure the longevity of the corporation and its long-term interests, as well as that of its shareholders. The goal of succession planning is to ensure the transfer of company leadership to highly competent and qualified candidates. However, succession planning ranks low in Philippine PLCs' agendas, primarily because most PLCs are still family-owned corporation.

The Board is responsible for ensuring and adopting an effective succession planning program for the company to ensure the company's growth and continued increase in shareholders' value. It is the directors' responsibility to make sure that the company is prepared to select, compensate and when necessary, replace its Chief Executive Officer (CEO) and key officers, with minimal disruption of the company's operations. This is achieved by implementing a process of selection of competent, professional, honest and highly-motivated management officers who can add value and contribute independent judgment to the formulation of sound corporate strategies and policies.<sup>67</sup>

The Board is responsible for ensuring and adopting an effective succession planning program for the company.

The ACGS recommends the disclosure of how the Board plans for the succession of the CEO/Managing Director and Key Management.

Although the actual selection process of succession planning is left to the discretion of the corporation, the SEC shall require the proper disclosure of this process in the ACGR.

### b. *Aligning Key Officers and Board Remuneration with Long-Term Interest of the Company*

The RCCG provides that the levels of remuneration of the corporation should be sufficient to be able to attract and retain the services of qualified and competent directors and officers. However, remuneration policies should not encourage excessive risk taking and should be aligned with the long-term interest of the company.<sup>68</sup> Hence, a balance must be struck between reasonable remuneration and the interest of the company and its shareholders.

The big question in this case is how to determine proper compensation. Section 30 of the Corporation Code provides that compensation other than per diems granted to directors may be granted by the vote of stockholders representing at least a majority of the outstanding capital stock at a regular or special meeting. Key considerations in determining the same include the following: that the level of remuneration is commensurate to the responsibilities of the role and that no director should participate in deciding on his or her remuneration.<sup>69</sup>

Department of Finance (DOF) Order No. 054-2015<sup>70</sup> also states that a fixed remuneration shall ideally be given to Independent Directors (IDs) of insurance and public companies at the level sufficient to attract and retain the quality of directors to run the company successfully. Entitlement to such fixed amount should ideally be based on the results of an independent ratings mechanism, established for purposes of evaluating the performance of IDs. Stock options and performance benefits of any kind are ideally not included in the remuneration package of IDs.

The G20/OECD Principles of Corporate Governance recommend that a policy statement be formulated and adopted to specify the relationship between remuneration and performance. In measuring performance, there should be specific metrics that emphasize the longer run (strategic) interests of the company over short term (operational) considerations.

<sup>68</sup> Consultative Group Discussion on August 11, 2015.

<sup>69</sup> RCCG, Article 3(I).

<sup>70</sup> Adoption of Guidelines Prescribing the Fit and Proper Rule for Directors of Insurance Companies and Public Companies.

<sup>67</sup> RCCG, Article 3(F)(2)(a).

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Further, the ACGS recommends the full disclosure of the remuneration policy and fee structure of all directors.

In connection with the above-mentioned principle, specific metrics in measuring performance to determine proper remuneration of key officers shall be subject to the discretion of the corporation taking into account its respective needs and performance. The said metrics together with a remuneration policy statement should be disclosed in the ACGR.

These items shall be included in the 2016 Code of Corporate Governance on a “comply or explain” basis. The full disclosure of company’s remuneration policy for its key officers and directors may be required only from companies meeting a certain threshold to be determined by the SEC applying the principle of proportionality in the 2016 Code of Corporate Governance, subject to a reasonableness test.

### c. *Formal and Transparent Board Nomination and Election Process*

A formal and transparent Board nomination and election process is necessary for all corporations to ensure that there is proper composition of the Board that would address the demands and needs of the company. The establishment of a transparent procedure is generally the responsibility of a Nomination Committee or Sub-Committee, who should review and evaluate the qualifications of all persons nominated to the Board and other appointments that require Board approval, and assess the effectiveness of the Board’s processes and procedures in the election or replacement of a director.<sup>71</sup>

A transparent nomination and election process for directors includes encouragement of active shareholders’ participation. This is emphasized in the G20/OECD Principles of Corporate Governance.

A formal and transparent Board nomination and election process is necessary for all corporations to ensure that there is proper composition of the Board that would address the demands and needs of the company.

<sup>71</sup> RCG, Article 3(K)(ii).

Presently, companies are given the discretion to determine the actual procedure or process for the nomination and election of its directors. For companies covered by the RCGG, the nomination and election of its IDs is made pursuant to Rule 38 of the SRC.

Under the ACGS, it is a recognized good practice that companies should align their process of identifying the quality of directors with their strategic direction and to use professional search firms or external sources when searching for candidates to the Board. The SEC shall consider the aforementioned ACGS best practice in drafting the 2016 Code of Corporate Governance. Selection of directors based on collective experience and expertise will be emphasized. In addition, a study shall be undertaken on the creation of a directors’ registry containing a broad pool of candidates.

It is further recommended that mechanisms be set up allowing shareholders to nominate candidates to the Board. This shall also be addressed in the 2016 Code of Corporate Governance.

### d. *Overseeing Internal Control and Audit*

It is recognized that overseeing internal control is one of the important responsibilities of the Board.<sup>72</sup> It is part of the Board’s duties to set up a mechanism for “monitoring and managing potential conflicts of interest of management, board members and shareholders. In addition, the Board takes final responsibility of “ensuring the integrity of the company’s accounting and financial reporting systems, including compliance with relevant laws, regulations and reporting standards, and that appropriate systems of internal control and risk management are in place.”<sup>73</sup> To help the Board discharge its duties in this regard, the RCGG mandates an Audit Committee for all covered corporations. With regard to Internal Auditors, some are appointed by companies and directly reporting to the Board. Other companies choose to outsource the functions of an Internal Auditor.

<sup>72</sup> RCGG, Article 3(H).

<sup>73</sup> OECD (2015), “G20/OECD Principles of Corporate Governance”, VI. *The Responsibilities of the Board*, (D)(7) p. 56.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

To make sure that the integrity of the company's reporting and monitoring systems is not compromised, it is the Board's role to establish a clear system of determining responsibility and accountability in the organization.<sup>74</sup> Special attention should be given to any possible "misuse of corporate assets and abuse of RPTs." The scope and particulars of an effective control system may differ among corporations depending on, among others, the nature and complexity of the business and the business culture; volume, size and complexity of the transaction; degree of risks involved, degree of centralization and delegation of authority, extent and effectiveness of information technology; and extent of regulatory compliance.<sup>75</sup>

At present, Philippine companies are not mandated to establish a separate Internal Audit Department. However, they are required to have a separate audit function. Insurance companies, for example, are specifically mandated to have an audit function in place, which should be independent and adequately resourced.<sup>76</sup>

It is the Board's role to establish a clear system of determining responsibility and accountability in the organization.

Having a separate internal audit function is a best practice recommended in the ACGS. The head of the internal audit should be identified, and if outsourced, the name of the external firm should be disclosed. In addition, the ACGS recommends that the appointment and removal of the Internal Auditor should be upon prior approval of the Audit Committee.

Further, the G20/OECD Principles of Corporate Governance state that large companies should be encouraged to put in place an internal audit function and an Audit Committee of the board to oversee the effectiveness and integrity of the internal control system. Hence, all companies should have an internal audit function. Depending on a company's size and scope, it

may have an in-house or outsourced Internal Auditor, appointed by and directly reporting to the Audit Committee. However, more complex corporations should have a separate internal Audit Department in place.

The role of the Internal Auditor shall be given more focus, including his or her functions and responsibilities to the corporation. This will highlight his independence from the operations of the organization. To ensure independence, there should be an explicit company policy that the remuneration and performance appraisal of an Internal Auditor are set and performed by the Audit Committee and not by Management. Further, companies should have an Audit Charter to be updated when international standards or best practices require and to consider changes in the company and its environment, i.e., expansion, innovation in the business model and improvement in technology.

It is also recommended that non-executive directors (NEDs) hold separate meetings with the external auditor and heads of the internal audit, compliance and risk function, without any executives present. This is to ensure that proper checks and balances are in place.

These requirements shall be considered in the 2016 Code of Corporate Governance for companies meeting a certain threshold to be determined by SEC and following the principle of proportionality.

### e. *Overseeing Risk Management*

Companies are exposed to a growing complexity of risks, both financial and non-financial. Hence, risk policy is a matter of increasing importance that is closely related to corporate strategy. As such, part of the Board's responsibilities is to define the company's level of risk tolerance and provide oversight over its risk management policies and procedures.<sup>77</sup> It is also the Board's responsibility to formulate policies or to set strategies to avoid or at least minimize the impact of company risks.

<sup>74</sup> Ibid.

<sup>75</sup> RCCG, Article 3(H)(ii).

<sup>76</sup> IC Circular Letter No. 32-2006 dated 18 September 2006. *Guidelines in the Preparation of the Revised Operating Manual in Combating Money-Laundering and Financing of Terrorism for Insurance Commission Covered Institution.*

<sup>77</sup> BSP Circular No. 749, Series of 2012 (Guidelines in Strengthening Corporate Governance in BSP Supervised Financial Institutions, Section 2 (a)(c)(3)).

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

The types and degrees of risks that a company is willing to accept must be identified and managed by the company. Having a separate risk management function is essential to identify, assess and monitor key risk exposures. Depending on a company's size and scope of operations, it may have a separate risk department.

Having a separate risk management function is essential to identify, assess and monitor key risk exposures.

At present, the task of overseeing the functionality and effectiveness of a company's risk management system may be performed by a board level Risk Oversight Committee or Risk Committee. Most Philippine companies combine the functions of the Risk Oversight Committee with the Audit Committee.<sup>78</sup> The BSP, however, now mandates a separate Risk Oversight Committee for complex banks, which include universal and commercial banks.<sup>79</sup>

Disclosure of the company's risk management system is a recognized best practice under the ACGS, which also recommends that the company's Annual Report should include a statement that the Board conducts an annual review of the risk management system and as to the adequacy thereof. In addition, the ACGS highly encourages the creation of a separate board level Risk Committee.

Hence, in view of the growing complexity of business risks to which the company is exposed to and the dire need to monitor those risks, the Board should ensure that the company has a sound risk management framework and infrastructure that will clearly identify, source, prioritize, assess and manage key business risks, and will monitor company-wide risk management performance on an ongoing basis. This framework should be in accordance with the expectations of pertinent regulatory regime. Companies should also disclose their risk management system, which

should be done through the ACGR. In addition, the companies' Board should also set up a mechanism by which the function of overseeing management of their risks is effectively discharged. To accomplish this, it would help if companies educate themselves on Enterprise Risk Management.

Companies meeting a certain threshold to be determined by the SEC shall have a separate Chief Risk Officer (CRO) in charge of managing the company's Risk Management System. A general description of the CRO's functions and responsibilities shall also be provided in the 2016 Code of Corporate Governance.

### 2. Effectiveness of the Board of Directors

In view of the multi-faceted and comprehensive duties of the Board associated with their over-all final responsibility of "managing the affairs of the corporation," the Board needs to structure itself and adopt a board protocol to guide its own internal processes. It should also consider creating specialized committees to aid it in the performance of its functions. This, together with having the right mix of individuals with the required diverse set of skills, experience and knowledge would enable the Board to discharge its duties and responsibilities effectively.

Part of having an effective Board is ensuring that directors are fit and proper to hold such position. In this regard, the DOF Order No. 054-2015 provides for a Fit and Proper Rule for directors of insurance companies and PCs. Companies may refer to this in adopting standards to determine the qualifications of directors that would ensure the effectiveness of the Board.

Part of having an effective Board is ensuring that directors are fit and proper to hold the position.

It must be underscored that having an effective Board is key to the smooth running of corporations. Many corporations have fallen on hard times because of an ineffective Board. Ensuring the effectiveness of the Board entails the existence of certain policies and practices.

<sup>78</sup> Consultative Group Discussion on August 11, 2015.

<sup>79</sup> BSP Circular No. 749, Series of 2012 (Guidelines in Strengthening Corporate Governance in BSP Supervised Financial Institutions, Section 2(a)(c)(7)(d)(ii)).

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

### a. Board Committees

Board Committees are necessary to support the Board in the effective performance of its functions. They are established to focus on specialized issues, which result in better workload management for the Board.<sup>80</sup> The number of Committees that is constituted by the Board usually depends on the size of the company and the complexity of its operations and transactions. The Audit Committee is mandatory for most companies but larger companies also have other Committees such as Executive, Remuneration, Nomination and Governance.

The most common Committees found in PLCs are the Audit, Nomination and Remuneration Committees. Table 8 shows a summary of committees formed and the number of PLCs having the same for 2015.

Presently, the RCCG provides for three committees, namely: Audit, Nomination and Remuneration. The IC also requires the same committees for insurance companies.<sup>81</sup> However, depending on the size of the bank and the board, the complexity of operations, long-term strategies and risk tolerance level of the bank, BSP mandates the following Committees: Audit, Risk Oversight Committees and Corporate Governance Committees.<sup>82</sup>

**Table 8**  
**Committees in Publicly-Listed Companies**

Name of Committee	Present in PLCs
Executive Committee	121
Audit Committee	205
Nomination Committee	192
Remuneration Committee	152
Corporate Governance Committee	46
Risk Management Committee	63
Compensation Committee	53
Finance and Investment Committee	12
Related Party Transaction Committee	5

<sup>80</sup> Australian Institute of Company Directors, "Board Committees", 13 January 2015. <http://www.companydirectors.com.au/director-resource-centre/director-qa/roles-duties-and-responsibilities/board-committees>.

<sup>81</sup> IC Circular Letter No. 31-2005 dated 26 September 2005.

<sup>82</sup> BSP Circular No. 749, Series of 2012 (Guidelines in Strengthening Corporate Governance in BSP Supervised Financial Institutions, Section 2(a)(c)(7)(d)(i)(ii)(iii)).

The ACGS makes mention of the Audit, Nomination and Remuneration Committee. It further recommends that the Audit Committee be composed entirely of NEDs with a majority of IDs, one of whom should have accounting expertise. The Chairman should also be an ID. It is also recommended that the Audit Committee meets at least four times during the year.

The ACGS also recommends that companies have Nomination and Remuneration Committees comprised of a majority of IDs, one of whom shall be the Chairman of the Committee. It is also considered as best practice for the Nomination and Remuneration Committees to meet at least twice during the year.

Considering the best practices recommended in the ACGS and taking into account the Philippine context and experience and the goal of harmonizing regulatory requirements, the following Committees shall be required in the 2016 Code of Corporate Governance on a "comply or explain" basis for corporations meeting a certain threshold to be determined by the SEC applying the principle of proportionality, without prejudice to the creation of other Committees that companies may deem proper and necessary:

### i. Audit Committee

The Audit Committee usually oversees the company's internal audit function and risk management competency. It also manages the company's relationships with its external auditor and the types of services rendered by it. It should be composed of at least three members, all NEDs with a majority of IDs. At least one ID should have adequate skills and background in accounting, finance and audit. The Chairman should also be an ID. It is also recommended that the members of the Audit Committee meet at least four times during the year.

The functions of the Audit Committee provided in the RCCG shall be reviewed and updated, as needed, in the 2016 Corporate Governance Code.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

### ii. Risk Oversight Committee

Subject to the threshold set by the SEC applying the principle of proportionality and depending on the company's size and complexity of transactions into which significant risks are embedded, a specialized Board Risk Oversight Committee should be set up. Such a committee shall be responsible for the oversight of a company's risk management system to ensure its functionality and effectiveness. The Committee should be composed of at least three members, including one ID. The Chairman should be an ID who is not the Chairman of the Board or of any other committee.<sup>83</sup> The company's CRO should also report to the Risk Oversight Committee.

For smaller companies not meeting the threshold set by SEC and with less complex transactions and risk exposure, a separate function on risk oversight shall be recommended. This function may be included in the Committee Charter of the particular committee tasked with this function. In most cases, this is the Audit Committee.

The aforementioned, including the functions and responsibilities of the Risk Oversight Committee, shall be included in the 2016 Code of Corporate Governance.

### iii. Corporate Governance Committee

A Corporate Governance Committee should be created to assist the board in the performance of its CG responsibilities. The Committee should be tasked to ensure compliance with and proper observance of CG principles and practices. The Committee should have at least three members, two of whom should be IDs. The Chairman should also be an ID. Depending on the size and scope of a company and applying the principle of proportionality, its Corporate Governance

Committee may either have Nomination and Remuneration sub-committees or the functions of the Nomination and Remuneration Committees be subsumed in its functions.

#### (a.) Nomination Sub-Committee/ Function

The Nomination Sub-committee (or the Corporate Governance Committee performing the functions of a Nomination Committee) has the special duty of defining the general or individual profile of board members that the company may need at any given time,<sup>84</sup> and of ensuring the appropriate knowledge, competencies and expertise that complement the existing skills of the Board. It further has the responsibility of identifying the candidates who meet desired criteria and qualifications and to present them to shareholders before the ASM.<sup>85</sup>

It is highly encouraged that the Nomination Sub-Committee be composed entirely of IDs and that the Chairman should be an ID. Best practice also dictates that the sub-committee meets at least twice during the year.

#### (b.) Remuneration Sub-Committee/ Function

The Remuneration Sub-Committee is tasked with the establishment of a formal and transparent procedure for developing a policy for determining the remuneration of directors and officers to ensure that their compensation is consistent with the corporation's culture, strategy and the business environment in which it operates.<sup>86</sup>

<sup>83</sup> Basel Committee on Banking Supervision (2015), "Corporate Governance Principles for Banks", *Principle 3: Board's Own Structure and Practices*, p. 17. <http://www.bis.org/bcbs/publ/d328.pdf>.

<sup>84</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", VI. *The Responsibilities of the Board*, (D)(5) p. 55.

<sup>85</sup> Ibid.

<sup>86</sup> RCCG, Article 3(K)(ii)(b).

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Best CG practice dictates that the members of the Remuneration Sub-Committee should be comprised of a majority of IDs. The Chairman is also recommended to be an ID. The sub-committee should also meet at least twice a year, in accordance with recognized best practices.

### iv. *Related Party Transactions Committee*

Subject to the principle of proportionality and the threshold to be determined by the SEC, companies shall be required to constitute a Related Party Transactions Committee. The guidelines set by the BSP in its Proposed Circular on RPTs<sup>87</sup> shall be considered by the SEC.

The Related Party Transactions Committee shall be composed of at least three members of the Board, two of whom shall be IDs, including the Chairman of the Committee. At all times, it shall be composed entirely of IDs and NEDs with a majority of the members being IDs. The functions of the Committee shall be provided in the 2016 Code of Corporate Governance.

### b. *Board and Committee Charters*

To ensure the effectiveness of the board, it is imperative for Boards to have a charter, which clearly states its strategic intent, functions and responsibilities.<sup>88</sup> The Board Charter serves as a guide to the directors in the performance of their functions. Further, it also sets the expectations of the company as to how its directors should discharge their functions and can be used as the basis for the Board's self-assessment of its performance.<sup>89</sup>

Board Committees are constituted to improve the performance of the board's duties. Optimal performance of Board Committees also hinges

on its having a full and clear picture of its purpose, duties and composition, which are contained in Committee Charters. Clearly defining the roles and accountabilities of each committee avoids any overlapping functions and results in a more effective board for the company.

Defining roles and accountabilities of each committee avoids any overlapping functions.

Presently, SEC requires all PLCs to disclose their Committee Charters on their websites. This is in line with the ACGS best practice of disclosing the companies' Audit, Remuneration and Nominations Committee Charters in their Annual Report or website. It also recommends the disclosure of companies' Board Charters.

Moving forward, the SEC shall mandate a Board Charter for all corporations to guide the directors in the performance of their fiduciary obligation to the company, its shareholders and other stakeholders. In addition, all committees shall be required to have Committee Charters stating in plain terms their respective roles, responsibilities and accountabilities.

The Board and Committee Charters shall be fully disclosed to the company's shareholders and stakeholders through the company's website. The Charters may provide the standards for evaluating the performance of the Board and its committees. This requirement shall be included in the 2016 Code of Corporate Governance. The SEC will also consult with the PSE on the inclusion of this requirement in the PSE Listing Requirements and Disclosure Rules.

### c. *Board Seat Limit*

Being a director necessitates a commitment to the corporation. To show full commitment to the company, directors should devote the time and attention necessary to properly and effectively perform their duties and responsibilities, including sufficient time to be familiar with the corporation's business.<sup>90</sup>

Sitting on the Board of too many companies may interfere with the optimal performance of Board members.

<sup>87</sup> Proposed BSP Circular, Guidelines on Related Party Transactions of Banks (2015).

<sup>88</sup> Securities Commission Malaysia (2011), "Malaysia Corporate Governance Blueprint", Chapter 3: *The Board's Role in Governance*, p. 25.





<sup>89</sup> Ibid. p. 26.

<sup>90</sup> RCCG, Article 3(G)(ii).



## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

**Table 9**  
**Best Practices on Multiple Directorships**

Country	Best Practices
 Singapore	The Board should determine the maximum number of listed company board representations which any director may hold, and disclose this in the company's Annual Report.
 Thailand	The Board should set a limit of five board seats in listed companies, which an individual director can hold simultaneously.
 Japan	Directorships in other companies shall be limited to a reasonable number and disclosed each year.
 Malaysia	The number of directorships held in listed companies should be limited to five.

Studies have shown that multiple directorships have a negative relation to firm performance.<sup>91</sup> Hence, sitting on the Board of too many companies may interfere with the optimal performance of board members since they may not be able to contribute enough time to keep abreast of the corporation's operations and to attend and actively participate in all meetings of the Board.

The SEC presently prescribes no limit as to the number of companies that a person may be elected as director, except for business conglomerates, where an ID can be elected as such to only five companies within the conglomerate.<sup>92</sup> The RCCG, however, states that the Board may consider the adoption of guidelines on the number of directorships that its members can hold and that the optimum number should take into consideration the capacity of a director to diligently and efficiently perform his duties and responsibilities. The best practice recommended in the ACGS is having a Board seat limit of five directorships in PLCs.

Table 9 shows the best practices on multiple directorships in other jurisdictions.

Boards should adopt appropriate rules to ensure that board members are able to commit themselves effectively to their responsibilities. These rules may include limitations on the number of other responsibilities that may

take up much of the time and attention of the members of the Board. One such rule is to provide a limit as to the number of board directorships that an ID/NED may hold.

A study shall be conducted to determine what would be the appropriate Board seat limit for IDs/NEDs in Philippine PLCs taking into consideration Philippine experience and context. The optimal number for a Board seat limit derived from the results of this study shall then be adopted for IDs/NEDs. Fitness and capacity to serve shall be taken as key considerations. Expected completion of this study shall be before the promulgation of the 2016 Code of Corporate Governance, where the Board seat limit shall be required under a "comply or explain" basis.

Rules pertinent to this requirement shall also be addressed in the 2016 Code of Corporate Governance. In addition, the SEC will discuss with the PSE the inclusion of the number of board seats that a director may hold in its Listing Requirements and Disclosure Rules.

A study shall also be conducted on whether a director must seek prior approval of the Board where he is an incumbent director before accepting a directorship in another company, as is present practice in other ASEAN countries such as Malaysia.<sup>93</sup> This will allow the company where he is currently a director to assess if his present responsibilities and commitment to the company will be affected.

<sup>91</sup> Fich, E.M. and Shivdasani, A (2006), "Are Busy Boards Effective Monitors?", *Journal of Finance*, 61(2) pp. 689-724; Jackling, B. and Johl, S. (2009), "Board Structure and Firm Performance: Evidence from India's Top Companies", *Corporate Governance: An International Review*, 17(4) pp. 492-509.

<sup>92</sup> SEC Memorandum Circular (SEC MC) No. 9, Series of 2011, "Term Limits of Independent Director".

<sup>93</sup> Securities Commission Malaysia (2011), "Malaysia Corporate Governance Blueprint", *Chapter 3: The Board's Role in Governance*, p. 39.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

### d. *Prior Training for First-Time Directors and Continuing Training for all Directors*

Being a director of a company, particularly PLCs, is not an easy task. Certain skills and know-how need to be acquired or honed to be an effective director. In order to improve board practices and the performance of its members, it is a good practice for companies to require their directors and key officers to undergo initial and continuing training to acquire special skills and to keep them abreast with relevant laws, regulations and various business risks relevant to the company.<sup>94</sup>

It is good practice for companies to require their directors and key officers to undergo initial and continuing training.

Recognizing the need for training of board members and key officers of PLCs, the SEC mandates attendance, at least once a year, to a CG training or seminar.<sup>95</sup> Mandated topics which include, among others, discussions on Insider Trading, Board Responsibilities, Protection of Minority Shareholders and RPTs are prescribed for the first training. The company can choose any CG matter relevant to the company for subsequent trainings.<sup>96</sup> Directors and key officers are required to submit a copy of the Certificates of Attendance to said trainings.<sup>97</sup> Disclosure of trainings attended is also required in the ACGR.

Having a policy encouraging attendance of directors to continuing education programs and disclosure of actual trainings attended in the Annual Report is recommended good practice under the ACGS. The G20/OECD Principles of Corporate Governance also encourage companies to engage in board training.

Consequently, the SEC should strengthen the training requirement for all directors and key officers. Given the various issues tackled in CG discussions and their importance to capital market development, the SEC shall annually update its list of mandated topics through a Circular to ensure that relevant CG trends or issues are addressed in the training programs.

Further, the accredited institutional training providers or the companies themselves should design programs for first-time directors that would be specific to their needs and business. A special program for IDs should also be offered by training providers. The program should highlight their specific duties that differ from other NEDs and Executive Directors (EDs). In addition, various other programs should be created such as those specifically for the different types of directors or key officers, or programs addressing CG issues and concerns of particular sectors or industries. What is pertinent is the emphasis on continuing learning education for all those responsible for the long-term value enhancement of the company.

The SEC shall also look into the possibility of making the minimum four hours of training cumulative. Hence, directors and key officers may attend shorter but multiple trainings per year as long as they meet the minimum number of hours of training required.

To reiterate the importance of the continuing training requirement, the SEC will also coordinate with the PSE on the possible inclusion of this requirement and the disclosure of the same in the PSE Listing Requirements and Disclosure Rules.

### e. *Board Diversity*

The Board should assess whether it has the “right mix of background and competencies” as demanded by the ever-changing strategic and other requirements of the company. Having a diversity of perspectives and proven experience in building relevant businesses, as well as deep functional knowledge, is critical.<sup>98</sup>

<sup>94</sup> OECD (2015), “G20/OECD Principles of Corporate Governance”, VI. *The Responsibilities of the Board*, (E)(4) p. 60.

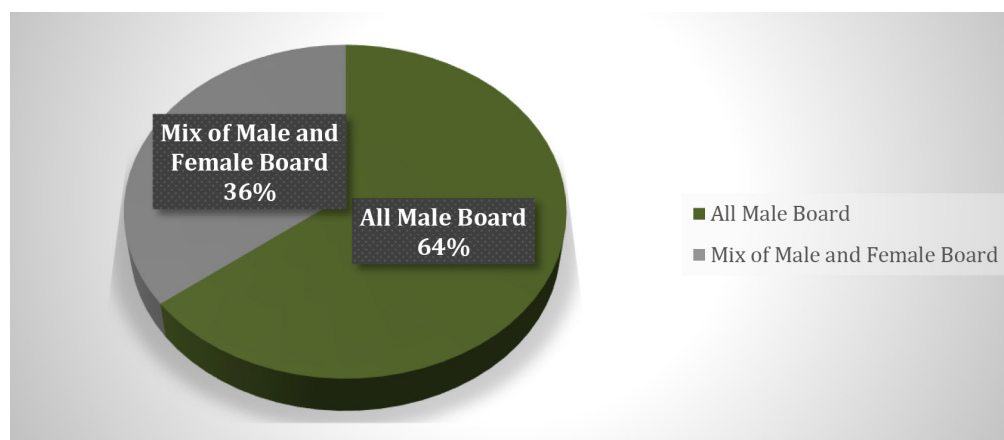
<sup>95</sup> SEC MC No. 20, Series of 2013, “All Members of the Board of Directors and Key Officers of Publicly Listed Companies to attend Corporate Governance Training only with SEC-Accredited Training Providers.”

<sup>96</sup> SEC MC No. 2, Series of 2015, “Additional Guidelines on Corporate Governance Training Programs and Lectures”.

<sup>97</sup> SEC MC No. 20, Series of 2013, “All Members of the Board of Directors and Key Officers of Publicly Listed Companies to attend Corporate Governance Training only with SEC-Accredited Training Providers.”

<sup>98</sup> Barton, D. and M. Wiseman. “Where Boards Fall Short.” *Harvard Business Review*, January-February 2015 issue. <https://hbr.org/2015/01/where-boards-fall-short>.

**Figure 3**  
**Board Gender Diversity in Philippine Publicly-Listed Companies**



Groupthink is one area of concern where there is no diversity in the members of the Board.<sup>99</sup> With no one to question the Board's decisions and to bring fresh ideas on the table, optimal decision-making and Board effectiveness are not achieved. On the other hand, new ideas and out of the box solutions presented when there is variety of perspectives available bring added value to the Board deliberation process.

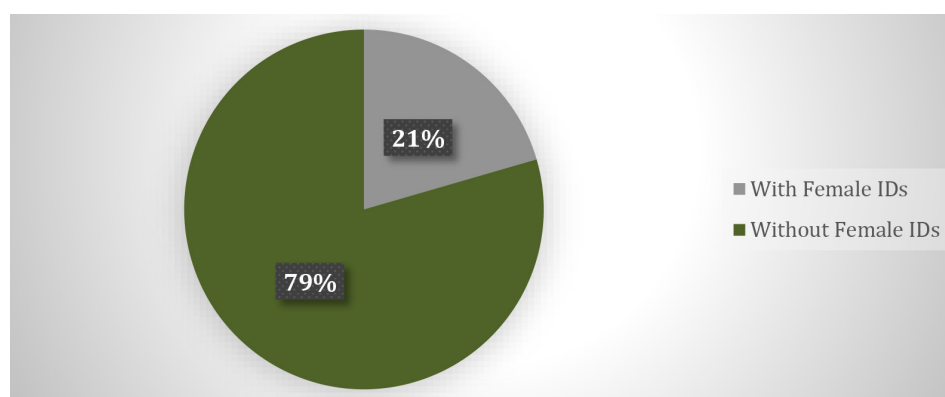
In this regard, importance must be given to having a diverse Board. Board diversity does not merely refer to gender diversity, it could also mean diversity in age, ethnicity, culture, skills, competence and knowledge. However, much attention is given globally to gender diversity as an important component of inclusive growth.<sup>100</sup> Companies are therefore highly encouraged to elect female directors, particularly, female IDs, as well as female senior managers.

At present, the SEC has no rules or regulations mandating or recommending board diversity. Hence, as can be seen in Figure 3, 64% of Philippine PLCs have all-male board. Nevertheless, companies that have a policy on diversity are required to disclose it in the ACGR, which is a recommended practice in the ACGS.

The ACGS further puts premium on having female IDs in a company's Board. The G20/OECD Principles of Corporate Governance also state that Boards should consider if they collectively possess the right mix of backgrounds and competencies to bring diversity of thought to Board discussions.

Presently, only 36% of Philippine PLCs have female directors, 21% of which have female IDs, as seen in Figure 4.

**Figure 4**  
**Philippine Publicly-Listed Companies with Female Independent Directors**



<sup>99</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", VI. *The Responsibilities of the Board*, (E)(4) p. 60.

<sup>100</sup> Securities Commission Malaysia (2011), "Malaysia Corporate Governance Blueprint", Chapter 3: *The Board's Role in Governance*, p. 36.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

The SEC shall recommend the adoption of a diversity policy for all corporations, which should be disclosed to all shareholders, investors and other stakeholders. Disclosure shall be made in the ACGR. To ensure proper disclosure of this policy, the ACGR shall be amended such that companies shall be required to disclose their actual diversity policy instead of merely stating the presence of such a policy. Board diversity policy is a move to avoid groupthink and less than optimal decision making in Boards.

Board diversity policy is also proposed to be included in the PSE's Listing Requirements and Disclosure Rules.

### f. *Board Assessment*

The best measure of effectiveness of the Board is through an assessment process. Board assessment helps the directors to thoroughly review their performance and understand their roles and responsibilities. Hence, there is a need for Boards to conduct a periodic review and assessment of their own performance, including the performance of their members, the Chairman and the CEO. This should at least show how directors performed their responsibilities effectively, their attendance at board meetings, participation in boardroom discussions and manner of voting on material issues.

More particularly, for IDs, there should be an assessment of their independence. Though it is difficult to prove or measure a director's independence, this may be derived from personal conviction and ethics and the director's commitment to serve the best interest of the company and not his own. The guidelines or criteria provided by the SEC and other regulatory agencies may also be used as basis for the assessment.

Presently, the SEC does not mandate that boards undertake an assessment of their performance. The RCCG merely makes discretionary the creation of an internal self-rating system that can measure the Board and management's performance.

Nevertheless, the annual assessment of the CEO/President, the Board as a whole, the individual directors and the Board Committees

is a recommended practice in the ACGS. Disclosure of the process followed and the criteria used should also be disclosed. Further, the G20/OECD Principles of Corporate Governance make mention of self-assessment by Boards of their performance, as well as performance reviews of individual board members and the Chairman and CEO.

**The Board should monitor the company's governance practices and make changes as needed. This monitoring should be pro-active.**

The Board should monitor the company's governance practices and make changes as needed.<sup>101</sup> This monitoring should be pro-active. It includes putting up accountability systems for everyone within the corporation to commit to certain performance standards and levels of accomplishment for well-defined time periods. It extends to conducting performance reviews and assessments at all levels of the company, starting with the Board. Self-assessments should also be made by individual directors. In addition, peer review should be conducted on the members of the Board, the Board Committees and the company's CEO.

Disclosure of the results of the assessment should be made to ensure transparency and to allow stockholders and stakeholders to determine if the directors and CEO are performing their responsibilities to the company. A study shall be conducted on what should be disclosed or the extent of disclosure required, as well as the manner of disclosing the results of the Board assessment. To ensure disclosure of the results, the ACGR shall be amended to include a portion for the results of the assessment.

The criteria and process to be followed for the assessment should be left to the judgment of the company but the criteria should be based on the Board or Committee Charter. In establishing these criteria, attention should be given to the values, principles and skills required for the company. The said criteria and process should also be disclosed in the ACGR.

<sup>101</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", VI. *The Responsibilities of the Board*, (D)(2) p. 54.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

The SEC will coordinate with the PSE on the possible inclusion of the criteria and process in its Disclosure Rules. In addition, the aforementioned shall be incorporated in the 2016 Code of Corporate Governance.

Pursuant to DOF Order No. 054-2015,<sup>102</sup> the SEC and IC shall also promulgate guidelines and implement a system for ranking PCs and insurance companies, respectively, in terms of company practices employed in ensuring that directors are fit and proper to hold such position. The guidelines shall include criteria on integrity, experience, education, training and competence, and shall be consistent with the standards stated in said Department Order. This ranking system shall be promulgated and implemented in 2017 after the effectivity of the 2016 Code of Corporate Governance.

### *g. Corporate Secretary and Compliance Officer*

Compliance with CG principles and indicated best practices rests mainly on the Board of the company. As the collegial body that acts on behalf of the company in managing its affairs, the Board has the principal duty of ensuring that the company follows CG principles and best practices. To live up to this duty, the Board is assisted by, and ordinarily can count upon, two corporate officers, whose duties include ensuring compliance with all pertinent laws, rules, regulations and contracts the company entered into.

The first of these officers is the Corporate Secretary. The RCCG provides that the Corporate Secretary, working under the direct auspices of the Board, should:

- i. Be loyal to the mission, vision and objectives of the corporation, always remembering that this duty of loyalty is to the entire corporation, and not to any group of shareholders or managers;

- ii. Have appropriate administrative and interpersonal skills so as to work fairly and objectively with the Board, Management and stockholders and other stakeholders, always recognizing that the duty of fairness is to the corporation as a whole, and to all its stakeholders;
- iii. Have a working knowledge of the operations of the corporation, and in particular to be aware of the laws, rules and regulations - including all the rules and regulations, principles and indicated proper practices of CG - necessary in the performance of his duties and responsibilities;
- iv. Be responsible for the safekeeping and preservation of the integrity of the minutes of the meetings of the Board and its committees, as well as the other official records of the corporation;
- v. Inform members of the Board of the agenda of Board meetings and all shareholders of the agenda of the annual shareholders' meetings;
- vi. Attend all Board meetings, except in the case of justifiable causes, such as, illness, death in the immediate family and serious accidents, prevent him from doing so;
- vii. Ensure that all Board procedures, rules and regulations are strictly followed by the members; and
- viii. If he is also the Compliance Officer, performs all the duties and responsibilities of the said officer as provided for in the RCCG.

Companies should also have a Compliance Officer, who is a member of the company's management team in charge of compliance function. Under the RCCG, the duties and responsibilities of a Compliance Officer, include the following:

- i. Monitor compliance by the corporation with the RCCG and the rules and regulations of regulatory agencies; If violations are found, report the matter to the Board and recommend the imposition of appropriate disciplinary action;
- ii. Appear before the SEC when summoned in relation to compliance with the RCCG; and

<sup>102</sup> Adoption of Guidelines Prescribing the Fit and Proper Rule for Directors of Insurance Companies and Public Companies (15 April 2015).

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

- iii. Issue a certification every January 30<sup>th</sup> of the year on the extent of the corporation's compliance with the RCCG for the completed year and, if there are any deviations, explain the reason for such deviation. For PLCs, this duty is complied with through the ACGR.

The ACGS recommends the disclosure of the role played by the Corporate Secretary in helping the Board discharge its responsibilities. The Corporate Secretary should be trained in legal, accountancy and other company secretarial practices.

The functions, scope and responsibilities of the Corporate Secretary and Compliance Officer should be strengthened. In addition, greater accountability to the corporation and to the shareholders should be required from them in the performance of their functions. These matters shall be addressed in the 2016 Code of Corporate Governance.

Also, given the critical role of Corporate Secretaries and Compliance Officers, additional and continuing trainings on CG principles, rules, regulations, and best practices need to be mandated for them, in the same manner that these are mandated for corporate directors, particularly those serving on the Board of PLCs. Furthermore, a free association of Corporate Secretaries should also be given impetus and duly recognized just like the GGAPP, a free association of compliance officers serving PLCs.

A formal certification program for Corporate Secretaries and Compliance Officers shall be initiated and is expected to be fully institutionalized under the aegis of the SEC by 2017.

### 3. Board Independence

The Board is vested with the responsibility of providing strategic guidance to the company, overseeing its management and monitoring management performance, and it has the fiduciary duty to the company and all its stakeholders. In order for the Board to carry out its responsibilities, members should exercise "objective and independent" judgment. To help secure objective

and independent judgment on corporate affairs, and to substantiate proper checks and balances, several members of the Board should be completely independent of management. There should be a significant majority of directors who hold no executive position in the company.

**Independent Directors should have no other significant relationship with the company, so their only concern is to act in the company's best interest.**

#### a. Qualifications of an Independent Director

These IDs should have no other significant relationship with the company, so their only concern is to act in the company's best interest. These directors need to gain a good general understanding of the industry they are in. It is important to take note that independence and expertise should go hand-in-hand. They should also have a level of "emotional intelligence" - that is the ability to relate to other members of the Board and understand their perspectives. IDs can add further value through:

- Their objectivity;
- Knowledge of their industry(ies)/markets and different networks of valuable contacts or stakeholders;
- The freedom to ask even the "senseless" questions; and
- The ability to challenge current management thinking without fear or bias.

Independent directors should not be "so close" to the business that they lose perspective; instead they bring a different perspective and a different set of disciplines.<sup>103</sup>

The G20/OECD Principles of Corporate Governance recommend that in order for NEDs to exercise their duties of monitoring managerial performance, preventing conflicts of interest and balancing competing demands on the corporation, it is essential that the IDs are truly independent of the corporation, its management and its affiliates. This will ensure efficient use of objective judgment.

<sup>103</sup> IFC, "IFC Corporate Governance Knowledge", *FOCUS – Guidance for the Directors of Banks*, Publication No. 11.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

The RCCG mandates that the NEDs, including IDs, should possess qualifications and stature provided under the proposed amendments to the Corporation Code and the SRC that would enable them to effectively participate in the deliberations of the Board.

Securities Regulation Code Rule 38 provides additional qualifications that an ID should possess to hold such position. Also, the DOF recently issued Department Order No. 054-2015 prescribing Ideal Qualifications of an Independent Director. It provides that an ID shall refer to a person who, ideally:

- Is not more than 80 years old, unless otherwise found fit to continue serving as such by SEC or IC;
- Is not or has not been a member of the executive committee of the board of directors, or an officer or employee, of the covered entity, its subsidiaries, affiliates or related companies during the three years immediately preceding the date of his election;
- Is not a director, officer or employee of the related companies of the covered entity's majority shareholders;
- Is not a "substantial shareholder", i.e., does not own/hold shares of stock sufficient to elect one seat in the board of directors of either the covered entity, its subsidiaries, affiliates, or any related companies of its majority corporate shareholders;
- Is not a relative within the fourth degree of consanguinity or affinity; legitimate or otherwise, of a director, officer, or substantial shareholder of the covered entity or any of its related companies;
- Is not acting as a nominee or representative of any director or any of its related companies;
- Is not retained, within three years immediately preceding the date of his election, either in his personal capacity or through a firm, as a professional adviser, consultant, agent or counsel of the covered entity, any of its related companies or substantial shareholder; is otherwise independent of management and free from any business or other relationship within the three years immediately preceding the date of his election; and

- Does not engage or has not engaged, whether by himself or with other persons or through a firm of which he is a partner, director or substantial shareholder, in any transaction with the covered entity or any of its related companies or substantial shareholders, other than such transactions that are conducted at arm's length and could not materially interfere with or influence the exercise of his judgment.

It is essential for regulators to have a good set of qualifications to validate if an ID is qualified to hold the position. This set of qualifications can ensure shareholders that the ID they are electing does not have any conflict of interest or any perception of conflict. His primary duty and advocacy as a member of the Board is to uphold the interest of the corporation.

It is essential for regulators to have a good set of qualifications to validate if an ID is qualified to hold the position.

To be able to come up with a better set of qualifications for IDs, it is recommended that the set of qualifications based on SRC Rule 38, DOF Order No. 054-2015 and IFC Definition of Independent Directors be harmonized. This will be addressed in the 2016 Code of Corporate Governance and will be under the "comply or explain" approach.

### b. *Number of Independent Directors in the Board*

The presence of IDs on the Board is encouraged to ensure that independent judgment on corporate affairs is exercised. They are expected to be diligent and vigilant in maintaining fairness, accountability and transparency in the activities of the Board to protect the interests of various stakeholders. Independent Directors, as non-executives, do not engage in the day-to-day activities of the company. Instead, they play an important role in overseeing the performance of the management.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Currently only companies covered by the RCCG and Section 38 of the SRC are required to have IDs on the Board. Under the SRC, covered companies must have at least two IDs or such number as to constitute at least 20% of the members of such Board, whichever is lesser, but in no case less than two.

Even though the best practice in the region is to have at least 30% IDs in the Board, most covered companies in the country have complied only with the minimum requirement, as shown in Table 10.

It is important to take note of other ASEAN countries' requirement as to the number of IDs that a corporation in their respective jurisdictions should have. Please see Table 11.

**Table 10**  
**Number of Independent Directors in Publicly-Listed Companies**

Independent Directors (ID)	Number of PLCs
With 1 ID	4
With 2 IDs	92
With 3 IDs	53
With 4 IDs	12
With 5 IDs	8
With 6 IDs	1
With 7 IDs	1

**Table 11**  
**Board Composition of Publicly-Listed Companies in other ASEAN Countries**

COUNTRY	REGULATION	BASIS
INDONESIA	<i>For Listed Companies</i> - at least 30% of the members of the Board of Commissioners should be independent OR at least one ID.	Indonesia Stock Exchange Regulation Number I-A on the Listing of Shares and Equity Securities other than Shares Issued by Listed Companies (No. KEP-00001/BEI/01-2014)
MALAYSIA	The Board must be comprised of a majority of IDs where the chairman of the board is not an ID.	Malaysian Code on Corporate Governance 2012 <i>under Recommendation No. 3.5</i>
SINGAPORE	<ul style="list-style-type: none"> <li>There should be a strong and independent element on the Board, with IDs making up at least one-third of the Board.</li> <li>The IDs should make up at least half of the Board where: (a) if the Chairman and Chief Executive Officer is the same person; (b) if the Chairman and CEO are immediate family members; (c) if the Chairman is part of the management team; and (d) if the Chairman is not an ID.</li> </ul>	Singapore Code on Corporate Governance 2012 <i>under Board Composition and Guidance</i>
THAILAND	There should be a number of IDs equivalent to at least one-third of the Board size, but not less than three.	Thailand Code on Corporate Governance 2006 <i>under Board Structure</i>
VIETNAM	Only listed companies must include independent members on the management Board. One-third of a listed company's management Board members must be independent.	Law on Enterprises No. 60/2005/QH11



## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

The DOF Order No. 054-2015 recommends an ideal minimum number of IDs. At least 20% but not less than two members of the Board shall be IDs. Provided, that any fractional result from applying the required minimum proportion, i.e., 20%, shall be rounded up to the nearest whole number. For PLCs, the number of IDs must be proportionate to the percentage of shares held by the public.

Globally, the recent trend of regulators and shareholders of publicly traded companies has been to increase the proportion and influence of IDs. However, Stock Exchanges in many countries, such as Finland and New Zealand, recommend (or may require) that publicly traded companies have a minimum number or proportion of IDs. Elsewhere, such as in the United Kingdom and United States, boards are largely free to choose the proportion of independent or non-executive directors, which has traditionally been quite low.<sup>104</sup>

Globally, the recent trend of regulators and shareholders of publicly traded companies has been to increase the proportion and influence of IDs.

For PLCs and PCs in the Philippines to be at par with the global trend, their boards should have at least two IDs or such number as to constitute at least one-third of the members of such Board, whichever is higher.

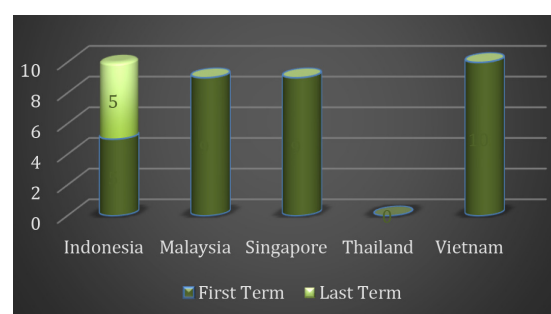
### c. Term of Independent Directors

In other jurisdictions within the ASEAN region, the recommended best practice for the tenure of IDs is a cumulative term of up to nine years.<sup>105</sup> A nine-year term is adequate for IDs to understand the business well enough to contribute in boardroom discussions, test strategies of the CEO and management and create long term shareholder value. Long stretches of service may prejudice a director's ability to act independently and in the best interest of the company.<sup>106</sup> Any term

beyond nine years for an ID should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the Board and to succession for appointments to the Board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the Board.<sup>107</sup>

Figure 5 shows the term limit set by our ASEAN neighbor countries on the IDs of their regulated companies.

**Figure 5**  
Term Limits of Independent Directors



In Indonesia, the maximum term of office is limited to two consecutive periods (normally each period is around three to five years). Both in Malaysia and Singapore, the tenure of IDs should not exceed a cumulative term of nine years. Thailand, however, does not prescribe a term limit. Instead, it requires its regulated companies to clearly state the term of service of directors in their CG policy. Lastly, Vietnam allows a maximum of ten-year tenure.

In the Philippines, covered companies are following the 5-2-5 Rule set by the SEC as the term limits of IDs. SEC Memorandum Circular (MC) No. 9, Series of 2011 provides that an ID can serve for five consecutive years. After completion of the five-year service, the ID will have a mandatory two-year cooling-off period, after which, the ID can be re-elected for another five years. After serving a total of ten years, the ID is perpetually barred from re-election in the same company or conglomerate. The said MC took effect on 28 January 2012.

<sup>104</sup> IFC, "IFC Corporate Governance Knowledge", *FOCUS – Guidance for the Directors of Banks*, Publication No. 11.

<sup>105</sup> ACMF ASEAN Corporate Governance Scorecard, E.2.6.

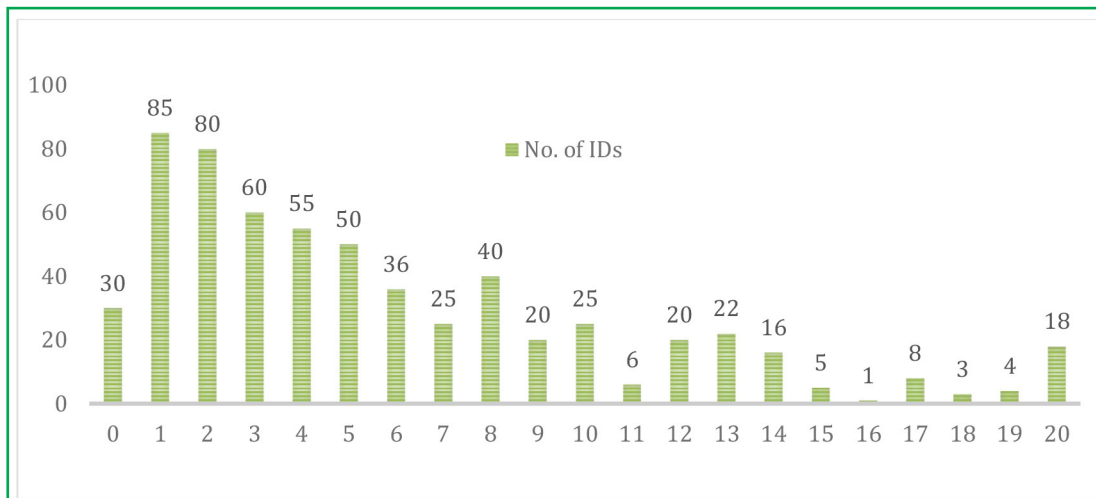
<sup>106</sup> Securities Commission Malaysia (2011), "Malaysia Corporate Governance Blueprint", *Chapter 3: The Board's Role in Governance*, p. 30.

<sup>107</sup> UK Code (June 2010) as quoted in ACMF ASEAN Corporate Governance Scorecard, E.2.6.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

At present, there are still 128 IDs serving more than nine years on the same Board. This is not at par with the best CG practices in the region. See Figure 6.<sup>108</sup>

**Figure 6**  
**Years of Service of Independent Directors in Philippine Publicly-Listed Companies**



Note: Years of Service starts from date of first appointment.

An effective director should be able to add value, and remain committed to doing so, for a period of eight to 12 years. However, after about nine or ten years, it may be difficult for the director to remain genuinely independent and not to become complacent. Many stock exchanges regard this period as the longest that any director may be regarded as independent.<sup>109</sup>

Therefore, to ensure independence, a term limit should be set.

It is recommended that the term limit of IDs be set at nine years. After a cumulative term limit of nine years, an ID is perpetually barred from re-election in the same company but may continue to serve the company as a non-independent director.

In connection with SEC MC No. 9, Series of 2011, the cumulative nine-year term limit shall be reckoned from 2012 – under the “comply or explain” approach.

*d. Separation of the Role of the Chairman of the Board and Chief Executive Officer*

Even though it is not considered good CG practice to have the President or CEO as a member of the Board, the present Corporation Code allows such. This may be due to the fact that most of the companies in the country are Family-Owned Corporations and family members are usually appointed as CEOs. The Board consults the CEO, as representative of management, before a decision is made. With the CEO as one of the directors, it is more convenient for the Board to get all the facts and data that they need before coming up with an objective judgment.

<sup>108</sup> Based on ACGR of PLCs as of August 2015.

<sup>109</sup> IFC, “IFC Corporate Governance Knowledge”, *FOCUS – Guidance for the Directors of Banks*, Publication No. 11.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

However, the Board should ensure that there are proper checks and balances of authority in making Board decisions. There should be a clear separation of the roles of Chairman and CEO to avoid conflict or a split board (see story below.<sup>110</sup>) In cases where the roles are combined, alternative arrangements are acceptable such as the designation of a “lead director” among the IDs.

Currently, there are no specific SEC rules and regulations separating the roles of the Chairman and CEO.

Hence, it is highly recommended that the roles of Chairman and CEO be separated. In case they are not, proper mechanisms should be in place to avoid abuse of power and authority and potential conflict of interest. In addition, the Board should have a strong “lead director” among the IDs. This lead director should have sufficient authority to lead the board in cases where management has clear conflicts of interest. Also, he has to be professionally supported by a Corporate Secretary, who is equally bound by the duty of loyalty to the company. The Corporate Secretary has a special duty of ensuring that the Board and all its members are reminded of their fiduciary responsibility to the company and to all its stakeholders.

### **Replacement of Citigroup’s CEO**

One controversial CEO transition was the sudden replacement of Vikram Pandit as the head of Citigroup Inc. in late 2012. The independent members of the board, led by the independent chair, Michael O’Neill, had evidently planned this move over several months and even had their chosen successor, Michael Corbat, ready to step in when the pressure was put on Vikram Pandit to resign.

While this action received much adverse publicity, *it demonstrates well the value of splitting the roles of the board chair and CEO*. If one person had held both roles, the process would have become considerably more complicated and almost inevitably would have led to a split board – at least for a period.

Source: *New York Times and Citigroup public releases (October 2012)*

It is highly recommended that the roles of Chairman and CEO be separated.

Accordingly, the division of responsibilities between the Chairman and CEO must be clearly defined and disclosed in the Board Charter. The separation of the roles between the Chairman and CEO allows each to focus on his respective responsibilities. This is crucial for corporate performance where the Chairman focuses on governance and compliance while the CEO focuses on the business and the day-to-day operations of the company.

This recommendation will be addressed in the 2016 Code of Corporate Governance under the “comply or explain” approach.

#### *e. A Balance of Non-Executive and Executive Directors on the Board*

To help secure objective independent judgment on corporate affairs, and to substantiate proper checks and balances, several members of the Board should be completely independent of management. There should be a significant majority of directors who hold no executive position within the company. As such, there should be enough number of NEDs on the board to exercise independent judgment where there is a potential for conflict of interest. They should ensure the integrity of financial and non-financial reporting, the review of RPTs, nomination of board members and key executives, and Board remuneration. Discussion of these issues requires NEDs to have a separate meeting without the presence of any ED.

At present, only a regulation on the number of IDs on the board is in place. Companies have the prerogative of deciding on the ratio between NEDs and EDs on the board.

<sup>110</sup> Ibid.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

The membership of the Board should be a combination of NEDs, which include IDs and EDs in order that no director or small group of directors can dominate the decision-making process. The NEDs should possess such qualifications and stature that would enable them to effectively participate in the deliberations of the Board.

In order to exercise its duties of monitoring managerial performance, preventing conflicts of interest, and balancing competing demands on the corporation, it is essential that the Board is able to exercise objective judgment. In the first instance, this means independence and objectivity with respect to management. This has implications on the composition and structure of the Board. Board independence in these circumstances usually means that a sufficient number of board members need to be independent of management.

#### 4. Ethical Standards

In addition to fairness to all shareholder groups, members of the Board are also duty-bound to apply high ethical standards, taking into account the interests of all stakeholders. Corporate Boards are expected to adopt Codes of Conduct which stipulate standards for professional and ethical behavior, not only within the company but also in their external dealings, particularly, with regulatory and tax authorities. They are expected to take great care in safeguarding the company from unnecessary legal and reputational risks.

Members of the Board are also duty-bound to apply high ethical standards, taking into account the interests of all stakeholders.

##### a. Adoption of a Code of Business Conduct and Ethics

The Board should apply high ethical standards. The Board has a key role in setting the ethical tone of a company, not only by its own actions, but also in appointing and overseeing key executives and consequently, the management in general. High ethical standards are in the “long-term interest” of the company as a

means to make it credible and trustworthy, not only in day-to-day operations but also with respect to longer term commitments. To make the objectives of the Board clear and operational, many companies have found it useful to develop company Codes of Conduct based on, *inter alia*, professional standard and sometimes broader Codes of Behaviour.<sup>111</sup>

It is the responsibility of the Board to ensure that the details of the Code of Ethics are properly disclosed. The Board should make sure that all safeguards are in place so that all transactions and activities of the company are transparent and lawful.

Currently, not all companies in the country have a Code of Business Conduct and Ethics.

To instill a corporate culture that promotes ethical conduct that pervades throughout the company, Boards should formalize ethical values through a Code of Business Conduct and Ethics. Boards should also ensure the implementation of appropriate internal systems to support, promote and guarantee compliance. This comprises efficient communication channels, which aid and encourage employees, customers, suppliers and creditors to raise concerns on potential unethical/unlawful behavior without fear of retribution.

There is no “one size fits all” Code of Conduct. The main responsibility to create and design a Code of Conduct suitable to the needs of the company and the culture by which it operates lies in the Board. The Code of Conduct should be properly disseminated to the Board, senior management and employees. The Board should ensure commitment to its compliance. Proper training should be conducted to explain proper compliance with the Code. Finally, the Code of Conduct should be disclosed and be made available to the public through the company website.

There is no “one size fits all” Code of Conduct.

<sup>111</sup> OECD (2015), “G20/OECD Principles of Corporate Governance”, VI. *The Responsibilities of the Board*, (C) p. 53.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

The proposed amendment to the Corporation Code requires a One Person Corporation to attach a Code of Ethics or Standards of Conduct when it files its Articles of Incorporation. For stock corporations, subject to the provisions of the Constitution, the Corporation Code, other special laws, and the Articles of Incorporation, it shall provide in its by-laws for a Code of Ethics or Standards of Conduct for the correct and proper performance of the corporation's business and its dealings, direct or indirect, with the government and its agencies, as well as mechanisms to enforce such Code of Ethics or Standards of Conduct, which shall contain the minimum requirements the SEC may provide.

b. *Proper and Efficient Implementation and Monitoring of Compliance with the Code and Internal Policies*

At present, it is not mandatory for companies to set up mechanisms to support internal systems to ensure that internal policies and procedures are followed by the Board, senior management and employees. The proper and efficient implementation and monitoring of compliance with the Code of Business Conduct and Ethics has long been overlooked by companies, particularly the Board. This shows a disconnect between the companies' stated intention and the degree to which they truly value ethical behavior.

Though most companies claim that they have an existing Code of Business Conduct and Ethics, it is a mere document for it lacks proper disclosure on how it is implemented and monitored. Currently, the SEC does not require the companies to report how the Code is disseminated and embedded in the company culture. Companies do not disclose the sanctions or disciplinary actions taken when wrongdoing occurs.

The Board has the primary duty to make sure that the internal systems are in place to ensure the company's compliance with the Code and its internal policies and procedures. To guarantee that the corporate ethics policy is effective and instilled in the company values, the following methods may be adopted:

The Board has the primary duty to make sure that the internal systems are in place to ensure the company's compliance with the Code and its internal policies and procedures.

*Communication and Awareness Campaigns* – This is a continuous process. To engage the Board, senior management and employees and raise awareness of ethical decision making, the company's ethics policy should be available through the company website. Any update in the Code should also be seen in the company newsletter and/or company email or intranet. Also, the company should conduct activities to promote awareness of its ethical policies so that the Board, senior management and employees will be enlightened on how the Code will be implemented and monitored and the consequences of misconduct.<sup>112</sup>

*Training and Reinforcement of the Code* – Most organizations now offer online training on anti-bribery. On its own, this is not enough. Companies should not be comforted by a tick-the-box mentality. There is no substitute for face-to-face, qualitative training with wider discussion and debate of understanding and practical application.<sup>113</sup>

*Supporting Context and Culture* – This involves having the "ethical architecture" in place to support a living, breathing code. This architecture should include outlining policies and regulations in employee contracts and supplier agreements, identifying individuals and Boards who are accountable for outcomes, creating ongoing awareness-raising programmes, opening discussions with feedback and having oversight and monitoring procedures in place. Taking action against

<sup>112</sup> Barman, T. and S. White. "Implementing an Effective Corporate Ethics Policy". *CGMA Magazine*, June 13, 2014. <http://www.cgma.org/magazine/features/pages/20149701.aspx>.

<sup>113</sup> Ibid.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

wrongdoing and communicating the action taken to staff is an important element of this. More companies are including ethics-related criteria in performance reviews.<sup>114</sup> To bridge the communication gap between senior management and employees, the compliance officer should provide training to the senior management of each business unit to enhance the training activities with additional topics that address challenges specific to it and how these challenges should be handled.

*Monitoring and Accountability* – Effective speak up arrangements, such as anonymous helplines, through which employees, contractors and other third parties can raise concerns in confidence about unsafe, unethical or unlawful practices are an important element of good CG.<sup>115</sup> The company should set up an avenue where employees will be comfortable to raise issues without fear of retaliation. The number and nature of issues raised should be communicated to the Board and should be shared with the senior management and employees through the intranet. For transparency, the company may also make this information public. Reporting the issues raised provides evidence that the company has procedures in place that are actually used and are effective in managing ethical misconduct.

In addition, the proposed amendments to the Corporation Code require all corporations to properly and efficiently implement its Code and internal policies by providing avenues of communication in reporting violations of the Code of Ethics and Standards of Conduct and other improprieties or other unlawful or illegal activities by the Board, senior management and employees. The proposed amendment also provides for a penalty if the corporation fails to show that (1) it has installed safeguards to ensure that it is carrying out its services in a transparent and lawful manner, and that (2) it has installed policies, Codes of Ethics and procedures against graft and corruption, when coupled with a finding of graft and corrupt practices against any of the company's directors, officers, employees, agents or representatives. These proposals will make this CG practice mandatory.

### F. Towards A Stronger and More Effective Enforcement Regime

***Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.***<sup>116</sup>

#### Overview

With a framework for proper CG practices in place, it is necessary to secure their compliance in spirit, and where specific and concrete best practice guidelines are provided, also according to the letter of those guidelines. Under a free and open market system, however, corporations are given the option to adopt alternative practices, provided they fall within the spirit of the principles and give an explanation to the market and the general public through their disclosure to the SEC and the PSE. The SEC has the authority to determine whether those alternative practices are proper and in accord with the spirit of the CG principles.

A strong and effective enforcement mechanism is critical, therefore, to the open and proper observance of CG principles. The mechanism is necessarily multi-faceted. It starts with the Board of the company and ends with the SEC and other regulatory authorities, working in close tandem with the SEC. They are all mandated to secure a strong and effective CG regime. In the case of SEC, in all corporations in the Philippines; in the case of BSP, in all banks; in the case of the IC, in all insurance companies; in the case of the GCG, in all GOCCs; and in the case of the PSE, in all PLCs.

**A strong and effective enforcement mechanism is critical to the proper observance of CG principles.**

Compliance with CG principles and indicated best practices rests mainly on the Board of the company. The Board has the principal duty of ensuring that the company is fully and properly compliant with CG principles and best practices.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> OECD (2015), "G20/OECD Principles of Corporate Governance", I. Ensuring the Basis for an Effective Corporate Governance Framework, (E) p. 16.

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

Beyond the inner ambit of companies, there are now intermediate institutions with a strong commitment to compliance with CG principles and best practices. Among the professional associations with a special, dedicated CG committee within their Board are: (a) Philippine Institute of Certified Public Accountants (PICPA); (b) FINEX; (c) IIAP; and (d) MAP. In addition, we also have (e) SharePhil, which protects and promotes the interests of all shareholders, especially minority shareholders; (f) GGAPP, which is an association of good governance advocates and practitioners from various PLCs, the public sector and other organizations and (g) the Institute of Corporate Directors, a society of Fellows made up of actively serving corporate directors. All these intermediate institutions with a strong advocacy for higher standards of compliance with CG principles need to be encouraged and duly recognized for the important role they play in strengthening the CG regime in the Philippines.

### Challenges and Recommendations

#### 1. Funding and Resources for the Securities and Exchange Commission

The SEC is the central public agency with a mandate to enforce CG rules and regulations. How it is empowered, resourced, and provided with authority and support, which secure and enhance its autonomy, independence, and ability to hire and keep professional and properly remunerated staff will help determine how effectively it can play its central role in the enforcement mechanism for good CG.

For a more effective enforcement regime, a strong SEC armed with adequate authority, resources and capacity for the effective discharge of its supervisory, regulatory and enforcement functions and responsibilities is necessary. Though not a constitutional commission, the SEC, under the SRC, is authorized to reorganize to enable it to more efficiently and effectively perform its functions.

Current efforts at amending and strengthening the Corporation Code and future amendments to the SRC should take serious account of the critical role the SEC plays in capital markets development, including the promotion of CG. The SEC should be given the necessary resources to effectively carry out its mandate of strengthening and regulating the corporate and capital markets infrastructure of the Philippines. In line with this, the restructuring of SEC into an autonomous body in terms of financing/funding and in the hiring and firing of people should be considered. This requires the approval of agencies such as the Department of Budget and Management, DOF, the Civil Service Commission, Congress, and the Office of the President.

For a more effective enforcement regime, a strong SEC armed with adequate authority, resources and capacity is necessary.

In addition, a study should be conducted on the organizational structure of SEC counterparts in other countries, especially those in the ASEAN region, for possible best practices. The BSP model should also be studied to see whether it can be replicated in the SEC.

Meanwhile, SEC can publish its own blueprint or roadmap towards becoming as strong and effective regulator for the entire corporate sector as the BSP has become for the banking sector. This will include investing in its human resource development, streamlining its core processes, adopting regional and even global benchmarks for serving its constituencies, working in tandem with other regulatory authorities, and securing the funding support for all its strategic priorities contained in such a blueprint or roadmap. The timelines in the blueprint shall be tracked and closely assessed .

## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

### 2. Updating of Laws and Regulations

The Philippines' Securities Laws and Regulations should be more comprehensive in order to address the evolving regulatory landscape of the country. A development in this area includes the recent release of the 2015 Implementing Rules and Regulations of the SRC by the SEC. It will be noted, however, that there are pending efforts to have the amendments to the Corporation Code approved in Congress. There is also a move to amend the SRC.

Further review and amendment of laws and regulations under the jurisdiction of the SEC, such as the amendments to the Corporation Code and the proposed amendment of the SRC, should be pursued to be more aligned with current trends and practices and to address gaps that are not currently covered in existing rules.

### 3. Regulation of External Auditors

In 2009, the SEC signed a Memorandum of Agreement (MOA) with the BSP, the IC and the Professional Regulatory Board of Accountancy to simplify the accreditation process for external auditors. The MOA provides a framework for harmonizing the different accreditation procedures of regulatory agencies by streamlining the documentary requirements and procedures for accreditation.<sup>117</sup>

The ongoing efforts of the SEC to develop its SEC Oversight Assurance Review initiative should be continued. Such a program is envisioned to be implemented through the sending of teams from the SEC's Office of the General Accountant to examine the External Auditing firms' working papers on their clients, specifically focusing on companies with certificates of registration and secondary licenses. These companies include PLCs and brokerage firms.

### 4. The Philippine Stock Exchange, Inc.'s Corporate Governance Initiatives

Compliance with CG rules and regulations on the part of big corporations such as those listed on the PSE has a powerful exemplary influence on the manner in which smaller and middle-sized companies also comply with those rules and regulations. In this light, the PSE has an important role in the further development of the Philippine capital markets, and in making it wider, broader, and more inclusive. As it promotes the listing of more companies in the PSE, it should also intensify its programs and initiatives in enforcing the observance of CG principles and best practices, which need to be more fully aligned with the standards adopted by the other more advanced economies in ASEAN region.

The Annual PSE Bell Awards for Corporate Governance should be enhanced from an annual CG recognition program to a program that also aims to assist mid-caps and Small and Medium-sized Enterprises to improve their CG standards and practices to the level of the larger companies. Further, the PSE should not limit its attention to companies that already do well by the CG standards it has set, as well as those set in the ACGR, which are also fully consistent with the ACGS. Special attention should also be given to companies which are still scoring below the average for Philippine PLCs.

A study shall also be conducted on how the PSE can further support the CG agenda of the SEC.

The PSE has an important role in the further development of the Philippine capital markets.

<sup>117</sup> BSP Media Release: BSP, SEC, IC AND BOA Simplify Accreditation Process for External Auditors (12 August 2009).



## II. TOWARDS A MORE EFFECTIVE CG FRAMEWORK

### 5. Comprehensive Corporate Governance Strategy

In view of evolving local and regional CG standards and practices, there is a need for a comprehensive CG strategy in the country. This CG Blueprint is being developed in order to address this need.

The applicable recommendations of the CG Blueprint should be incorporated in the 2016 Code of Corporate Governance and, if possible, in the Listing Requirements and Disclosure Rules of the PSE. In addition, the SEC should study the development of sector-specific CG codes within the next five years. Regulators should also identify institutions that will help monitor and implement the recommendations of the CG Blueprint. Lastly, a study should be made on employing industry associations to help enforce CG rules on its members, especially after the sector-specific CG codes are released

### 6. Further Rationalizing Corporate Governance Reportorial Requirements

Different regulatory agencies have different CG reportorial requirements. The SEC requires the submission of the ACGR. The PSE requires CG Guidelines for Listed Companies Annual Self-Assessment. The BSP also requires various reports provided in Section 6 of its Guidelines in Strengthening Corporate Governance in BSP Supervised Financial Institutions.<sup>118</sup> Based on feedback from representatives of various stakeholders, the CG reporting burden of PLCs may be further rationalized to facilitate compliance.

The SEC shall coordinate with other regulatory agencies to rationalize and consolidate CG reporting requirements (in particular, the ACGR, and the CG Guidelines for Listed Companies Annual Self-

Assessment). The ACGR shall be the only document for all CG information of companies. Scaled down versions of the ACGR shall be required depending on the company's respective sectors and subject to the principle of proportionality.

### 7. Strengthening the Legal System to Effectively and Efficiently Resolve Capital Markets Related Cases

The SEC recognizes that regular consultation would need to be undertaken with other offices and agencies within the Executive Branch, particularly those that are within the broader ambit of the DOF. In addition, consultation with Congress and the Judiciary is necessary so that the broader requirements of the SEC in carrying out its mandate to strengthen, expand, develop, and make inclusive our capital markets would be met expeditiously and supported judiciously. Regular and more effective, open consultation and communication with the general public is also necessary, particularly in order to win general public understanding and support for the SEC as it facilitates and speeds up more inclusive and equitable development of our economy, starting with the development of our capital markets.

The use of Alternative Dispute Resolution should be strengthened.

The SEC should coordinate with the Department of Justice (DOJ) on the possibility of creating or designating DOJ units specifically focused on capital markets and CG-related cases. A study should then be conducted on how regulators can partner with or support said DOJ units. It is also recommended that select DOJ personnel be trained to help prosecute these types of cases.

<sup>118</sup> BSP Circular No. 749, Series of 2012.

Another study should be conducted, in partnership with the Supreme Court of the Philippines, on the strengthening of commercial courts. The Supreme Court of the Philippines should be engaged in order to ensure that judges designated to handle commercial cases, including securities- and CG-related cases, have the necessary know-how and background to effectively and efficiently resolve the same.

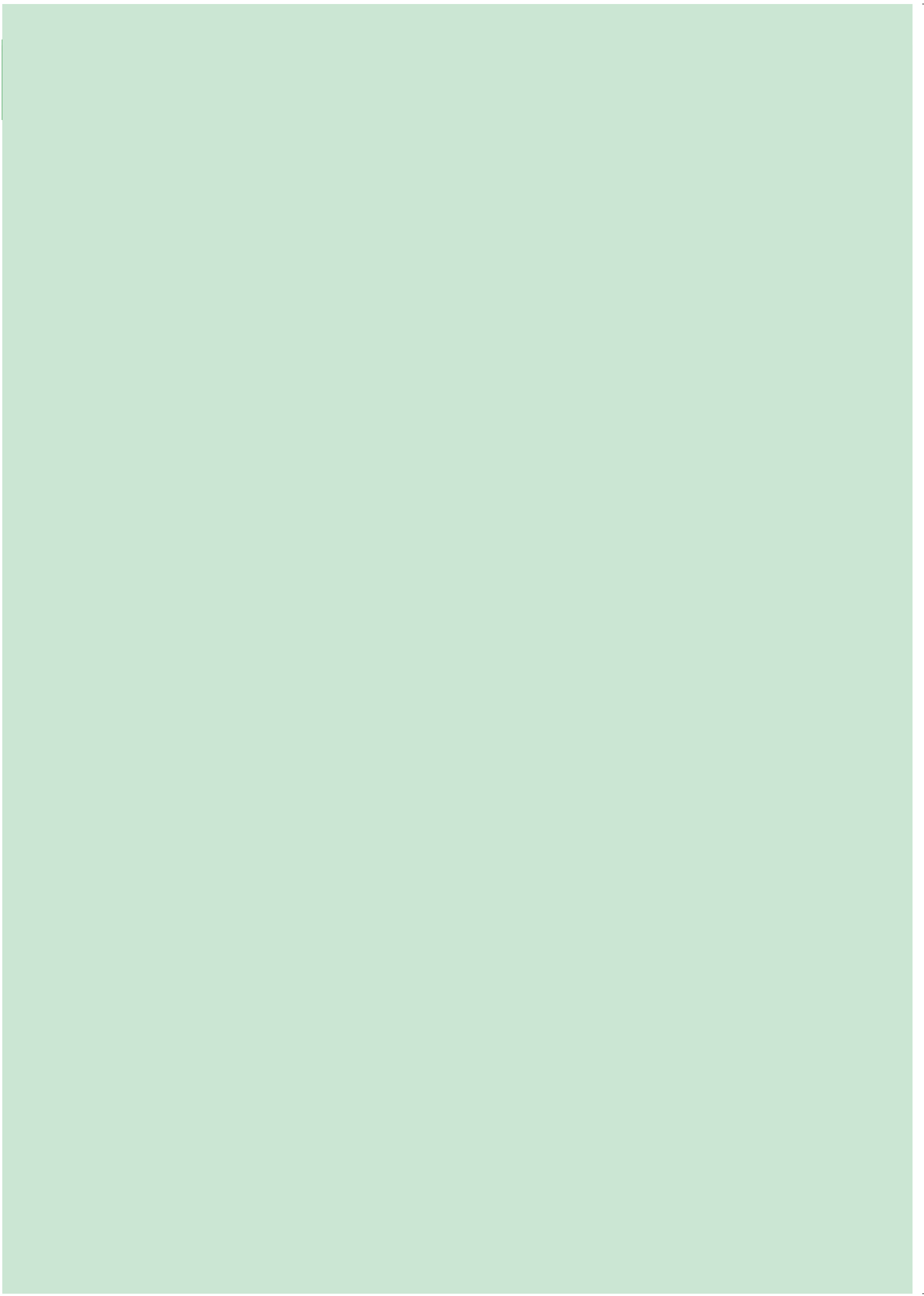
Further to this, the use of ADR should be strengthened. This can be done through the engagement of the DOJ's Office of ADR and the Philippine Dispute Resolution Corporation to develop strategies on how to expand the use of ADR mechanisms in resolving capital markets and CG-related issues and cases. In connection with this, the scope and remedial procedures of intra-corporate disputes must be better defined. The SEC shall come up with implementing rules and guidelines to assure and maintain a pool of trained professional arbiters who are properly accredited/certified by the SEC. This is where arbitration hearing officers shall be drawn from.

#### **8. Harmonizing Corporate Governance Rules of all Regulatory Agencies**

As the central regulatory authority with the mandate to raise the standards of CG in all corporations in the Philippines, the SEC takes the lead in coordinating and harmonizing its CG programs and initiatives with other more specialized agencies, with a more focused mandate on such sectors as banking (the BSP); insurance (the IC); and GOCCs (the GCG). In addition, it has the PSE as a Self Regulatory Organization for PLCs under its auspices. These more specialized and focused agencies look to the SEC for the comprehensive principles and practices that apply to all corporations.

Presently, the Financial Sector Forum, composed of the SEC, the BSP, the IC and the Philippine Deposit Insurance Corporation, is already spearheading the harmonization of the CG rules and regulations of the aforementioned agencies. This initiative shall be strengthened. In addition, SEC shall continue to work in close coordination with all other regulatory agencies, particularly BSP, IC, GCG and PSE to ensure that the differing circumstances of corporations within their respective sectors are considered in the harmonization of the CG principles and practices.

# **III. IMPLEMENTATION ROADMAP: 2020**



### III. IMPLEMENTATION ROADMAP: 2020

All recommendation items are plotted in an Implementation Roadmap with a 2020 final target date, unless otherwise indicated.

STRATEGIC CG PRIORITY	RECOMMENDATION	PARTIES INVOLVED	TARGET DATE	
<b>A. Shareholders: Their Rights of Ownership</b>				
1	Right to Participate in Annual Shareholders' Meeting			
a.	Notice of Annual Shareholders' Meeting	Adopt the 28-day period for giving out notices of Annual Shareholders' Meeting (ASM) in the proposed amendments to the Corporation Code	SEC and PSE	2016-2017
		Encourage companies to send notice of ASM electronically	SEC and PSE	2016
b.	Annual Shareholders' Meeting Agenda	State the rationale and explanation for each agenda item in the notice of ASM	SEC and PSE	2016
		Give shareholders the right to propose the holding of special meetings and matters for discussion or inclusion in the agenda of the ASM	SEC and PSE	2016
		Provide the process for shareholders to file proposals, including a reasonable time to submit the same	SEC and PSE	2016
c.	Attendance and Voting in the Annual Shareholders' Meeting	Make the proxy form easily available or accessible	SEC and PSE	2016
		Encourage the use of secure electronic voting in absentia	SEC and PSE	2016
		Encourage poll voting by shareholders	SEC and PSE	2016
d.	Minutes of the Annual Shareholders' Meeting	Make publicly available by the next working day the result of the votes taken during the most recent ASM and post the minutes of the ASM in the company website within five days from the date of the meeting	SEC and PSE	2016
2	Right to Nominate Candidates to the Board	Give non-controlling shareholders or those owning at least more than a certain threshold, the right to nominate.	SEC	2016
		SEC to provide certain threshold for the exercise of the right to nominate candidates to the Board	SEC	2016
		Provide mechanism for shareholders to send their nomination and the period for the same	SEC	2016
3	Right to Seek Redress for Violation of Rights	Include in the proposed amendments to the Corporation Code a provision on arbitration as an "alternative dispute resolution" mechanism	SEC	2016-2017
		Formulate rules and regulations which shall govern arbitration and facilitate the organization of an arbitral board	SEC, DOJ	2017
4	Right to be Notified of Material Related Party Transactions	Require members of the board to present to stockholders during ASMs disclosures on self-dealing and related party transactions (RPTs)	SEC	2016
		Adopt relevant portions of the Bangko Sentral ng Pilipinas Circular on RPTs	SEC, BSP	2016
5	Right to be Informed of Changes in Corporate Control	Provide a mechanism for protection of investors' rights and interests regarding changes in corporate control	SEC	2016
		Require a precise and forthright declaration of beneficial, not just nominal, interest of all counter-parties	SEC	2016

### III. IMPLEMENTATION ROADMAP: 2020

STRATEGIC CG PRIORITY		RECOMMENDATION	PARTIES INVOLVED	TARGET DATE
<b>B. Role of Institutional Investors and Financial Advisors</b>				
6	Stewardship/Responsible Investment Code of Institutional Investors	Recommend institutional investors to disclose their policies with respect to CG	SEC	2017
		Work with institutional investor groups to study the potential development and implementation of a Stewardship Code	SEC, Institutional Investors	
7	Disclosure of Institutional Investors' Corporate Governance and Voting Policies	Undertake a study on making mandatory selected CG practices for institutional investors that would have a material impact on the company and other stakeholders, such as the disclosure of CG and voting policies	SEC, Institutional Investors	2017
<b>C. Duties to Other Stakeholders</b>				
8	Effective Redress for Violation of Stakeholders' Rights	Require companies to always abide by the principle of "truth in advertising," and provide clear and timely information as well as effective mechanisms to address customer complaints, questions and suggestions	SEC	2016
		Put in place effective mechanisms to provide relevant, accurate, sufficient, reliable, timely and regular information to all shareholders	SEC	2016
9	Employee Participation	Encourage companies to develop performance-enhancing mechanisms for employee participation	SEC	2016
10	Anti-Corruption Programmes	Mandate companies to promote integrity in the conduct of their business and, whenever possible, to formalize this commitment through an integrity pledge	SEC	2016
11	Whistle-blowing Policy	Require companies to have a whistle-blowing policy that would allow employees and other stakeholders to freely communicate their concerns without fear of any retribution or repercussion	SEC	2016
12	Creating Shared Value as new Corporate Social Responsibility	Mandate companies to be socially responsible in all their dealings with communities, ensuring that their interaction serves the communities in a positive and progressive manner	SEC	2016
<b>D. Disclosure and Transparency</b>				
13	Enhancing Disclosure in Annual Reports			
a.	Financial and Operating Results of the Company	Recommend that material and significant financial transactions relating to an entire group of companies be disclosed in line with high quality internationally recognized standards	SEC	2016
		Encourage the Boards to establish corporate disclosure policies and procedures to ensure a comprehensive, accurate and timely report to stakeholders	SEC	2016
b.	Company Objectives and Non-financial Information	Encourage companies to disclose to all shareholders and other stakeholders their strategic (long-term goals) and operational objectives (short-term goals)	SEC	2016
		Require the Board to supplement the report of management by reporting to the shareholders on how it performed its responsibilities	SEC	2016

### III. IMPLEMENTATION ROADMAP: 2020

STRATEGIC CG PRIORITY		RECOMMENDATION	PARTIES INVOLVED	TARGET DATE
c.	Transparency in Company's Ownership Structure	Mandate companies to disclose relevant information regarding their ownership structure	SEC and PSE	2016
		Conduct a study on the disclosure of the ultimate beneficial owner of the company's shares to the regulators from the current ten calendar days to three business days	SEC and PSE	2016
		Include in the Board Charter a requirement for the directors to disclose/report to the company their dealings in the company's shares within three business days	SEC and PSE	2016
d.	Remunerations of Members of the Board and Key Executives	Encourage companies to adopt a formal and transparent procedure for developing a policy on executive remuneration and for fixing the remuneration packages of individual directors	SEC	2016
		Require companies to disclose in their Annual Reports and Information Statements the Board and executive remuneration on an individual basis	SEC	2016
e.	Full Disclosure of Material Related Party Transactions	Mandate companies to abide by the rules of regulatory authorities on the definition and coverage of RPTs and to disclose their policy covering the review and approval of material/significant RPTs	SEC, BSP, PSE	2016
		Mandate companies to have a committee of non-executive directors, majority of whom shall be independent directors, to review material/significant RPTs	SEC, BSP, PSE	2016
f.	Foreseeable Risk Factors	Maintenance of a risk register of prioritized risks or a reporting channel	SEC	2016
		Require companies to disclose in such a report any risk identified arising from the transaction and how the company would address such risks	SEC	2016
g.	Acquisition or Disposal of Assets	Criteria for a more comprehensive and detailed disclosure of the acquisition or disposal of significant assets of Publicly-Listed Companies (PLCs)	SEC	2016
		Appointment of an independent party to evaluate the fairness of the transaction price	SEC	2016
14	Strengthening Auditor Independence and the Importance of Audit Quality	Audit Committees to disclose policies and procedures to assess the suitability and independence of external auditors	SEC	2016
		Audit committees be required to exercise effective oversight to ensure that Standards and Code are being complied with by independent auditors	SEC	2016
15	Evaluating and Implementing Sustainability and Integrated Reporting	Conduct an impact study on the requirement of sustainability or integrated reporting by listed companies	SEC and PSE	2017
16	Simplifying Reportorial Requirements	A study on how to simplify and align the reportorial requirements for all regulatory agencies	SEC, BSP, IC, GCG and PSE	2016-2018

### III. IMPLEMENTATION ROADMAP: 2020

STRATEGIC CG PRIORITY	RECOMMENDATION	PARTIES INVOLVED	TARGET DATE	
<b>E. Board Roles and Responsibilities</b>				
17	Roles and Responsibilities of the Board			
a.	Overseeing Succession Planning of Key Officers and Management	Mandate that a proper process should be in place for choosing the successor of a Chief Executive Officer and other key management officers	SEC	2016
b.	Aligning Key Officers and Board Remuneration with Long-Term Interest of the Company	Recommend that a policy statement be formulated and adopted to specify the relationship between remuneration and performance	SEC	2016
c.	Formal and Transparent Board Nomination and Election Process	Companies to align their process of identifying the quality of directors with their strategic direction and to use professional search firms or external sources when searching for candidates to the Board	SEC	2016
		Recommend that mechanisms be set up allowing shareholders to nominate candidates to the Board	SEC	2016
d.	Overseeing Internal Control and Audit	Mandate companies to have a separate internal audit function and that the appointment and removal of the Internal Auditor should be upon prior approval of the Audit Committee	SEC	2016
		Recommend that non-executive directors hold separate meetings with the external auditor and heads of the internal audit, compliance and risk functions, without any executives present	SEC	2016
e.	Overseeing Risk Management	Mandate companies to set up a formal risk management framework and infrastructure that will clearly identify, source, prioritize, assess and manage key business risks	SEC	2016
		Recommend a separate Chief Risk Officer in charge of the company's Risk Management Systems for companies meeting a certain threshold set by SEC	SEC	2016
18	Effectiveness of the Board of Directors			
a.	Board Committees	Require the Audit, Risk Oversight, Corporate Governance and Related Party Transactions Committees for corporations meeting the threshold to be set by SEC	SEC and BSP	2016
i.	<i>Audit Committee</i>	Recommend that the Audit Committee be composed entirely of non-executive directors, a majority of whom are independent directors		
ii.	<i>Risk Oversight Committee</i>	Recommend that a specialized Board Risk Oversight Committee be set up subject to the threshold set by the SEC and depending on the company's size and complexity of its transactions		
iii.	<i>Corporate Governance Committee</i>	Recommend that a Corporate Governance Committee be created to assist the Board in the performance of its CG responsibilities		
iv.	<i>Related Party Transactions Committee</i>	Require companies to constitute a separate Related Party Transactions Committee subject to the principle of proportionality and the threshold/s to be determined by the SEC		



### III. IMPLEMENTATION ROADMAP: 2020

STRATEGIC CG PRIORITY	RECOMMENDATION	PARTIES INVOLVED	TARGET DATE
b. Board and Committee Charters	Mandate a Board Charter for all corporations to guide the directors in the performance of their fiduciary obligation to the company, shareholders and other stakeholders	SEC	2016
	Require companies to have Committee Charters stating in plain terms their respective roles, responsibilities and accountabilities		
c. Board Seat Limit	Conduct a study to determine the appropriate Board seat limit for independent/non-executive directors in Philippine PLCs, taking into consideration Philippine experience and context	SEC	2016
	Conduct a study to determine if a director must seek prior approval from the Board where he is an incumbent director before he accepts another directorship	SEC	2017
d. Prior Training for First-Time Directors and Continuing Training for all Directors	SEC to strengthen the training requirement for all directors and key officers	SEC	2016
	Annually update the list of mandated training topics	SEC, Accredited Training Providers	2016
	Study the possibility of allowing cumulative training hours to comply with the required minimum number of training hours	SEC, Accredited Training Providers	2016
e. Board Diversity	Recommend the adoption of a diversity policy for all corporations, which should be disclosed to all shareholders, investors and other stakeholders through the Annual Corporate Governance Report (ACGR)	SEC	2016
	Amend ACGR to require disclosure of actual diversity policy	SEC	2016
f. Board Assessment	Conduct of an annual assessment of the CEO/President, the Board as a whole, the individual directors and the Board Committees	SEC, PSE	2017
	Conduct a study to determine what disclosure should be required and the extent of disclosure	SEC, PSE	2016
g. Corporate Secretary and Compliance Officer	Strengthen the functions, scope and responsibilities of the Corporate Secretary and Compliance Officers	SEC	2016
	A formal certification program for Corporate Secretaries and Compliance Officers	SEC	2017

### III. IMPLEMENTATION ROADMAP: 2020

STRATEGIC CG PRIORITY		RECOMMENDATION	PARTIES INVOLVED	TARGET DATE
19	Board Independence			
a.	Qualifications of an Independent Director	Harmonize the set of qualifications based on Securities Regulation Code Rule 38, Department of Finance Order No. 054-2015 and the International Finance Corporation Definition of Independent Directors	DOF, SEC and IFC	2016-2017
b.	Number of Independent Directors on the Board	For PLCs and public companies to have at least two Independent Directors or such number as to constitute at least one-third of the members of such board, whichever is higher. This will be under the “comply or explain” approach	SEC and PSE	2016
c.	Term of Independent Directors	Nine-year term limit for independent directors. After a cumulative term limit of nine years, an Independent Director is perpetually barred from re-election in the same company but may continue to serve the company as a non-independent director. This will be under the “comply or explain” approach	SEC	2016
d.	Separation of the Role of the Chairman of the Board and Chief Executive Officer	Separation of the roles of Chairman and CEO and a clear statement of the responsibilities of the Chairman and CEO in the Board Charter	SEC	2016
e.	A Balance of Non-Executive and Executive Directors on the Board	Sufficiency of directors that are independent of management	SEC	2016
20	Ethical Standards			
a.	Adoption of Code of Business Conduct and Ethics	Adoption of a Code of Business Conduct and Ethics	SEC	2016
b.	Proper and Efficient Implementation and Monitoring of Compliance with the Code and Internal Policies	Mandate all corporations to properly and efficiently implement their Code of Business Conduct and Ethics and internal policies by providing avenues of communication in reporting violations thereof and other improprieties or other unlawful or illegal activities by the Board, senior management and employees	SEC	2016
<b>F. Towards a Stronger and More Effective Enforcement Regime</b>				
21	Funding and Resources for the Securities and Exchange Commission	Restructuring the Securities and Exchange Commission (SEC) into an autonomous body in terms of financing/funding and in the hiring and firing of people	SEC, Congress	2016
		Publish the SEC blueprint or roadmap towards becoming a strong and effective regulator	SEC	2017
22	Updating of Laws and Regulations	Review of the laws and regulations under the jurisdiction of the SEC to be more aligned with current trends and practices and to address gaps that are not currently covered by existing rules	SEC	2016

### III. IMPLEMENTATION ROADMAP: 2020

STRATEGIC CG PRIORITY		RECOMMENDATION	PARTIES INVOLVED	TARGET DATE
23	Regulation of External Auditors	SEC to continue the ongoing efforts to develop the SEC Oversight Assurance Review initiative	SEC	2016
24	The Philippine Stock Exchange, Inc.'s Corporate Governance Initiatives	Enhance the Annual Philippine Stock Exchange (PSE) Bell Awards for Corporate Governance from an annual CG recognition program to a program that also aims to assist mid-caps and Small and Medium-Sized Enterprises to improve their CG standards and practices to the level of the larger companies	PSE	2016
		Conduct a study on how the PSE can further support the CG agenda of the SEC	PSE	2016
25	Comprehensive Corporate Governance Strategy	Incorporate applicable recommendations of the CG Blueprint in the 2016 Code of Corporate Governance and possibly, in the Listing Requirements and Disclosure Rules of PSE	SEC, PSE	2016
		Development of sector-specific CG codes within the next five years	SEC	2016
26	Further Rationalizing Corporate Governance Reportorial Requirements	SEC to coordinate with other regulatory agencies to rationalize and consolidate CG reporting requirements	SEC, PSE, BSP, IC	2016-2018
		Prepare scaled down versions of the ACGR to match sector specific CG Code	SEC	2017
27	Strengthening the Legal System to effectively and efficiently Resolve Capital Market Related Cases	Conduct a study on how regulators can partner with or support Department of Justice (DOJ) units focused on capital markets and corporate governance related cases	SEC, DOJ, Supreme Court	2017
		Conduct a study, in partnership with the Supreme Court, on strengthening of commercial courts		2017
		Strengthen the use of Alternative Dispute Resolution through the engagement of the DOJ's Office of Alternative Dispute Resolution and the Philippine Dispute Resolution Corporation		2016
		SEC to come up with implementing rules and guidelines to assure and maintain a pool of trained professional arbiters who are properly accredited/certified by it		2017
28	Harmonizing Corporate Governance Rules of all Regulatory Agencies	Strengthen the Financial Sector Forum initiative on harmonization of CG rules and regulations	SEC, BSP, IC, PDIC	2016-2018
		Close coordination with all other regulatory agencies	BSP, IC, GCG, PSE	2016

## ACRONYMS AND ABBREVIATIONS

ACGA	Asian Corporate Governance Association
ACGR	SEC Annual Corporate Governance Report
ACGS	ASEAN Corporate Governance Scorecard
ACMF	ASEAN Capital Markets Forum
ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
AFS	Audited Financial Statements
ASEAN	Association of South East Asian Nations
ASM	Annual Stockholders' Meeting
Board	Board of Directors
BSP	Bangko Sentral ng Pilipinas
CEO	Chief Executive Officer
CG	Corporate Governance
CG Blueprint	Corporate Governance Blueprint
CLSA	Credit Lyonnais Securities Asia
Code	Code of Business Conduct and Ethics
Corporation Code	Corporation Code of the Philippines
CSR	Corporate Social Responsibility
CSV	Creating Shared Value
DOF	Department of Finance
DOJ	Department of Justice
ED	Executive Director
FMAP	Fund Managers Association of the Philippines
GCG	Governance Commission for GOCCs
GGAPP	Good Governance Advocates and Practitioners of the Philippines

GOCC	Government-Owned and Controlled Corporations
IC	Insurance Commission
ICGN	International Corporate Governance Network
ID	Independent Director
IFC	International Finance Corporation
IHAP	Investment Houses Association of the Philippines
IIRC	International Integrated Reporting Council
IR	Integrated Reporting
NED	Non-Executive Director
OECD	Organisation for Economic Co-operation and Development
PC	Public Company
PLC	Publicly Listed Company
PSE	The Philippine Stock Exchange, Inc.
RCCG	Revised Code of Corporate Governance
RPT	Related Party Transaction
SASB	Sustainability Accounting Standards Board
SEC	Philippine Securities and Exchange Commission
SRC	Securities Regulation Code
TOAP	Trust Officers Association of the Philippines
WEF	World Economic Forum

## REFERENCES

ACMF ASEAN Corporate Governance Scorecard

Asian Corporate Governance Association (ACGA), <http://www.acga-asia.org>.

Australian Institute of Company Directors, "Board Committees," 13 January 2015. <http://www.companydirectors.com.au/director-resource-centre/director-qa/roles-duties-and-responsibilities/board-committees>. Accessed on 8 September 2015.

BSP Circular No. 749, Series of 2012. "Guidelines in Strengthening Corporate Governance in BSP Supervised Financial Institutions."

BSP Media Release: BSP, SEC, IC AND BOA Simplify Accreditation Process for External Auditors (12 August 2009)

Barman, T. and S. White. "Implementing an Effective Corporate Ethics Policy." *CGMA Magazine*, June 13, 2014. <http://www.cgma.org/magazine/features/pages/20149701.aspx>.

Barton, D. and M. Wiseman. "Where Boards Fall Short." *Harvard Business Review*, January-February 2015 issue. <https://hbr.org/2015/01/where-boards-fall-short>

Basel Committee on Banking Supervision (2015), "Corporate Governance Principles for Banks," *Principle 3: Board's Own Structure and Practices*, <http://www.bis.org/bcbs/publ/d328.pdf>.

Commissioner Luis A. Aguilar, "19 April 2013 Speech on Institutional Investors: Power and Responsibility," <http://www.sec.gov/News/Speech/Detail/Speech/1365171515808>

DOF Order No. 054-2015. "Adoption of Guidelines Prescribing the Fit and Proper Rule for Directors of Insurance Companies and Public Companies."

Dwayne Baraka, "How do the Major Corporate Sustainability Reporting Initiatives Measure up?" <http://www.dwaynebaraka.com/blog/2014/01/20/major-corporatesustainability-reporting-initiatives-gri-iirc-sasb-measure>

Fernando, Irene. "Adapting the CSV Business Model." *Manila Bulletin*, 14 December 2014 <http://www.mb.com.ph/adapting-the-csv-business-model/#CwjzcmEfrFegTYAi.99>.

Fich, E.M. and Shivdasani, A (2006), "Are Busy Boards Effective Monitors?," *Journal of Finance*, 61(2)

Jackling, B. and Johl, S. (2009), "Board Structure and Firm Performance: Evidence from India's Top Companies," *Corporate Governance: An International Review*, 17(4)

Friedman, Milton. "The Social Responsibility of Business is to Increase its Profits." *New York Times Magazine*, September 13, 1970. <http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-respbusiness.html>.

IC Circular Letter No. 31-2005 dated 26 September 2005. "Guidelines in the Preparation of the Revised Operating Manual in Combating Money-Laundering and Financing of Terrorism for Insurance Commission Covered Institution"

International Corporate Governance Network (2014), "ICGN Global Governance Principles,"

ICGN, "Responsible Investment Codes," <https://www.icgn.org/policy/responsible-investment-codes>

IFC. "Defining an Independent Director"

IFC (2009), "Global Corporate Governance Forum Focus 8," *Stakeholder Engagement and the Board: Integrating Best Governance Practices*

IFC, "IFC Corporate Governance Knowledge," *FOCUS Guidance for the Directors of Banks*, Publication No. 11.

IIRC (2013), "International Integrated Reporting (IR) Framework."

KPMG International (2012), "Integrated Reporting: Performance Insight through Better Business Reporting," Issue 2, <http://integratedreporting.org/wpcontent/uploads/2012/06/KPMG-Integrated-Reporting-Performance-Insight-Through-Better-Business-Reporting-Issue-2.pdf>

## REFERENCES

Macasero, Ryan. "The Way to Inclusive Growth: Create Shared Value." *Rappler*, 3 October 2014. <http://www.rappler.com/business/industries/70944-creating-shared-value>.

Moore, Carol. "Corporate Social Responsibility and Creating Shared Value: What's the Difference?" *Heifer International*, May 14, 2015. [https://sharedvalue.org/sites/default/files/resourcefiles/CFR047%20Corporate%20Social%20Responsibility%20White%20Paper\\_FINAL.pdf](https://sharedvalue.org/sites/default/files/resourcefiles/CFR047%20Corporate%20Social%20Responsibility%20White%20Paper_FINAL.pdf)

Nestle (2014), "Nestlé Philippines CSV Report 2013," *Creating Shared Value*, <https://www.nestle.com.ph/documents/2013%20csv%20report%20%20philippines.pdf>.

OECD (2011), "Reform Priorities in Asia: Taking Corporate Governance to a Higher Level," *Asian Roundtable on Corporate Governance*.

OECD (2015), "G20/OECD Principles of Corporate Governance".

Porter, M. and M. Kramer. "Creating Shared Value." *Harvard Business Review*, January- February 2011. <https://hbr.org/2011/01/the-big-idea-creating-shared-value>.

Porter, Michael. "The New Competitive Advantage: Creating Shared Value." *Harvard Business Review*, October 11, 2013. <http://www.slideshare.net/amitkapoor/porterprizeindia-michaelporterpresentation>.

Proposed Amendments to Batas Pambansa Blg. 68, The Corporation Code of the Philippines

Proposed BSP Circular, "Guidelines on Related Party Transactions of Banks" (2015)

R.G. Manabat & Co.'s comment on the Draft SEC CG Blueprint received on 14 October 2015.

Republic Act No. 10667, "Philippine Competition Act" (2015)

SEC CG Blueprint Consultative Group Discussion on August 11, 2015

Securities and Exchange Commission Memorandum Circular No. 6, Series of 2009, "Revised Code of Corporate Governance"

SEC MC No. 9, Series of 2011. "Term Limits for Independent Directors"

SEC MC No. 20, Series of 2013. "All Members of the Board of Directors and Key Officers of Publicly Listed Companies to Attend Corporate Governance Trainings only with SEC Accredited Training Providers"

SEC MC No. 2, Series of 2015. "Additional Guidelines on Corporate Governance Training Programs and Lectures"

Securities Commission Malaysia (2011), "Malaysia Corporate Governance Blueprint."

The PSE (September 2013), "Revised Disclosure Rules"

UK Code (June 2010) as quoted in ACMF ASEAN Corporate Governance Scorecard

# ACKNOWLEDGMENTS

The SEC would like to extend its appreciation to the assistance extended by the Asian Development Bank (ADB) through Mohd. Sani Ismail that led to the fruition of the 2015 Philippine Corporate Governance Blueprint.

The SEC would also like to acknowledge the significant and invaluable contributions of the individuals who formed the Corporate Governance Blueprint Consultative Group, headed by Chairperson Teresita J. Herbosa and Commissioner Antonieta Fortuna-Ibe. They have dedicated substantial time, knowledge and effort for the completion of this blueprint. Our heartfelt gratitude goes to the following members of the consultative group:

1. Dr. Jesus P. Estanislao  
*Consultant*
2. Anar Aliyev  
*International Finance Corporation – A World Bank Group*
3. Chief Justice Artemio V. Panganiban (Ret.)  
*Independent Director*
4. Benedicta Du-Baladad  
*Financial Executives of the Philippines*
5. Celso P. Vivas  
*Management Association of the Philippines*
6. Elmer Nitura  
*Good Governance Advocates and Practitioners of the Philippines*
7. Evelyn Singun  
*Insurance Commission*
8. Ferdinand Negre  
*Philippine Franchise Association*
9. Gil L. Gonzales  
*Good Governance Advocates and Practitioners of the Philippines*
10. J. Argel G. Astudillo  
*The Philippine Stock Exchange*
11. Jocelyn V. Altamira  
*Good Governance Advocates and Practitioners of the Philippines*
12. Jose Jesus A. Laurel  
*Shareholders' Association of the Philippines*
13. Joseph Gerard Razo  
*The Philippine Stock Exchange*
14. Justina Fernandez-Callangan  
*Securities and Exchange Commission*
15. Karen G. Arias-Rocha  
*Securities and Exchange Commission*
16. Leila T. Laureta-Agustin  
*Securities and Exchange Commission*
17. Leonardo J. Matignas  
*Institute of Internal Auditors Philippines*
18. Lyn Javier  
*Bangko Sentral ng Pilipinas*
19. Ma. Michelle P. Tibon-Judan  
*Assistant to the Consultant*
20. Mariane Theresa B. Salles-Salud  
*Securities and Exchange Commission*

21. Miguel Tuano  
*Shareholders' Association of the Philippines*
22. Mohd. Sani Ismail  
*Asian Development Bank*
23. Ofelia A. Castillo  
*Insurance Commission*
24. Rebecca G. Sarmenta  
*Institute of Internal Auditors Philippines*
25. Romeo Bernardo  
*Independent Director*
26. Romeo G. David  
*Shareholders' Association of the Philippines*
27. Rosario S. Bernaldo  
*Shareholders' Association of the Philippines*
28. Rosario Carmela B. Gonzalez-Austria  
*Securities and Exchange Commission*
29. Sheila Mae S. Pañares  
*Securities and Exchange Commission*
30. Sherisa P. Nuesa  
*Financial Executives of the Philippines, Institute of Corporate Directors*

The SEC would like to thank, as well, the following individuals who took the time to attend the initial meeting for the CG Blueprint and to provide their valued insights on this SEC initiative:

1. Cesar O. Virtusio  
*Bankers Association of the Philippines*
2. Edgardo G. Lacson  
*Employers Confederation of the Philippines*
3. Henry Lim Bon Liong  
*Federation of Filipino-Chinese Chambers of Commerce and Industry, Inc.*
4. Nestor Tan  
*Bankers Association of the Philippines*
5. Rosemarie Lim  
*Federation of Filipino-Chinese Chambers of Commerce and Industry, Inc.*

Lastly, the SEC would like to recognize the efforts and contribution of the Corporate Governance Division (CGD), Corporate Governance and Finance Department from the planning stages to the drafting and research and up to the printing and launch of the blueprint. Aside from being part of the consultative group, the CGD acted as the Blueprint Secretariat, as well. The members of the CGD are:

1. Director Justina Fernandez-Callangan
2. Asst. Director Leila T. Laureta-Agustin
3. Atty. Rosario Carmela B. Gonzalez-Austria
4. Ms. Mariane Theresa Salles-Salud
5. Ms. Sheila Mae S. Pañares
6. Ms. Karen G. Arias-Rocha



Securities and Exchange Commission  
SEC Building, EDSA, Greenhills  
Mandaluyong City, Philippines  
Trunkline No.:(+632) 584-0923 Fax No.:(+632) 584-5293  
Website: [www.sec.gov.ph](http://www.sec.gov.ph)